

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

RSA-5408-2019 (O&M)

Date of decision : 12.09.2022

Ajit Singh

...Appellant

Vs.

Manjinder Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Manish Prabhaker, Advocate
for the applicant-appellant.

MANOJ BAJAJ, J.

CM-15367-C-2019

This application has been filed under Section 5 Limitation Act, 1963 read with Section 151 CPC for condonation of delay of 108 days in filing the appeal.

For the reasons mentioned in the application, same is allowed and delay of 108 days in filing the appeal is condoned.

CM stands allowed.

Main case

Appellant (defendant) has preferred this regular second appeal to challenge the judgment and decree dated 09.04.2019 passed by the first appellate Court, whereby the judgment and decree passed in Civil Suit No.464 dated 06.11.2013 by Civil Judge (Senior Division) Amritsar, decreeing the suit for recovery filed by respondent/plaintiff, was upheld.

Briefly, the facts of the case are that plaintiff-Manjinder Singh filed a suit for recovery of Rs.2,00,600/- (Rs.1,70,000 principal amount+Rs. 30,600/- as interest) on the ground that he being engaged in the business of

selling building material had supplied cement etc. worth Rs.2,30,000/- to defendant, but the complete payment was not made by the defendant and later he had entered into an agreement dated 07.04.2012 acknowledging the debt, and had given an undertaking to clear the debt by 06.10.2013. At that stage, the defendant had handed over the possession of his shop in favour of the plaintiff, however, pursuant to the said written agreement, the defendant had paid Rs.30,000/- on 31.05.2012 followed by Rs.10,000/- each on 11.08.2012, 19.12.2012 and 10.03.2013. As per the pleadings, the defendant had earlier filed a suit for injunction against the plaintiff restraining him from recovering the debt forcibly and illegally. As the outstanding amount of Rs.1,70,000/- was not paid by defendant, therefore, he brought the suit for recovery.

Upon notice in the suit, defendant failed to appear, who was proceeded against *ex parte* and vide judgment and decree dated 10.03.2014, plaintiff's suit was decreed. Subsequently, defendant moved an application under Order IX Rule 13 CPC for setting aside the *ex parte* decree and the same was allowed. Thereafter, he filed his written response, wherein it is not disputed that plaintiff is engaged in business of selling building material and according to him, the defendant had already made payment of material in cash to the plaintiff. However, the execution of agreement dated 07.04.2012 was denied and it was explained that the said instrument is forged and fabricated. While denying the other averments in the plaint, he prayed for dismissal of the suit.

After completion of the pleadings, the trial Court framed only one issue and thereafter, the parties adduced their respective evidence and upon considering the same, the trial Court decreed the suit vide judgment and decree

dated 24.04.2018.

Dissatisfied with the said judgment and decree, the appellant preferred appeal before District Judge, Amritsar and the same was also dismissed vide impugned judgment and decree dated 09.04.2019. Hence this regular second appeal.

Learned counsel for the appellant has argued that the plaintiff had set up a specific case that he supplied building material to the defendant worth Rs.2,30,000/-, but in order to establish the same, he has not adduced any evidence relating to this transaction, much less the invoices or bills, therefore, the Courts fell in error of law in accepting his claim and decreeing the suit. He submits that the solitary piece of evidence relied upon by the plaintiff is in the nature of agreement dated 07.04.2012 (Ex.P-1) between the parties, which in fact was never signed by the defendant. He submits that it was for the plaintiff to discharge the initial onus and since he failed to do so, therefore, his suit was bound to fail. He submits that interference is warranted by this Court by exercising the jurisdiction under Section 100 Code of Civil Procedure, 1908. He prays for setting aside the impugned judgment and decree.

After hearing learned counsel and considering the submissions, as well as the material on record, this Court finds that the Courts have mainly relied upon the admission of the defendant, who had previously brought a suit for injunction against the plaintiff seeking restraint order from recovering the amount/debt from him by use of force or any other illegal manner. During the course of hearing, it is not disputed by learned counsel that indeed the said suit was filed, but it was later on withdrawn. Further, concededly, the defendant admitted that he made certain payments to the plaintiff i.e.Rs.30,000/- on

31.05.2012, Rs.10,000/- on 11.08.2012, Rs.10,000/- on 19.12.2012 and finally Rs.10,000/- on 10.03.2013, respectively. Besides, it is the case of the defendant himself that he had cleared the entire debt by making payment in cash, therefore, once this transaction is not disputed by the defendant, who has failed to prove any evidence to show that the due amount was paid to the plaintiff, therefore, the Courts have rightly returned the findings on material issue against the defendant and in favour of the plaintiff.

Further, the argument that the agreement dated 07.4.2012 (Ex.P-1) acknowledging the debt was not signed by him is also without any merit as no evidence was brought on record by defendant to show that he did not sign that instrument. Thus, bald averment that agreement is forged was rightly rejected by both the Courts.

No other argument was raised.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, the appeal fails and same is dismissed.

(MANOJ BAJAJ)
JUDGE

12.09.2022
vanita

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