

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-1193-2015 (O&M)

Date of decision: 10.09.2019

Pipal Singh

..... Appellant

Versus

Gurmeet Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. PK Bansal, Advocate for the appellant.

Mr. Dhirender Chopra, Advocate for the respondent.

RAMENDRA JAIN, J. (ORAL)

Service complete.

Power of attorney filed on behalf of respondent-plaintiff is taken on record. Be tagged at the appropriate place.

Through this regular second appeal appellant-defendant has laid challenge to judgment and decree of lower Appellate Court dated 16.10.2014, affirming judgment and decree of trial Court dated 21.09.2013, whereby suit of respondent-plaintiff under Order XXXVII CPC for recovery of ₹6,50,000/- was decreed along with simple interest @ 6% per annum, from the date of execution of pronote and receipt dated 21.12.2009, till realization.

Briefly, respondent-plaintiff filed a suit under Order XXXVII CPC against appellant-defendant for recovery of ₹6,50,000/-

along with interest @2% per month w.e.f. 21.12.2009 to 21.12.2012, totalling ₹8,84,000/-, on the basis of pronote and receipt dated 21.12.2009.

Notice upon appellant-defendant was served on 09.04.2013, despite the fact that he had already appeared through counsel on 16.03.2013, but, did not move any application under Order XXXVII Rules 2(3) and 3 CPC. However, after expiry of statutory period envisaged under the aforesaid Rules, the appellant filed an application seeking leave to defend, along with application under Section 5 of the Limitation Act, 1963 (for short-'the Act'), which was rejected and his defence was struck off. Finally, trial Court decreed the suit vide judgment and decree dated 21.09.2013 for ₹6,50,000/- along with simple interest @ 6% per annum from the date of execution of pronote and receipt dated 21.12.2009, till realization.

Being aggrieved, appellant-defendant approached lower Appellate Court, but remained un-successful as his appeal too was dismissed vide judgment and decree dated 16.10.2014.

Learned counsel for appellant-defendant *inter alia* contends that respondent-plaintiff in her suit had also claimed his attachment of property beyond purview of Order XXXVII CPC. Therefore, the trial Court was required to treat the suit as a recovery suit and not under Order XXXVII CPC. Both the Courts below failed to appreciate that instead of non-suiting the appellant at preliminary stage, ought to have decided the suit on merits. In the notice served upon appellant on 09.04.2013, the next date for appearance was mentioned as 29.04.2013, therefore, non-

fulfillment of requirement within prescribed period of 10 days under Order XXXVII CPC is not intentional or deliberate, rather is *bona fide* due to above reasons.

On the other hand, learned counsel for respondent-plaintiff vehemently opposing the submissions of learned counsel for appellant, pleaded the legality and validity of judgments of both the Courts below.

Having given thoughtful consideration to the rival submissions, this Court finds the instant regular second appeal merits dismissal for the reasons to follow:

A perusal of the record shows that the appellant, admittedly, put in appearance before the trial Court through his counsel on 16.03.2013, prior to serving of notice upon him on 09.04.2013, the date mentioned in the notice for his appearance. The appellant-defendant was required to move application, seeking leave to defend within 10 days as enshrined in Order XXXVII CPC, but he moved the same along with application under Section 5 of the Act, after expiry of mandatory period of 10 days of receipt of the notice, which, in my considered view, was rightly rejected by the Courts below, being filed beyond expiry of prescribed period. The contention of learned counsel for the appellant that both the learned Courts below should have decided the suit on merits instead of non-suiting the appellant at preliminary stage is not sustainable for the simple reason that the appellant did not move application seeking leave to defend within the period mandatorily prescribed under Order XXXVII Rules 2(3) and 3 CPC.

No question of law much less substantial has been raised in

the instant regular second appeal. Hence, the same is held not maintainable.

I have carefully gone through the the judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

September 10, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No