

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

RSA No.5036 of 2017 (O&M)

Date of decision: 03.12.2019

Kuldeep Singh

.....Appellant

Versus

Charanjit Singh and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jitender Singh Dadwal, Advocate,
for the appellant.

Mr. Sanjiv Gupta, Advocate,
for respondent No.1.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 29.08.2017 passed by the District Judge, Ludhiana, whereby appeal filed by defendant No.1-appellant (hereinafter referred to as 'defendant No.1') against the judgment and decree dated 08.02.2016 passed by the Civil Judge (Junior Division), Ludhiana, has been dismissed and the suit of plaintiff-respondent No.1 (hereinafter referred to as 'the plaintiff') has been decreed

Charanjit Singh-plaintiff (respondent No.1 herein) filed a suit for recovery of Rs.7,08,000/- i.e. Rs.6,00,000/- being the principal amount and Rs.1,08,000/- as the amount of interest at the rate of 1% per month, with the averments that marriage of Manpreet Singh son of plaintiff was solemnized with one Jaspreet Kaur daughter of Avtar Singh, resident of village Khandoor on 02.06.2007. After the marriage, plaintiff and his son came to know that said Jaspreet Kaur had already married and obtained divorce from her previous husband. Due tot his reason, a dispute arose between Manpreet

Singh and Jaspreet Kaur along with her parents. Son of the plaintiff filed a

complaint under Sections 406/420/494/506/120-B IPC against Jaspreet Kaur, her parents and the mediator. Vide order dated 13.03.2009, passed by the Judicial Magistrate Ist Class, Ludhiana, all of them were summoned to face trial. Manpreet Singh also filed another complaint against Jaspreet Kaur and others under Sections 420/465/467/468/471/120-B IPC and they were facing the said trial. Thereafter, a Panchayat was convened by the parents of Jaspreet Kaur requesting the plaintiff and his son to withdraw the aforesaid complaints and to compromise the matter. In that compromise, defendant No.1 became a mediator. As per compromise, an amount of Rs.6,00,000/- was deposited in the account of defendant No.1 by father of Jaspreet Kaur. After the compromise, Manpreet Singh withdrew both the complaints. A petition under Section 12 of the Hindu Marriage Act had also been filed by Manpreet Singh, which was allowed vide judgment dated 22.11.2011 passed by the Additional District Judge, Ludhiana. After the completion of terms and conditions of the compromise, Manpreet Singh and plaintiff requested defendant No.1 (appellant herein) to hand over the aforesaid amount of Rs.6,00,000/-, but he delayed the matter on one pretext and the other. Ultimately, defendant No.1 refused to pay the said amount to plaintiff and his son Manpreet Singh. Upon this, plaintiff got registered FIR No.122 dated 27.11.2012, under Sections 406/420 IPC against the defendants. Even after registration of the criminal case, defendants did not pay amount of Rs.6,00,000/- to the plaintiff. Hence, the present suit.

Upon notice, defendant No.1 filed written statement taking preliminary objections with regarding to maintainability, concealment of true facts, non joinder of necessary parties, limitation, cause of action etc.

On merits, it was denied that marriage of Manpreet Singh was ever

solemnized with Jaspreet Kaur. The fact with regard to compromise between Manpreet Singh and Jaspreet Kaur was also denied. Defendant No.1 further denied that in the compromise, father of Jaspreet Kaur had paid a sum of Rs.6,00,000/- to the plaintiff. All other allegations made in the plaint were denied and prayer for dismissal of the suit was made.

Defendant No.2 did not put in appearance despite service, therefore, he was proceeded against exparte vide order dated 20.08.2013.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to recover the suit amount?
OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the suit is bad for non-joinder of necessary parties?
OPD
4. Whether the suit of the plaintiff is barred by time and period of limitation? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the plaintiff has not come to the Court with clean hands and has suppressed the material facts from this Court?
OPD
7. Whether the suit of the plaintiff is not properly valued for the purpose of Court fee and jurisdiction? OPD
8. Relief.

Trial Court, after hearing learned counsel for the parties, decreed the suit for recovery of Rs.6,00,000/- as principal amount along with interest of Rs.1,08,000/-. Plaintiff was also held entitled to recover interest on the total amount of Rs.7,08,000/- at the rate of 9% per annum from the date of institution of the suit till the date of decree and further at the rate of 6% per

annum till realization of entire amount. Feeling aggrieved, both the defendants preferred an appeal. The first appellate Court, vide judgment dated 29.08.2017, dismissed the appeal filed by defendant No.1-Kuldeep Singh (appellant herein). However, appeal qua defendant No.2 was accepted.

