

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) RSA No.6123 of 2015 (O&M)
Date of Order:27.02.2020

Tarlochan Singh ..Appellant

Versus

Balbir Singh ..Respondent

(2)

RSA No.375 of 2016(O&M)

Tarlochan Singh ..Appellant

Versus

Gurmit Kaur ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Kumar, Advocate,
for the appellant (in both the appeals)

Mr. Avtar Singh Khinda, Advocate
for the respondents (in both the cases)

ANIL KSHETARPAL, J(Oral)

**C.M.No.15315-C-2015 in RSA No.6123-2015 &
C.M.No.1133-C-2016 in RSA No.375-2016**

Prayer in these applications is for condonation of delay of 17
days in filing the appeal.

For reasons mentioned in these applications, which are
supported by an affidavit, the delay of 17 days in filing the appeal is
condoned.

Both the applications stand disposed of.

C.M.No.1134-C-2016 in RSA No.375-2016

Prayer in this application for making good the deficiency in the payment of Court fee.

Deficiency in Court fee has already been made good. Delay, if any, is condoned.

C.M.No.1135-C-2016 in RSA No.375-2016

Prayer in this application is for condonation of delay of 156 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by an affidavit, the delay of 156 days in re-filing the appeal is condoned.

Application stand disposed of.

MAIN

This order shall dispose of Regular Second Appeal No.6123 of 2015 and Regular Second Appeal No.375 of 2016. Learned first appellate court has disposed of two connected appeals arising from two separate suits by a common judgment. Counsels for the parties have agreed that these appeals can be disposed of by one judgment.

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below while passing a decree for recovery of the principal amount of Rs.75.000/- each along with interest @ 6% per annum. The suits were filed on the basis of pronotes and receipts. The appellant in both the appeals is common.

Gurmit Kaur (wife of Balbir Singh) and Balbir Singh had filed two suits for recovery of the amount on the basis of two separate pronotes of Rs.75000/- each.

In the suit filed by Balbir Singh, defendant admitted the fact that he had borrowed an amount of Rs.75,000/- as loan and executed

pronote and receipt. However, he contested the suit on the ground that he has already paid Rs.67,000/-, whereas Rs.43,000/- remained to be paid with interest. Defendant further pleaded that the plaintiff has taken away his buffalo.

Both the courts on appreciation of evidence, found that the receipt of Rs.67,000/- is not worthy of reliance. Thus, both the courts decreed the suit on appreciation of evidence. The courts also found that the defendant failed to prove that the plaintiff had taken away his buffalo.

This court has heard learned counsels for the parties at length and with their able assistance gone through the judgments and decrees passed by the Courts below.

Jurisdiction of this court while examining regular second appeal is regulated by Section 41 of the Punjab Courts Act, 1918 which is extracted as under:-

41. Second appeals—(1) *An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely :*

(a) the decision being contrary to law or to some custom or usage having the force of law :

(b) the decision having failed to determine some material issue of law or custom or usage having the force of law :

(c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits. ”

Keeping in view the aforesaid phraseology used in Section 41 of the Punjab Courts Act, 1918, this court can interfere only, if the attention of this Court is drawn to substantive misreading or non-reading of the evidence. In this case, although, learned counsel for the appellant made sincere attempt, however, failed to draw attention of the court to any

substantive misreading or non reading of evidence. Learned counsel for the appellant failed to draw any error of law.

Hence, both the appeals are dismissed.

February 27, 2020
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(ANIL KSHETARPAL)
JUDGE

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