

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

RSA-2432-2022 (O&M)

Date of decision: 14.11.2022

Manohar Singh Bhogal

...Appellant

Versus

Hardev Singh and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

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

H.S. MADAAN, J. (Oral)

Feeling aggrieved by the judgment passed by learned Civil Judge (Jr. Divn.) Jalandhar, vide which the said Court had decreed the suit filed by plaintiff Hardev Singh and his wife Surinder Kaur, both plaintiffs against defendant Manohar Singh Bhogal, passing a decree for recovery of Rs.5 lacs with interest @ 9% p.a., as well as the judgment and decree passed by Addl. District Judge, Jalandhar on 01.09.2022, dismissing the appeal filed by defendant Manohar Singh Bhogal against the judgment and decree passed by the trial Court, the said defendant has approached this Court by way of filing an appeal praying that the judgments and decrees passed by the Courts below be set aside and suit filed by the plaintiffs against him be dismissed.

2. Briefly stated facts of the case are that plaintiffs had brought a suit for recovery of Rs.5 lacs along with interest and costs against

defendant Manohar Singh Bhogal, contending that as there were cordial relations between the parties, at request of defendant, the plaintiffs advanced Rs.5 lacs to him as a friendly loan; plaintiff No.1 who was residing abroad had sent Rs.1 lakh to his wife Surinder Kaur on 09.04.2011 through a bank transfer and by withdrawing that amount of Rs.1 lakh, plaintiff No.2 Surinder Kaur had given that amount to defendant; subsequently, at request of defendant, Hardev Singh, plaintiff No.1 had sent Rs.4 lacs by way of bank transfers to saving bank account with Punjab National Bank Branch of defendant on 09.04.2011; the defendant had promised to return that amount within a short period, however, he did not do so and when the plaintiffs asked him to return the amount, serving a legal notice dated 14.07.2012 also, he put off the matter on one pretext or the other. Feeling aggrieved, the plaintiffs brought the suit in question.

3. On notice, the defendant appeared and filed written statement, contesting the suit, raising various legal objections and on merits, denying that he had requested the plaintiffs to advance a sum of Rs.5 lacs as a friendly loan or that at his request, such amount was actually given to him by the plaintiffs. Refuting the remaining allegations, he prayed for dismissal of the suit.

4. For proper adjudication of controversy between the parties, following issues were struck by the trial Court:-

- (1) Whether plaintiffs are entitled for the relief of recovery of Rs. Five lacs along with interest @18% per annum as prayed for? OPP

- (2) Whether suit is not maintainable ? OPD
- (3) Whether plaintiff has no cause of action and locus standi to file the present suit ?OPD
- (4) Whether the plaintiffs are estopped from filing the present suit by their own act and conduct ?OPD
- (5) Whether suit is hopelessly time barred? OPD
- (6) Relief.

5. The parties were afforded adequate opportunities to lead evidence in support of their respective claims. After hearing arguments, the trial Court decided issue No.1 in favour of the plaintiffs and against the defendant; issues No.2 and 3 were decided against the defendant and in favour of the plaintiffs; similarly issues No.4 and 5 were also decided against the defendant and in favour of the plaintiffs. As a result of findings on the issues, suit of the plaintiffs was decreed as mentioned above.

6. The defendant had challenged the judgment and decree passed by the trial Court before District Judge, Jalandhar, which appeal was assigned to Addl. District Judge, Jalandhar, who vide judgment and decree dated 01.09.2022 had upheld the judgment and decree passed by the trial Court, dismissing the appeal, leaving the defendant aggrieved and he has knocked at the door of this Court by way of filing the present Regular Second Appeal.

7. I have heard learned counsel for the appellant/defendant besides going through the record.

8. The judgments passed by the Courts below are quite detailed,

well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therewith. I find myself in agreement with the verdict given by the trial Court as well as Ist Appellate Court. It needs to be mentioned here that the plaintiffs had examined an official from Punjab National bank, Rama Mandi who had placed on record the account statement Ex.PW5/1. When defendant appeared as his own witness as DW-1, he had admitted that Rs.4 lacs was transferred by plaintiff No.1 in his bank account with SBI Branch, Rama Mandi on 09.04.2011. In addition to that, it also stand proved on the record that plaintiff No.2 had given Rs.1 lakh to defendant which had been sent to him by her husband Hardev Singh. Thus, receipt of Rs.5 lacs by the defendant from the plaintiffs stands established on the record. In the written statement, the defendant has denied having received this amount but when he appeared in the witness box as DW-1 and was subjected to cross-examination, he stated that he had returned the amount of Rs.5 lacs to the wife of plaintiff No.1, which he had arranged by withdrawing from the bank and by borrowing some amount from Jasbir Kaur wife of Paramjit Singh and another person. This stand is contrary to the plea taken by him in the written statement. Furthermore when the defendant admitted in his cross-examination that he had returned Rs.5 lacs to Surinder Kaur, plaintiff No.2. In that way, he admitted receipt of Rs. 5 lacs from the plaintiffs, otherwise, there was no occasion for him to return the amount. The defendant has failed to prove on record any payment in the form of receipt or otherwise to show that he had returned

