

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

RSA-4032-2014 (O&M)

Date of decision : 14.01.2020

Baljit Singh

...Appellant

Versus

M/s Mahinder Singh Gurdarshan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. J.S. Cooner, Advocate for the appellant.

Mr. Rakesh Bakshi, Advocate for respondent Nos.1, 2 and 4.

Mr. S.S. Dinarpur, Advocate for respondent Nos.3 and 5.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below, while dismissing the suit for recovery of ₹5,00,000/- alongwith interest.

Plaintiff claimed that the defendants are Commission Agents and he had advanced a sum of ₹5,00,000/- through the cheque dated 19.06.2002 with oral agreement to return the same alongwith 24% p.a. interest. The amount of interest on the aforesaid loan has been paid upto November 2004, but thereafter neither the interest is being paid nor the principal amount has been returned.

Defendant No.2 filed written statement controverting the assertions made in the plaint. It was asserted that the present suit has been filed by the plaintiff in collusion with defendant No.3-Gurdarshan Singh as both are from the same village. It was further pleaded that Gurdarshan Singh, the then partner of defendant No.1-firm, required the money for personal use and he

routed it through the firm. Defendant No.3 filed separate written statement that he is not the partner of the partnership firm (defendant No.1) since October, 2004.

On appreciation of evidence, the Court has found that except the cheque in question, there is no evidence to prove advancement of the amount as a loan. The Court also found that no reliable evidence has been produced to prove that interest as alleged upto November 2004 stands paid. The Court further found that the partnership firm was dissolved and the accounts between the parties were settled through the help of an Arbitrator and at that time the plaintiff never made any claim before the Arbitrator. The Court further found that the suit filed by the plaintiff is barred by time as the cheque in question is of dated 19.06.2002 whereas the suit has been filed on 03.10.2007.

The First Appellate Court, on re-appreciation of evidence, has affirmed the finding of the trial Court.

Learned counsel for the appellant has submitted that the amount of ₹5,00,000/- has been transferred through cheque in favour of defendant No.1-firm. He has submitted that, therefore, the advancement of the loan stands proved. He further submitted that the plaintiff was not party to the arbitration proceedings and, therefore, the same is not binding on him.

On the other hand, learned counsel for the respondents, has submitted that both the Courts have concurrently found that there is no merit in the suit filed. He further submitted that no evidence apart from the cheque in question has been produced to prove that the loan is being alleged. He further submitted that no reliable evidence has been produced to prove that interest, as is being alleged, was paid upto November 2004.

This Court with able assistance of learned counsel for the parties

has analyzed their submissions while going through the judgments impugned herein.

On deeper consideration of the matter, this Court is of the view that no ground to interfere in the concurrent judgments passed by the Courts below is made out. The plaintiff has failed to produce any corroborative evidence to prove that the amount of ₹5,00,000/- paid through the cheque dated 19.06.2002 was in fact towards loan. Defendant No.1-firm was dissolved in the year 2004. Still, the plaintiff never staked any claim. No doubt, the award passed by the Arbitrator is not binding on the plaintiff-appellant because he was not the party thereto, however, inaction on the part of the plaintiff during all these years is one of the circumstance which has helped the Court to come to a right conclusion. The firm was dissolved in the year 2004, there is no reason as to why the plaintiff again waited for more than 3 years before filing the suit for recovery.

Still further, in absence of any evidence to prove, payment of any interest, as is being alleged, the suit filed by the plaintiff after a period of more than 5 years from the date of transfer of the amount has been correctly held to be barred by time.

In view thereof, there is no ground to interfere.

Accordingly, the present appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

14.01.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No