

In the High Court of Punjab and Haryana at Chandigarh

RSA- 4950 of 2018 (O&M)

Date of Decision: 5.3.2019

Amit Chawla

---Appellant

versus

Rupinder Chawla and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Gaurav Singla, Advocate
for the appellant**

Rekha Mittal, J.

CM No. 3211-C of 2019

Heard.

Allowed as prayed for. Annexure A-1 is taken on record,
subject to just exceptions.

Disposed of accordingly.

CM No. 13471-CII of 2018

Prayer in this application filed under Order 33 Rule 1 read with
Section 151 of the Code of Civil Procedure is to allow permission to file
the appeal as an indigent person.

Counsel for the applicant-appellant would urge that first
appeal before the District court was filed with permission to pursue the
appeal as an indigent person without payment of court fee and the same was
allowed by the First Appellant Court vide order dated 19.5.2016 (Annexure
A-1). It is further submitted that subsequent to passing of order dated

19.5.2016, the applicant has not acquired any property/assets on the basis whereof his plea for filing appeal without payment of required court fee being an indigent person can be rejected.

In view of the above, the application is allowed and the applicant-appellant is allowed to pursue the appeal as an indigent person.

Disposed of accordingly.

Main case

The present appeal directs challenge against concurrent findings of fact whereby suit for recovery filed by Rupinder Chawla and others was decreed by the trial court holding the respondents entitle to recovery of Rs. 6 lakhs with interest @ 6% per annum on the principal amount. It was further held that an amount of Rs. 2 lakhs was paid by the appellant in the criminal proceedings on 25.1.2011 and accordingly the respondents were held entitle to Rs. 4 lakhs from 25.1.2011 with interest at the aforesaid rate. The appeal preferred by unsuccessful appellant-defendant was dismissed by the Additional District Judge, Sangrur on 18.1.2018.

Counsel for the appellant would argue that as per case set up by the respondents-plaintiffs, Rupinder Chawla advanced loan of Rs. 1,50,000/- vide cheque dated 29.11.2004 and Madhu Chawla paid Rs. 2 lakhs vide another cheque of the same date. Shakuntla Chawla, mother of Rupinder Chawla paid in cash Rs. 2.5 lakhs on different dates upto 15.9.2005. It is argued with vehemence that the respondents have failed to specify the dates on which Shakuntla Chawla paid Rs. 2.5 lakhs to the appellant upto 15.9.2005. It is further argued that in absence of the

respondents leading clear and cogent evidence to prove payment by Smt. Shakuntla Chawla to the extent of Rs. 2.5 lakhs, courts have committed a serious error rather perversity by accepting claim of the respondents for recovery of Rs. 6 lakhs with interest. In addition, it is argued that the appellant had paid an amount of Rs. 31,000/- vide cheques drawn on Union Bank of India but the said amount has not been adjusted towards liability of the appellant, if affirmed.

Be that as it may, it is undisputed position of the case that the courts have recorded concurrent findings of fact upholding plea of the respondents-plaintiffs with regard to their entitlement to recover the amount as per the decree passed by the trial court. It is not open in the second appeal to re-appreciate the evidence or interfere in consistent findings merely because a different view is possible.

Perusal of the judgment of trial court makes it evident that case of the respondents is not only based upon the alleged initial payment vide two cheques by Rupinder Chawla and Madhu Chawla and Rs. 2.5 lakhs in cash by Smt. Sahkuntla Chawla but they have also relied upon pronote purported to be executed by the appellant in favour of Rupinder Chawla acknowledging receipt of Rs. 6 lakhs. Counsel has not made any submissions in order to assail findings of the courts with regard to pronote dated 27.10.2005 executed by the appellant in favour of Rupinder Chawla admitting his liability to pay Rs. 6 lakhs. As such, claim of the respondents is also based upon pronote that has been proved, in accordance with law. In the given circumstances, the appellant cannot derive any advantage to his contention from the factum that payment of Rs. 2.5 lakhs by Shakuntla

Chawla is not evidenced by documentary evidence.

So far as payment of Rs. 31,000/- by the appellant is concerned, the same has been appropriated towards his liability to pay interest. The trial court has taken a very reasonable and sympathetic view while awarding interest @ 6% per annum. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the courts that would call for intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance.

(Rekha Mittal)
Judge

5.3.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No