

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

RSA-998-2020(O&M)

Date of decision:-18.1.2023

Saroj

...Appellant

Versus

Gurdev Singh

...Respondent

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

Present: Mr.Akaant Kumar Mittal, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Gurdev Singh had brought a suit against defendant Saroj Rani seeking recovery of Rs.30 lakhs with interest @ Rs.1% per month in lieu of the money advanced by the plaintiff to the defendant since the cheque issued by the defendant in favour of the plaintiff dated 4.11.2011 had been dishonoured by the bank of defendant on account of Insufficiency of Funds in the account of defendant.

2. According to the plaintiff, he had advanced a sum of Rs.30 lac to the defendant for purchase of a kothi situated at Nawanshahr, which she had purchased vide sale deed dated 19.10.2011 and for that reason the defendant had issued post dated cheque dated 04.11.2011 for a sum of Rs.30 lakhs to the plaintiff giving assurance that there were sufficient

funds in her account for encashment of the cheque, however when plaintiff presented the cheque for encashment on 12.11.2011 to his banker, it was returned back unpaid by the banker of the plaintiff vide memo dated 12.11.2011 being unpaid on account of insufficient funds in the account of defendant; subsequently the defendant failed to make payment to the plaintiff despite repeated requests, rather she stated that she was going back to Italy after selling of her newly purchased kothi.

3. Notice of the suit was given to the defendant, who put in appearance contesting the suit contending that cheque in question is forged and fabricated having not been issued by the defendant in favour of the plaintiff; as a matter of fact the defendant did not owe any money to the plaintiff; neither she had borrowed any amount from the plaintiff as alleged in the plaint nor she promised to return the same; actually the defendant came in telephonic contact with plaintiff through his sister in the year 2010; the plaintiff represented himself to be an NRI settled in U.K. stating that a divorce petition was pending between him and his wife, which was about to be decided and he wanted to re-marry; the defendant discussed the matter with her parents and met the plaintiff for the first time at village Chohra at her sister's residence where the plaintiff proposed to her; they had been speaking with each other on telephone; after some time the defendant returned to Italy and the plaintiff went back to UK; they used to meet whenever they came to India; they had been meeting each other and residing together as husband and wife without actually getting married; the plaintiff also sent sponsorship in favour of defendant so as to persuade her to visit UK to reside with him; the

defendant asked him to marry her, then plaintiff thought of a plan to make the defendant solemnise a fake marriage with someone to enable her to come to UK and then to divorce that person, therefore the plaintiff got the defendant married with some unknown person of Ropar, who was an NRI from UK; the plaintiff got bank account of defendant transferred from Garhshankar to Nawanshahar and got issued cheque book from the bank; the defendant had given 8 blank cheques duly signed by her to her mother to enable her to withdraw the amount from her account in her absence; while defendant was in India and wanted to go back to Italy but plaintiff did not allow her to go back, giving rise to a dispute between them. According to the defendant, plaintiff had stolen aforesaid cheque along with other documents belonging to her with an intention to pressurize her; the defendant had reported the matter to the police; the cheque had been presented by the plaintiff with an intention to pressurize the defendant. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

4. The plaintiff had filed replication to the written statement controverting the allegations in the written statement whereas reiterating the averments in the plaint.

5. On the pleadings of the parties, following issues were framed:

1. Whether plaintiff is entitled to the recovery of Rs.30,00,000/- along with interest, if so at what rate? OPP
2. Whether suit is not maintainable in the present form? OPD
3. Whether the plaintiff is estopped from filing this suit by his act,

conduct, admission and acquiescence?OPD

4. Whether the plaintiff has no cause of action or right to sue?OPD

5. Whether the plaintiff has not approached this court with clean hands and has suppressed the material facts from the court?OPD

6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD

7. Relief.

6. The parties were afforded opportunities to lead evidence in support of their respective claims.

7. After hearing the learned counsel for the parties, the trial Court of Civil Judge(Sr.Divn.), SBS Nagar vide judgment and decree dated 23.10.2017 decreed the suit of the plaintiff for recovery of Rs.30 lakhs with proportionate costs along with simple interest @ 9% per annum on the principal amount from the date of issuance of cheque till the date of judgment and future interest @ 6% per annum on the principal amount from the date of judgment till realisation of the amount.

8. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, SBS Nagar, which were assigned to Additional District Judge, SBS Nagar, who vide judgment and decree dated 10.10.2019 dismissed the appeal upholding the judgment and decree passed by the trial Court.

9. Being dissatisfied with the judgments and decrees passed by the Courts below, the defendant filed the present regular second appeal before this Court.

10. I have heard learned counsel for the appellant besides going

through the record and I find that there is absolutely no merit in the present appeal.

11. Both the Courts below on proper analysis of the evidence available on the record, in light of the facts and circumstances of the case considering the legal position on the subject, have concluded that the plaintiff had advanced a sum of Rs.30 lakhs to the defendant to purchase Kothi, which she did vide sale deed dated 19.10.2011 and defendant had issued a cheque in his favour for return of the amount but on presentation the cheque got bounced, therefore, the liability of the defendant to return amount of RS.30 lakhs to the plaintiff comes out to be there and further since she had retained the money of plaintiff for several years, she is liable to compensate the plaintiff by way of payment of interest. The story set up by the defendant regarding plaintiff having developed close relations with her forcing her to get married and depositing that amount in her account then stealing a cheque duly signed by her which he had presented etc., detailed in the written statement was found to be without any element of merit and was rejected.

12. The concurrent findings recorded by the trial Court as well as First Appellate Court of Additional District Judge, SBS Nagar are that the defendant is liable to pay a sum of Rs.30 lakhs which she had borrowed from the plaintiff to him with interest.

13. The judgments and decrees passed by the Courts below are quite detailed well reasoned, based on proper appraisal of evidence and correct interpretation of law, which do not call for any interference.

14. No substantial question of law arises in this appeal.

15. Finding no merit in the appeal, the same stands dismissed.

Since the main appeal is dismissed, the miscellaneous application(s), if any stands disposed of accordingly.

18.1.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No