Rs.5 lacs to either of the plaintiff. The defendant has not brought on record any evidence to show from where he had arranged sum of Rs.5 lacs said to have been returned by him to the plaintiffs.

9. The parties are closely related inasmuch as defendant/appellant Manohar Singh Bhogal is brother in-law of plaintiff No.1 Hardev Singh. Another fact which puts the defendant in poor light is that as per case of the plaintiffs, defendant had got the electricity connection which was earlier in the name of plaintiff No.2 to the name of his wife Kulwinder Kaur by forging signatures of plaintiff No.2 Surinder Kaur. The plaintiffs have led evidence in support of their allegations that it was so done by the defendant in a fraudulent manner. Defendant appearing as DW-1 has admitted that plaintiffs had given a complaint against him to the police which was enquired into, which revealed that he had put signatures of the wife of plaintiff No.1 with regard to electricity connection at Plot No.3, Dashmesh Nagar, Rama Mandi, Jalandhar, which is in the name of Surinder Kaur, plaintiff No.2. He further admitted that the electricity connection so got transferred was retransferred in the name of Surinder Kaur again. He conceded that an agreement had taken place between the parties that plaintiffs would not pursue registration of FIR against the defendant. The trial Court has dealt with all these aspects in detail while analyzing the evidence adduced by the parties. Similarly, the Ist Appellate Court has considered all the aspects of the case.

10. Learned counsel for the appellant had argued before the Ist Appellate Court that plaintiff No.1 Hardev Singh used to reside abroad

and since his wife Surinder Kaur was not keeping good health, defendant used to take care of her and incur all expenses on her treatment and that dispute between the parties was compromised and all the rights and liabilities were settled between the parties and nothing is due from defendant towards the plaintiffs. The argument so advanced does not come out to be convincing, since no specific plea in that regard has been taken by the defendant in his written statement nor any cogent or convincing evidence has been led by him in that regard. Though, PW-1 Hardev Singh has been examined in that regard but the replies given by PW-1 in his cross-examination do not help the defendant in advancing his case. The Ist Appellate Court has also discussed different pleas taken by the defendant in the case and rejecting those one by one. Ultimately, the appeal filed by the defendant was dismissed.

11. Although, learned counsel for the appellant had taken up a plea that an application under Order 18 Rule 17 CPC had been filed by the appellant before Ist Appellate Court and without deciding the same, the first appeal had been decided but in my view, this plea is not much helpful to the appellant. If the appellant was so serious in pursuing the application, then it should have been pressed by his counsel and some order got passed thereon, but it is not shown to have been so done, filing an application and then forgetting about the same, not pursuing it properly by a litigant cannot result in putting the clock back and setting aside of the judgment for that reason. With the grounds of appeal, copy of the application said to have been filed before Ist Appellate Court has not

been placed on record. Even in grounds of appeal, it has not been detailed as to what additional evidence the appellant/defendant wanted to adduce, which was necessary for just decision of the case. The ground so taken is quite vague. Even if we see Order 18 Rule 17 CPC, it provides that the Court may at any stage of a suit recall any witness, which has been examined and may (subject to law of evidence for the time being in force) put such questions to him as the Court thinks fit. This provision does not deal with leading of additional evidence. Even in grounds of appeal, it has not been explained as to what additional evidence the appellant wanted to produce, which he could not lead despite due diligence. The relevant provisions for production of additional evidence in Appellate Court is Order 41 Rule 27 CPC, which for ready reference is reproduced as under:-

27. Production of additional evidence in Appellate Court.-

- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—*
- (a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*
 - (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*
 - (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*
- (2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.*

12. There is nothing on record to show that any of the ingredient of this provision was fulfilled. As a matter of fact, the appellant has not dilated in the grounds of appeal as to what other additional evidence, he wanted to lead.

13. As far as the present appeal filed by him before this Court, the same comes out to be devoid of any merit. No substantial question of law or fact is involved in this case. The appeal stands dismissed accordingly.

14.11.2022

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No