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

RSA No.3028 of 2013(O&M)

Date of decision: 2.3.2020

Harjinder Kaur …..Appellant

VERSUS

Sehdev Siag .....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. R.S. Rangpuri, Advocate for the appellant.

Mr. J.P. Rana, Advocate for the respondent.

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REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgment and decree dated 08.03.2013 passed by the District Judge, Sri Muktsar Sahib whereby appeal against judgment and decree dated 08.10.2012 passed by the trial Court dismissing suit of the respondent/plaintiff was accepted and suit of the respondent/plaintiff was decreed for recovery of Rs.50,000/- with interest at the rate of 6.% per annum from 17.01.2011 till realization of the decretal amount.

Counsel for the appellant would argue that the trial Court, on detailed consideration of materials on record, rightly negated plea of the respondent/plaintiff with regard to his having given a loan to the appellant and entitle to recover the suit amount, in view of observations recorded in para 15 of the judgment. It is further argued that the Appellate Court without pointing out any perversity in the judgment of trial Court, has set aside decree and judgment passed by the trial Court resulting in fastening liability to the tune of Rs.50,000/- with interest. It is further argued that the appellant raised a specific plea that on 04.12.2009, the respondent had taken financial assistance of Rs.50,000/- by way of cash in the presence of Joginder Singh and Harvinder Singh and the cheque in question dated 17.01.2011 was issued for return of the said amount. It is argued that the appellant examined Joginder Singh DW-2 and produced copy of her bank statement with Oriental Bank of Commerce wherein there is an entry with regard to withdrawal of Rs.50,000/- on 04.12.2009.

Counsel representing the respondent/plaintiff has supported the judgment and decree passed by the Court in appeal with the submission that plea of the appellant with regard to giving loan of Rs.50,000/- on 04.12.2009 does not find corroboration from any documentary evidence.

I have heard counsel for the parties, perused the paper-book and records.

The admitted position of the case is that the respondent/plaintiff issued cheque of Rs.50,000/- in the name of appellant and amount was remitted in her account. Meaning thereby that payment of Rs.50,000/- by the respondent/plaintiff to the defendant is not disputed.

The question for consideration is whether this amount represents loan given by the respondent/plaintiff to the defendant or it is repayment of loan taken by the respondent/plaintiff from the appellant/defendant, in view of her plea in the written statement.

The respondent/plaintiff appeared in the witness box to say on oath that Rs.50,000/- were paid to the appellant towards loan. Counsel for the appellant has failed to point out any materials brought-forth in cross examination of the respondent to discard or disbelieve his testimony or impeach his credibility.

To rebut statement of the respondent, the appellant examined herself and Joginder Singh DW2 to establish her defence plea that respondent had taken a loan of Rs.50,000/- on 04.12.2009.

As per settled position in law, the Court has to appreciate the quality and not quantity of evidence. The appellant would depose that she had given Rs.50,000/- in cash as loan to the respondent as respondent happened to be a friend of her brother. She further deposed that money was agreed to be repaid within few days. The brother of the appellant died in the year 2004 but loan is stated to be given in the year 2009. There is nothing on record suggestive of the fact that since December, 2009 till January, 2011 when the disputed cheque was issued, the appellant ever approached the respondent much less by issuance of a notice etc. for repayment of the amount. It is difficult to accept to reason that a person would lend Rs.50,000/- without preparing a writing or settling the terms and conditions with regard to repayment thereof more particularly in the circumstances that alleged brother of the appellant who happened to be friend of the respondent died in the year 2004. These facts create a doubt in the version set up by the appellant/defendant.

The testimony of Joginder Singh DW2 becomes doubtful in view of the facts elicited in cross examination of Joginder Singh and the appellant. Joginder Singh had stated that he had gone to the house of appellant as he wanted to admit one of his children in an institution away from Malout. Further stated that he got the admission of his child in B.Sc at Chandigarh but could not state if it was medical or non medical. The testimony of Joginder Singh, in this regard gets falsified and belied from cross examination of Harjinder Kaur who stated that daughter of Joginder Singh was to appear in exam of 10th class in the month of March and the result was to be declared in the month of June. If daughter of Joginder Singh was a student of class 10th where was the occasion for admission of the child in B.Sc at Chandigarh. This fact alone is sufficient to demolish evidential value of testimony of Joginder Singh, examined to corroborate the story of giving loan by the appellant to respondent on 04.12.2009 and that too without preparing a document. It appears that since on 04.12.2009, Harjinder Kaur had withdrawn a sum of Rs.50,000/- from her account maintained in OBC Bank, she concocted the story of giving loan, may be, with the help of a fertile legal brain. In this view of the matter, I do not find any reason to intervene.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

MARCH 2, 2020 **(REKHA MITTAL)**

'D. Gulati' **JUDGE**

Whether speaking/reasoned : yes/no

Whether reportable : yes/no