Heard.

Both the Courts below have returned a finding of fact that as per deposition given by Hardhir Singh, Clerk, Punjab & Sind Bank, Jodhan (PW-2), one account was opened in the name of Kuldeep Singh. He also proved account opening form Ex.PB, identification proof of Kuldeep Singh Ex.PC, copy of cheque Ex.PD and attested copy of voucher Ex.PE. This witness proved that Rs.6,00,000/- were deposited in the account of Kuldeep Singh. Plaintiff himself stepped into the witness box as PW-1 and examined Manpreet Singh as PW-3. He proved on record certified copy of orders Ex.P1 and Ex.P2. Manpreet Singh admitted that a compromise was effected between him and Jaspreet Kaur. He further admitted that he had no relation with defendant No.1-Kuldeep Singh. One Nirmal Singh was examined by the plaintiff as PW-4 to show that marriage of Manpreet Singh had been solemnized with Jaspreet Kaur and she (Jaspreet Kaur) was previously married. Due to this reason, a dispute arose and thereafter, a compromise took place between them. This witness further deposed that Rs.6,00,000/- were given by father of Jaspreet Kaur and defendant No.1-Kuldeep Singh did not return the same to the plaintiff. Defendant No.1 appeared as DW-1 and admitted the fact that plaintiff got registered a case under Section 420 IPC against him and his son. He stated that he had been acquitted in that case. During cross-examination, defendant No.1 further stated that he had

not brought the passbook of his account with Punjab & Sind Bank. He did not deny that he had ever opened an account in the said bank. Thereafter, he stated that he opened an account in the bank on 21.11.2011. Defendant No.1 further admitted the fact that Avtar Singh, resident of Khandoor had given a cheque of Rs.6,00,000/- to him and he got encashed the same. DW-1 further admitted that daughter of Avtar Singh was married with Manpreet Singh son of plaintiff. He stated that he had no business transactions with Avtar Singh. He further stated that Avtar Singh had borrowed this amount, which he gave back to him. But, he did not give any time when he had given this loan to Avtar Singh. Kuldeep Singh (DW-1) admitted that Avtar Singh was father of Jaspreet Kaur and she was married with Manpreet Singh.

Both the Courts, after going through the evidence, came to the conclusion that defendant No.1-Kuldeep Singh had admitted that Avtar Singh was father of Jaspreet Kaur and he had no business transactions with him (Avtar Singh). He could not give any date when he gave the aforesaid loan to Avtar Singh. Kuldeep Singh also denied that he had opened a bank account with Punjab & Sind Bank. However, as per deposition of Hardhir Singh, Clerk, Punjab & Sind Bank (PW-2), bank account stood opened in the name of Kuldeep Singh as per the account opening form Ex.PB. Identification proof of Kuldeep Singh was proved as Ex.PC. It was held that defendant No.1 could not lead any evidence to show that he had any business transaction with Avtar Singh. Hence, there was no occasion for Avtar Singh to borrow an amount of Rs.6,00,000/- from Kuldeep Singh-defendant No.1, which he had returned during the pendency of proceedings, which were initiated by Manpreet Singh against the family of Jaspreet Kaur. It was further held that at the time of marriage of Manpreet Singh with

Jaspreet Kaur, role attributed to Kuldeep Singh was that of a mediator. He had not disclosed that Jaspreet Kaur was also previously married and had got divorce from her husband. Even though Kuldeep Singh had denied that he was a mediator, but it has been duly proved on record that amount of Rs.6,00,000/- was deposited in his account pursuant to the compromise effected between the Manpreet Singh and Jaspreet Kaur and her family. After the compromise, Manpreet Singh had withdrawn all the complaints, which was pending against Jaspreet Kaur and her family members. However, it was appellant-defendant No.1 Kuldeep Singh, who had refused to return the amount of Rs.6,00,000/- to the plaintiff, which was received by him from Avtar Singh father of Jaspreet Kaur.

After hearing learned counsel for the parties and having examined the impugned judgments as well as documents relied upon by the parties, this Court is of the view that defendant No.1-appellant has failed to lead any cogent and convincing evidence to prove that he had not received an amount of Rs.6,00,000/- from the father of Jaspreet Kaur pursuant to the compromise effected between Manpreet Singh and Jaspreet Kaur. In the absence of any such evidence, suit of the plaintiff-respondent No.1 has been rightly decreed by the Courts below. No illegality, much less perversity, has been found in the impugned judgment, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration in this appeal.

Dismissed.

03.12.2019
ajp

(RITU BAHRI)
JUDGE

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