

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**RSA No.4114 of 2015 (O&M)
Date of Decision.25.02.2019**

Swaran Singh and others

...Appellants

Vs

Rashpal Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sherry K. Singla, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-defendants are in regular second appeal against the concurrent finding of fact whereby suit of the respondent-plaintiff for recovery of ₹13,19,200/- along with interest @12% per annum has been decreed.

Plaintiffs sought recovery of the amount against five defendants containing element of interest and future interest on the premise that defendants No.3 to 5 are close relatives of defendants No.1 and 2. In the month of October, 2002, defendants No.1 and 2 introduced the plaintiffs to defendants No.3 and 5, who were working as agents for sending people to South Korea and in this regard, defendants No.1 and 2 guaranteed to the plaintiffs that amount paid by them to the defendants would be safe in their hands and in case, plaintiffs are not sent to South Korea then the amount would be refunded. Believing the assurance of defendants No.1 and 2, plaintiffs paid a sum of ₹5,00,000/- each. Plaintiffs were sent to Thailand where defendants No.3 and 4 accompanied them and then left with some other agent and returned. Plaintiffs were assured that

the agent in Thailand shall take them to South Korea but the plaintiffs were detained in a room and forced to do smuggling work and on refusal were beaten. In this regard FIR under Sections 420 and 406 IPC was registered them.

Defendants No.1, 2, 4 and 5 filed the common written statement whereas defendant No.3 proceeded ex parte. They denied the Ikrarnama, much less, receipt of money or sending the plaintiffs to South Korea. It was explained that there was some dispute between plaintiffs and Jagdish Singh defendant No.3, who was kidnapped from Patiala and brought to village Danewal and detained in a room.

Plaintiffs in support of pleadings examined Jaspal Singh as PW1, Bachittar Singh as PW2, Satnam Singh as PW3, Harjinder Singh deed writer as PW4, PW6 Rashpal Singh, Satish Kumar clerk from the Tribune Office as PW7, PW8 Narinder Singh Clerk from OBC Bank, Shahkto, Surinder Singh attesting witness as PW9, Mukhtiar Singh witness to the Ikrarnama as PW10, Kuldeep Singh deed writer as PW11 and Lalit Kumar Clerk from State Bank of India, Shahkot as PW12 and tendered various documents i.e. copy of FIR, agreement dated 22.10.2002, copy of passport, airline tickets etc. etc. On the other hand, defendants examined Swaran Singh as DW1 and tendered judgment dated 14.01.2010 rendered by Judicial Magistrate 1st Class, Nakodar as Ex.D1.

Mr. Sherry K. Singla, learned counsel appearing on behalf of the appellants submitted that the alleged Ikrarnama was signed by Swaran Singh, appellant-defendant No.1 and Bachan

Singh, who was proceeded ex parte. The decree in the absence of fastening liability in the capacity of joint and several is not enforceable in law against other defendants. Once the plaintiffs have not able to prove the Ikrarnama or payment of money, civil suit for recovery of the amount ought to have been dismissed.

I am afraid the aforementioned argument is not sustainable, as the finding of the Criminal Court is not binding upon Civil Court as the civil suit is decided on the basis of preponderance of evidence. In view of the documents referred to above, plaintiffs have discharged the onus under Section 101 of the Indian Evidence Act, which remained unrebutted except that the defendants tendered judgment of the criminal court. Defendants have not been able to controvert the passport entries and Ikrarnama bearing signatures of Bachan Singh and Swaran Singh. Even in the absence of joint and several liability, decree can always be satisfied by one of the defendants in order to avoid the wrath of the execution proceedings against other defendants.

In view of such circumstances, I do not find any illegality and perversity against the concurrent finding of fact and law, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

February 25, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No