

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A No. 65of 2021(O&M)
Date of Decision:31.08.2021

Gurpreet Singh

.....Appellant

Versus

M/s Raj Neuro Spine and Trauma Centre, Pathankot

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Dinesh Mahajan, Advocate
for the appellant.

LISA GILL, J(Oral).

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Appellant-defendant has filed this appeal being aggrieved of judgment and decree dated 08.12.2018, passed by the learned Civil Judge (Jr. Division), Pathankot, whereby suit for recovery of Rs. 2,30,000/- has been decreed by the learned trial Court. Appeal filed by the appellant-defendant has been dismissed by the learned District Judge, Pathankot, vide judgment and decree dated 04.07.2019.

Brief facts necessary for adjudication of the case are that plaintiff-respondent filed a suit for recovery of the abovesaid amount as balance fee and expenses for the treatment of appellant-defendant's father from 19.11.2016 till 06.01.2017 as well as Rs.25,000/- as balance bill of pharmacy for medicines purchased from the hospital's pharmacy along with 15% interest. It is pleaded that the plaintiff is a hospital providing services,

with the proprietor being a Neuro Surgeon. Defendant's father namely Dev Raj, it is stated was admitted to the plaintiff-hospital at 1.20.p.m., on 19.11.2016. Medical condition of the defendant's father was critical and he was in need of immediate emergency surgery which was carried out on 19.11.2016 itself i.e., 'FTP Decompressive Craniotomy and Evacuation of Hematoma'. Surgery was successful and defendant's father was improving after surgery. He was also weaned of from the ventilator. Defendant's father remained admitted in hospital for 49 days till 06.01.2017. It is further pleaded that defendant's father was suffering from co morbid illnesses such as diabetes, hypertensive and non-sober habits of smoking and alcohol consumption due to which he developed chest infection and septicemia. Ultimately defendant's father died on 06.01.2017 despite best efforts on the part of the hospital. It is pleaded that apart from the medical bills, on account of hospital charges, ICU, ventilator, amount of Rs. 3,54,000/- was due, out of which defendant deposited a sum of Rs. 1,24,000/-. Last payment of Rs. 50,000/- was made by the defendant through NEFT on 15.12.2016. Despite request, rest of the payment was not made by the defendant. Cheque dated 31.12.2016 was issued by one Vishal Mehra from his account drawn on Axis Bank Ltd., for discharge of liability of the defendant. However, the said cheque was dishonoured. Defendant is stated to have suffered an affidavit to the effect that he would deposit a sum of Rs. 1,00,000/- on or before 09.01.2017. However, defendant did not honour the said commitment. Legal notice dated 08.02.2017 was accordingly served upon the defendant, but when necessary payment was not made present suit was filed.

Defendant duly appeared before the learned trial Court. Written statement was filed taking various preliminary objections. Admission of the

defendant's father with the plaintiff-hospital was admitted, but it is denied that defendant's father was undergoing any kind of treatment at the plaintiff's hospital. It is further denied that there was any outstanding balance due from the defendant towards plaintiff-hospital. Dismissal of the suit was sought.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether plaintiff is entitled to decree of recovery of Rs.2,55,000/- along with interest @ 15% per annum as prayed for?OPP
2. Whether the suit of the plaintiff is not maintainable?OPD
3. Whether the plaintiff has no cause of action to file the present suit?OPD
4. Whether the plaintiff has not come to the Court with clean hands and has suppressed material facts?OPD
5. Whether the plaintiff has no locus standi to file the present suit?OP
6. Relief.

Evidence was led by the plaintiff. However, despite grant of sufficient opportunities, defendant failed to lead any evidence and his evidence was closed by order vide order dated 07.12.2018.

Learned trial Court on considering the facts and circumstances of the case concluded that the plaintiff-hospital had successfully proved that the amount in question was due towards the plaintiff on account of treatment and hospitalization etc., of the defendant's father.

Appeal filed by the present appellant (defendant) was also dismissed by the learned District Judge, Pathankot, vide judgement and decree dated 04.07.2019.

Aggrieved therefrom, present appeal has been filed by the appellant.

Learned counsel for the appellant has argued that the plaintiff failed to prove its case, therefore both the learned Courts below have grossly

erred on facts and in law in decreeing the suit for recovery filed by the respondent-plaintiff. It is submitted that the suit was filed only as a counter blast to the complaint filed by the appellant in respect of negligence on the part of respondent-plaintiff due to which appellant's father had died. Learned counsel refers to the cross-examination of PW-1-Dr. Anil Garg to buttress his arguments. It is thus prayed that the present appeal be allowed and judgements and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiff-respondent be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

It is not denied that appellant's father was admitted with the respondent-plaintiff-hospital on 19.11.2016. Neither is there any evidence on record to falsify the plaintiff's stand that defendant's father remained admitted with the plaintiff-hospital till 06.01.2017. It is a matter of record that the present appellant chose not to lead any evidence whatsoever before the learned trial Court to prove his case. Learned counsel for the appellant is unable to deny that the appellant, despite sufficient opportunity being afforded, did not lead any evidence and his evidence was closed by order dated 07.12.2018 by the learned trial Court. Learned District Judge, Pathankot, has rightly held that more than ten opportunities were afforded to the defendant to lead his evidence, but despite opportunities, neither cost imposed was paid and nor any evidence led. Learned counsel for the appellant on a pointed query of the Court in respect to the fate of the complaints of negligence filed by him against the respondent, has not come-forth with a clear cut response except stating that it is very difficult to prove medical negligence, thus, the complaints may have been filed, though that also is not said with any certainty. Learned counsel argued that plaintiff has

to stand on its own legs and not depend on weaknesses of the defendants and in the present case evidence on record does not prove the plaintiff's case. Though, it is vehemently argued that issuance of cheque by Vishal Mehra, clearly shows the manner in which the hospital tried to build up a false case and Vishal Mehra in-fact has nothing to do with the plaintiff and is not related to him, the same is of no avail to the appellant. Plaintiff-respondent has duly proved admission of the defendant's father at its hospital, carrying out of the surgery and the fact that the defendant's father remained admitted at the hospital till 06.01.2017. Plaintiff has indeed successfully proved the foundational facts and it was incumbent upon the defendant to have rebutted the same by leading clear and cogent evidence in this respect. Appellant has not led any evidence on record to indicate that the entire dues towards the hospital were completely discharged by him. Mere reference to cross-examination of PW-1-Dr. Anil Garg to the effect that advance money for the patients is demanded on regular intervals at about after three days of recovery, does not in any manner suggest that the entire amount due indeed stood deposited. Therefore, both the learned Courts below have rightly decreed the suit filed by the plaintiff-respondent after proper appreciation of the evidence on record.

Learned counsel for the appellant, is unable to point out any question of law much less a substantial question of law which may be involved for consideration in this regular second appeal. Both the learned Courts below, after proper appreciation and consideration of the evidence on record have returned concurrent findings vide impugned judgements, which call for no interference.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed

above, impugned judgments and decrees dated 08.12.2018 and 04.07.2019 passed by the learned Civil Judge (Jr. Division) Pathankot and learned District Judge, Pathankot, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

31.08.2021
s.khan

[LISA GILL]
Judge

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