

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

137

RSA-2491-2019(O&M)
Date of Decision: 20.11.2023

Hardeep Singh

....Appellant

Versus

Manjot Kaur and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Bhritu Dutt Sharma, Advocate
for the appellant.

Mr. I.P.S. Kohli, Advocate
for the respondents.

SANJAY VASHISTH, J.(Oral)

CM-6739-C-2019

Present application has been filed under Section 151
C.P.C. for seeking condonation of delay of 8 days in re-filing the
present appeal.

For the reasons enumerated in the application, the same
is allowed and the delay of 8 days in re-filing the present appeal is
condoned.

Application stands disposed of.

RSA-2491-2019

1. Present regular second appeal has been filed by the
plaintiff-Hardeep Singh against the concurrent findings of dismissal of
civil suit.

2. The short prayer in the civil suit is that plaintiff withdrew an amount of Rs.14,95,000/- from his savings bank account No.084210000011931 through cheque No.191191 (Ex.PW4/2) dated 08.11.2011. It was pleaded that thereafter, on 07.12.2011 an amount of Rs.10,50,000/- was handed over to all the six defendants in cash in presence of PW2-Shashi Pal Sharma and PW3- Jasmeet Singh. Despite of asking to return the amount of Rs.10,50,000/-, same is not being returned by the defendants.

3. Defendants were proceeded against ex-parte before the Courts below. Thus, learned counsel for the appellant submits that without there being any opposition to the pleadings as well as to the oral evidence in the shape of affidavit Ex.PW2/A and Ex.PW3/A, suit ought to have been **decreed** by the Courts below.

4. This Court has noticed the fact regarding the marriage of brother of the plaintiff which was fixed three days prior to the giving of the money to the defendants. Learned trial Court recorded its finding that in the absence of any evidence, civil suit is not decreable and thus, dismissed.

Said finding has been affirmed by learned First Appellate Court also.

5. Even before this Court also, Mr. Bhriugu Dutt Sharma, learned counsel for the appellant while reading out the contents mentioned in the plaint submits that the amount of Rs.10,50,000/- was handed over to all the defendants collectively at one point of time.

While reading plaint, learned counsel for the appellant could not pointed out the fact that to whom in specific, the amount of Rs.10,50,000/- was handed over. Even otherwise also the purpose behind withdrawal of the amount of Rs.14,95,000/- has not been explained by the plaintiff. In the statement of PW2-Shashi Pal Sharma, PW3- Jasmeet Singh and PW-5 Ajay Kumar (three witnesses), while deposing their oral version, some attempt has been made to explain that which of the defendant retained the cash amount in parts.

6. To the view point of this Court, in the absence of any mentioning/explanation in the plaint, such deposition is nothing but an improvement in the original pleadings and that too without any corroboration. This Court has also noticed the fact that purpose of withdrawal of Rs.14,95,000/- is not explained by the plaintiff because it was withdrawn a month prior to the alleged handing over of it to the defendants.

Moreover, there is no explanation in the plaint regarding the balance amount used by the plaintiff apart Rs.10,50,000/-. Obviously, there was a marriage function in the family of the plaintiff that too of his brother, so, reason of withdrawal of the amount can be well understood.

However, handing over the amount to all the defendants collectively seems to be completely improbable version. Therefore,

strict proof of entrustment of the amount to the defendants with certain specification was required to be introduced in the plaint itself.

7. In the absence of any reliable and admissible evidence, suit has been rightly dismissed by the Courts below. No question of law much less substantial question of law arises in the instant appeal for the consideration of this Court. Consequently, the impugned judgments and decree passed by both the Courts below are hereby maintained and the present appeal stands **dismissed**.

November 20, 2023
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[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no