IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3763 of 2018 (O&M)
Date of Decision:17.09.2019

Sanjeev Sharma

......Appellant

Versus

Dew Soft Overseas Private Limited and others

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. S.B.Kaushik, Advocate
for the applicant-appellant.

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LISA GILL, J.

Appellant-plaintiff, has filed this appeal being aggrieved of judgment and decree dated 20.01.2012, passed by the learned Additional Civil Judge (Sr. Division), Gurdaspur, as well as judgment and decree dated 10.03.2015, passed by the learned Additional District Judge (Adhoc), Gurdaspur, whereby suit filed by the appellant has been dismissed.

Brief facts necessary for the adjudication of the case are that the appellant-plaintiff filed a suit for declaration to the effect that he is the sole operator and allottee of a computer site as detailed in the plaint and owned by defendant no.1 and further that defendants no.2, 3 and 4 had no right, title or interest in the said computer site and that names of the said defendants were mentioned by creating another firm by illegally deleting the plaintiff's name against the professional ethics. Consequential relief of permanent injunction as well as recovery of an amount of ₹17,00,000/- along with interest at the rate of 18% per annum, was sought. It is pleaded that the plaintiff joined the business of defendant no.1 as 'Big Banyana Tree Dot Com' in the month of October 2002 by depositing an amount of ₹6300/- with defendant no.1, who issued a reference I.D. No. 1382274 for providing online eduction as well as for carrying out business from any of their local centre. An accidental insurance for an amount of ₹20,00,000/- was also provided to the plaintiff. It is pleaded that the plaintiff joined other people in the business and plaintiff received a cheque for a sum of ₹1400/- drawn on ICICI bank limited after deduction of ₹600/- as education charges on 21.03.2003 from defendant no.1. Some other cheques were also issued by defendant no.1 in regard to business sales of the plaintiff. It is pleaded that the plaintiff received the last cheque of ₹2949/- from defendant no.1 on 04.02.2004. Thereafter, despite good business by the plaintiff, defendant no.1 did not release any payment. On enquiry, it emerged that defendant no.1 in connivance with defendants no.2 to 5 had deleted the plaintiff's name from the allotted site and defendants no.2 to 4 had been entered therein illegally, arbitrarily, without any notice on 13.10.2006. Thus, the profits to which the plaintiff was entitled, were given to defendants no.2 to 5. Defendant no.1, it is pleaded was involved in fraudulent activities. Accordingly, the suit was filed.

Defendant no.1 was proceeded *ex parte.*

Defendants no.2 to 5, resisted the suit. Various preliminary objections were raised in the written statement. Averments in the plaint regarding the plaintiff's joining the business of defendant no.1 are denied. It is pleaded that plaintiff had in-fact stopped working and therefore, is not entitled to any relief. Furthermore, ID number 1382274, it is stated is provided only for one year for the purpose of computer education provided under the plan of the company. The company, it is submitted was having its office at New Delhi, therefore the suit was not maintainable for want of jurisdiction. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for declaration, mandatory injunction and recovery of ₹17,00,000/- along with interest @ 18% per annum as prayed?OPP
2. Whether the suit of the plaintiff is not maintainable?OPD
3. Whether the plaintiff has not come to the court with soiled hands and have suppressed the true and material facts from this Court?OPD
4. Whether this court has got no jurisdiction to entertain the present case?OPD
5. Whether the suit is time barred by limitation?OPD
6. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, concluded that the plaintiff failed to prove his case on the basis of the evidence on record, therefore the suit filed by the plaintiff was dismissed.

Appeal preferred by the plaintiff-appellant was dismissed by the learned Additional District Judge (Adhoc), Gurdaspur, vide impugned judgement and decree dated 10.03.2015.

Aggrieved therefrom, present appeal has been filed by the appellant-plaintiff.

Learned counsel for the appellant vehemently argues that both the learned courts below have grossly erred in dismissing the suit filed by the appellant-plaintiff. It is submitted that clear and cogent evidence led by the plaintiff has been wrongly ignored by the learned Courts below. The plaintiff, it is contended has suffered a great loss due to the action of the defendants. Admission made by defendant no.4 while appearing as a witness has been wrongly ignored by both the learned Courts below. Learned first appellate Court, it is submitted has fallen in grave error while upholding the suit filed by the plaintiff to be time barred. It is thus prayed that the present appeal be allowed and the suit filed by the appellant-plaintiff be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

Appellant-plaintiff has pleaded that he was allotted ID No. 1382274 by respondent-defendant no.1 to work through its internet site i.e., Big Banyana Tree Dot Com. This ID was allotted to the appellant in the month of October 2002. Plaintiff, who has testified as PW-1, admitted that after April 2004, he never received any amount from defendant no.1, though there is an assertion by the plaintiff that he generated good business thereafter, but indeed learned counsel for the appellant is unable to point out any clear or cogent evidence on record to substantiate this claim. Learned Courts below have rightly held that the plaintiff was unable to prove that he was solely carrying on the said business from July 2003 till April 2004. Testimony of PW-2-Balraj Rana, is of no avail to the plaintiff. The same does not substantiate any business transaction between the plaintiff and defendant no.1 as alleged beyond 21.03.2003.

Oral testimony of the plaintiff-PW-1 to the effect that he was running the business of the abovesaid site till 2006, is not substantiated by any evidence on record and has been rightly negated by both the learned Courts below. Once the plaintiff failed to prove that he did not add any member, he possibly cannot stake any claim to the share of income from respondent-defendant no.1. Therefore, relief for recovery of ₹17,00,000/- as claimed by the plaintiff has been rightly declined by the learned Courts below. Documents Ex.P-1 to Ex.P-18 do not pertain to defendants no.2 to 4. Hence the so called admission has been rightly considered inconsequential. Learned counsel for the appellant is unable to deny that it was respondents-defendants no.2 to 4, who were working towards addition of new members and accordingly receiving the income from respondent-defendant no.1.

It is further rightly held by the learned Additional District Judge (Adhoc), Gurdaspur that the suit is barred by limitation. It is relevant to note that though it is stated by the plaintiff that the last payment was received by him in April 2004, but the said plea remains unsubstantiated by the evidence on record. The last payment received by the plaintiff was through a cheque dated 18.07.2003, Ex.P-2. There is no evidence on record to indicate any transaction between the plaintiff and defendant no.1, subsequent to this date. The present suit was filed on 23.01.2007. Hence the suit is rightly held to be time barred.

The Hon'ble Supreme Court in **Gurnam Singh (D) By Lrs and others Vs. Lehna Singh (D) By LRs 2019 (7) SCC 641** has observed as under:-

> "Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case

> involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to reappreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal."

Learned counsel for the appellant, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings vide impugned judgements, which call for no interference.

An application has been filed by the applicant/appellant under Order 33 Rule 1 read with Sections 107 and 151 CPC for filing this appeal as an indigent person while submitting that the appellant was declared an indigent person by the learned trial Court vide order dated 11.06.2010 Since the matter has been decided on merits, this application has been rendered academic. Application is, disposed of accordingly .

There is a delay of 999 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay in re-filing of this appeal is rendered academic. Application is disposed of accordingly .

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 20.01.2012 and 10.03.2015 passed by the learned Additional Civil Judge (Sr. Division) Gurdaspur and learned Additional District Judge, Gurdaspur, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

[LISA GILL]
Judge

17.09.2019
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.