

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

106

RSA-6913 of 2016(O&M)
Date of Order: 13.05.2022

Rajinderpal Singh

..Appellant

Versus

Ranjit Singh@Manager

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Bhatia, Advocate,
for the appellant.

Mr. Nitish K. Vasudeva, Advocate,
for the respondent.

ANIL KSHETARPAL, J(Oral)

While assailing the correctness of the concurrent findings of fact arrived at by the Courts below, the plaintiff has filed this Regular Second Appeal. His suit for the recovery of Rs.5,00,000/- which was allegedly given as a friendly loan to the defendant, has been dismissed by both the courts below. The plaintiff claims that he transferred the amount by way of a cheque of Rs.2,00,000/- and cash Rs.3,00,000/-. The defendant in order to return the amount issued him three cheques which were dishonored.

The defendant contested the suit claiming that a case under the Prevention of Corruption Act, 1947, was pending against him and the plaintiff promised to get it settled using his influence. The defendant had no money, therefore, the plaintiff paid the amount. The defendant further asserted that on the refund of the amount, the plaintiff has executed an

affidavit dated 14.12.2005, which is also attested by a witness Sh. Sardara Singh.

Both the Courts have recorded the concurrent findings of fact the affidavit dated 14.12.2005, has been proved by the defendant, therefore, the suit has been dismissed.

The learned counsel representing the appellant contends that the original affidavit has not been produced and as no application for permission to lead secondary evidence was filed, the same could not be taken into consideration.

In the considered opinion of the court, the argument of the learned counsel suffers from a fundamental error. There is no provision either under the Code of Civil Procedure, 1908, the Indian Evidence Act, 1872, or under the High Courts Rules and Orders which provides for prior permission of the Court to lead secondary evidence mandatory. Recently, the Supreme Court, the Bombay High Court as well this Court has held that there is no provision that mandates filing an application in advance for seeking the permission of the Court to lead secondary evidence. In fact, the Bombay High Court after noticing that a wrong practice has developed in the courts, has made strong observations directing the trial Courts not to insist on filing such application which is not supported by law. Reference in this regard can be made on the judgments passed in **Madan vs. Shankar and others** (RSA-327-1989 decided on 01.11.2018), **Dhanpat vs. Sheo Ram** **2020 SCC online SC 606** and in **Civil Revision Application no.82 of 2016 decided on 10.11.2017** by the Bombay High Court.

The affidavit has been exhibited and proved by examining the marginal witness. Furthermore, from the reading of the judgment passed by

the First Appellate Court, it is evident that the appellant never objected to the admissibility of the affidavit on this ground.

Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

May 13, 2022
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(ANIL KSHETARPAL)
JUDGE

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