

[108] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-753-2019

Date of Decision :01.03.2023

JASVIR KAUR

...Appellant

versus

HARJAP SINGH

....Respondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Sarbjit Singh, Advocate for the appellant.

B.S. Walia, J. (Oral)

[1] Challenge in the instant regular second appeal by the appellant plaintiff is to the dismissal of Civil Appeal No.300 of 27.11.2017 vide judgment and decree dated 07.08.2018 in case titled as Jasvir Kaur vs. Harjap Singh whereby the judgment and decree dated 25.10.2017 passed by the Court of the learned Civil Judge (Jr. Div.), Phagwara District Kapurthala in civil suit titled as Jasvir Kaur vs. Harjap Singh dismissing the suit for recovery of Rs.69,200/- along with interest @12% till realization along with costs of the suit from the date of filing of the suit.

[2] A perusal of the judgment and decree of the learned trial court reveals that on the basis of the pleadings of the parties, the following issues were framed:-

1. *Whether the plaintiff is entitled to the suit for recovery of Rs.69,200/- along with interest @ 12% till its realization along with the costs of the suit from the date of filing the suit? OPP*
2. *Whether the present suit of the plaintiff is not maintainable? OPD*
3. *Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
4. *Whether the plaintiff has suppressed and concealed the*

true and material facts? OPD

5. *Relief.*

[3] That thereafter, on the basis of evidence as well as submissions, the issues were decided against the appellant/plaintiff (wrongly mentioned defendant in the judgment of the learned trial Court) and in view thereof, the suit filed by the appellant/plaintiff was dismissed, primarily on account of the appellant/plaintiff having failed to produce any document on record to substantiate payment to the respondent/defendant.

[4] Learned counsel contends that the case of the appellant was that the respondent/defendant entered into an oral contract for supply of cement, concrete, soil etc. and took Rs.1,20,000/- from her but only made part supplies thereby took a sum of Rs.69,200/- in excess from the appellant/plaintiff. Respondent/defendant on the other hand denied the claim of the appellant/plaintiff and instead took up the stand that he had supplied material besides helped the appellant/plaintiff to obtain saria, therefore, the appellant/plaintiff was indebted to the respondent/defendant to the tune of Rs.83,800/- but after six months, the appellant/plaintiff had paid him only Rs.65,000/- and the balance amount of Rs.18,800/- was required to be paid by the appellant/plaintiff.

[5] Learned trial Court dismissed the suit in the absence of there being any documentary proof with regard to the alleged payment by the appellant/plaintiff to the respondent/defendant, while the appeal filed by the appellant/plaintiff met with the same fate on account of there being no evidence to prove the fact of payment of Rs.1,20,000/- by the appellant / plaintiff to the respondent/ defendant nor the appellant/plaintiff having issued any legal notice to the respondent/defendant before filing the civil

suit, moreover, in her complaint to the police, the appellant/plaintiff having claimed only Rs.25,200/- which itself was contradictory to the claim in the civil suit for recovery for Rs.69,200/- besides the appellant/plaintiff having admitted in the cross-examination in regard to Ex.PW-4/D-1 complaint that she was only claiming Rs.25,200/- instead of Rs.69,200/- in the recovery suit.

[6] Despite query, learned counsel for the appellant/plaintiff has not been able to refer to any evidence qua payment of Rs.1,20,000/- to the respondent/defendant.

[7] Sole argument of learned counsel for the appellant is that the respondent/defendant has admitted supplying material worth Rs.50,800/- and in the circumstances the claim of the appellant plaintiff Be as it may, the fact remains that the claim of the appellant/plaintiff was of her having paid a sum of Rs.1,20,000/- for material to be supplied but the respondent/defendant having supplied material to her only worth Rs.50,800/-. No documentary proof whatsoever was produced by the appellant/plaintiff on record to substantiate payment of Rs.1,20,000/- having been made by her. In the light of the aforementioned position, I do not find any infirmity with the judgment and decree passed by the learned appellate court upholding the judgment and decree of the learned trial court dismissing the civil suit.

[8] In the light of the position noted above, no substantial question of law much less question of law arises for consideration by this Court.

[9] Dismissed.

(B.S. Walia)
Judge

01.03.2023

'Amit'