

RSA-5701-2016 (O&M)

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

RSA-5701-2016 (O&M)

Date of decision : 04.02.2019

Net Share Private Limited

... Appellant

Versus

Ramesh Chander

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Munish Gupta, Advocate for the appellant.

AMIT RAWAL, J. (ORAL)

CM-14889-C-2016

For the reasons stated in the application, the delay of 67 days in
refiling the appeal is condoned.

CM stands disposed of.

CM-14890-C-2016

For the reasons stated in the application, the delay of 05 days in
filing the appeal is condoned.

CM stands disposed of.

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The appellant-plaintiff has not been successful in defending the
appeal preferred by the defendant/respondent against the judgment and
decree dated 30.11.2010, whereby the suit for recovery of ₹11,9745/- along
with interest, decreed by the trial Court, has been dismissed by the lower
Appellate Court.

The plaintiff-Net Share Private Limited, sought the recovery of
the aforementioned amount from the defendant/respondent, on the premise
that the defendant had purchased the equity shares of various companies and

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incurred losses on the sales of equity shares from 22.09.1999 to 18.10.1999, which were debited/credited in his account. A debit balance amounting to ₹78592.28 was recoverable from the defendant. The defendant also sold the equity shares on the same day and earned profits. The defendant filed a suit titled as “Ramesh Chander Vs Net Shares Pvt. Ltd.” for rendition of accounts, against the appellant-plaintiff, but the same on 23.07.2001 was dismissed for not depositing court fees.

The defendant contested the suit and stated that he had entered into a partnership business with MH Gandhi for the Net Shares Pvt. Ltd., Jalandhar and admitted regarding few sale and purchase in the partnership firm. The defendant had paid a sum of ₹60,000/- for the business of sale and purchase of stock to the plaintiff.

Since the parties were at variance, the trial Court framed the following issues:-

1. *Whether the plaintiff is entitled for recovery of ₹129742/- along with interest as prayed for? OPP*
2. *Whether suit is not maintainable? OPD*
3. *Whether court has not jurisdiction to try the present suit? OPD*
4. *Whether suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
5. *Relief.*

In order to prove the case, the plaintiff examined Tejinder Singh as PW1 and brought on record various documents (Ex.P1 to Ex.P62), whereas the defendant examined himself as DW1 and tendered in evidence many documents.

Learned counsel for the appellant-plaintiff submitted that the trial Court after noticing all the evidence on record, decreed the suit, but the

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lower Appellate Court, committed illegality and perversity by ignoring the fact that the defendant did not deny the transaction between the parties. The contract notes (Ex.P2 to Ex.P-42) produced in Court, being not signed by the plaintiff, could not have been a ground for non-suiting, in view of the aforesaid admission. The partnership deed remained unproved in view of the dismissal of the suit.

I am not in agreement with the contentions of Mr. Gupta, for, the aforesaid contract notes are in the name of other firms i.e. M/s M.B. Gandhi Shares and Stock Brokers Pvt. Ltd. and M/s Manmohan Gandhi Shares and Stock Brokers Pvt. Ltd. No witness of the firm has been examined, even otherwise, there are no signatures of the defendant, in such circumstances, the appellant-plaintiff failed to prove any acknowledgement of debt by the defendant or liability. The lower Appellate Court being the last Court of fact and law, in my view, has examined all the aforementioned circumstances and arrived at a fair and just decision.

In this view of the matter, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court, much less, no substantial question of law arises for determination. No ground for interference is made out. Resultantly, the present regular second appeal is dismissed.

04.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**