

Sr. No.125

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

RSA No.5375 of 2019 (O&M)

Date of Decision: 25.02.2020

Parkash Chand Bhati

...Appellant

Versus

Janak Raj

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ram Bilas Gupta, Advocate,
for the appellant.

ARUN MONGA, J.

1. Having suffered the concurrent adverse findings by the two Courts below defendant is in second appeal before this Court to challenge the judgments/decrees in suit for recovery of Rs.5,86,250/-. The trial Court believed the case set up by the plaintiff and decreed the suit in favour of the plaintiff and the First Appellate Court too upheld the findings rendered by the Trial Court.

2. Succinct factual narrative first, as noticed by the Courts below. The plaintiff had filed the suit seeking a decree for recovery of Rs.5,86,250/- on the ground that the defendant approached the plaintiff for short term financial assistance and the defendant demanded a sum of Rs.5,00,000/- from plaintiff in the month of March, 2013 and assured the plaintiff that defendant will repay the said amount within 6 months. The plaintiff being a friend of defendant advanced friendly loan of Rs.5,00,000/- vide cheque

No. 49960 drawn on Punjab National Bank and the said cheque was honoured and the amount was credited in defendant's bank account with Punjab National Bank on 02.04.2013. Since, October 2013 plaintiff has been requesting the defendant to repay the said loan amount, but defendant did not repay the said amount. The plaintiff also served a legal notice dated 29.08.2014 through registered post but in spite of the same, the defendant failed to make the payment to the plaintiff. Hence, the plaintiff filed suit for recovery of the said amount under Order XXXVII CPC.

3. Written statement was filed by the defendant taking preliminary objections that the suit of the plaintiff is not maintainable. Plaintiff has no cause of action, locus standi to file the present suit and plaintiff has suppressed the material facts. It is pleaded that the cheque of Rs.5,00,000/- dated 02.04.2013 was given by the plaintiff to the defendant towards his share in partnership business of liquor vending contract and not as friendly loan. It is submitted that defendant had not received any legal notice.

4. Based on the rival pleadings of the parties, the trial Court framed the following issues:-

1. *whether plaintiff is entitled to a decree for recovery of Rs.5,86,250/- along with interest @ 18% per annum as prayed for? OPP*
2. *Whether the suit of the plaintiff is not maintainable in present form? OPD*

5. Parties adduced oral as well as documentary evidence in support of their pleadings and also to discharge their respective

onus as per the issues, *ibid*.

6. The learned trial Court observed that plaintiff had raised a plea of giving of Rs.5,00,000/- to the defendant by way of cheque and had filed the civil suit claiming for its recovery. Receiving of Rs.5,00,000/- by way of cheque by the plaintiff was admitted by the defendant i.e. DW1. The only point to be considered was the defence taken by the defendant that the said amount had been paid by the plaintiff to the defendant as his contribution towards the partnership of liquor business. Thus, the onus to prove the same was on the defendant but the defendant failed to prove that there was existence of any partnership and any partnership deed was ever executed between the parties. The defendant had also not been able to prove that he ever returned the amount as alleged to the plaintiff out of the amount of Rs.5,00,000/- as received by him. Hence, Issue No.1 was decided in favour of the plaintiff and against the defendant. Issue No.2 was of formal nature and the same was not pressed during the course of arguments, nor was any oral or documentary evidence led on the same. Accordingly, the said issue stood disposed of.

7. The First Appellate Court agreed with the findings rendered by the trial Court and upheld the judgment and decree passed pursuant thereto.

8. I have heard the learned counsel for appellant and have perused the record including judgments and decrees of both the Courts below. To my mind, these judgments are in consonance with the record and have been passed after due and correct

appreciation of evidence adduced by the parties. The appellant had admitted that partnership deed had been drawn up on a stamp paper. The Courts below rightly held that its non-production had not been satisfactorily explained. The appellant's version that the money was paid towards respondents share of partnership business was correctly rejected.

9. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the concurrent findings of facts recorded by the Courts below.

10. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

11. In view of my discussion above and reasons recorded therein, no interference is called for by this Court.

12. Appeal is, accordingly, dismissed.

13. Pending application, if any, shall also stand disposed of.

14. No order as to costs.

(ARUN MONGA)
JUDGE

25.02.2020

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No