

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

RSA-2881-2022(O&M)

Date of decision:-11.1.2023

Baba Inderjit Singh (since died) through his LRs Parvinder Singh and ors.

...Appellants

Versus

Darshan Pal Singh

...Respondent

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

Present: Mr.Neeraj Goel, Advocate
for the appellant.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Darshan Pal Singh had brought a suit for recovery of Rs.3 lakhs with interest against defendant Baba Inderjit Singh on the averments that there had been close relations between the parties and as such the defendant had borrowed a sum of Rs.3 lakhs from the plaintiff on 9.7.2007 and to discharge that liability had issued a cheque No.0790162 dated 22.5.2008 amounting to Rs.3 lakhs from his account No.17760 with Bank of Baroda, Branch Phagwara, District Kapurthala, however, on presentation, the cheque was not cleared and returned to the plaintiff vide memo dated 2.6.2008 with the remarks 'Funds Insufficient'; the plaintiff tried to resolve the matter amicably with the defendant requesting him to make payment but to no

effect; the plaintiff served legal notice dated 9.6.2008 upon the defendant, however, the defendant neither responded to the notice nor made payment; the plaintiff had filed a complaint under Section 138 of Negotiable Instruments Act against the defendant; the defendant threatened him to withdraw the same; ultimately the plaintiff brought a suit for recovery against the defendant.

2. On notice, the defendant appeared and filed written statement contesting the suit raising various legal objections, to wit, that the plaintiff had not approached the court with clean hands; the suit was not maintainable; the plaintiff is estopped by his own act and conduct from filing the suit; the plaintiff lacked locus standi to bring the suit. On merits, the defendant contended that the plaintiff had taken 5 rooms from the defendant for running school but later on he started illegal activities there, as such his entry was banned in the premises belonging to the defendant. The defendant denied having borrowed a sum of Rs.3 lakhs from the plaintiff on 6.7.2007 or he being liable to pay any amount to the plaintiff. In the end, the defendant prayed for dismissal of the suit.

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

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

1. Whether the plaintiff is entitled to recovery of suit amount, as prayed for? OPP.

2. Whether the plaintiff is entitled for the interest, as prayed for?

OPP.

3. Whether the plaintiff has not come to the Court with clean hands? OPD

4. Whether the suit of plaintiff is not maintainable in the present form? OPD

5. Whether the plaintiff has no locus standi to file the present suit? OPD

6. Whether the plaintiff is barred to file the suit by his own act and conduct? OPD

7. Relief

5. The parties led evidence in support of their respective claims.

During the course of evidence of the plaintiff, he got his own statement recorded as PW1 and repeated on oath his case as pleaded in the plaint. He further examined Sh.Harbans Lal, Single Window Operator, Bank of Baroda, Branch GT Road, Phagwara as PW2 and then after tendering certain documents, he closed the evidence.

In rebuttal, defendant got his own statement recorded as DW5 besides examining Dr.Inderjit Singh, Handwriting and Fingerprint Expert as DW1, Neeraj Sharma, Pharmacist as DW2 and Parminder Singh as DW4. He also relied upon various documents and thereafter closed his evidence.

6. The plaintiff tendered in evidence certified copy of statement and cross examination of Parminder as Ex.P8 and Ex.P9, respectively in rebuttal evidence.

7. After hearing the learned counsel for the parties, the trial

Court decided issues No.1 and 2 in favour of the plaintiff and against the defendant, issues No.3 to 6 were decided against the defendant and in favour of the plaintiff. As a result of findings on issues, the suit of the plaintiff was decreed with costs for recovery of Rs.3 lakhs with interest @ 6% per annum from the date of issuance of cheque till realisation of the amount. This was so done vide judgment and decree dated 24.1.2017.

8. Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Rupnagar, which was assigned to Additional District Judge, Rupnagar, who vide judgment and decree dated 28.5.2019 dismissed the said appeal with no order as to costs 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 has filed the present regular second appeal before this Court.

10. I have heard learned counsel for the appellants besides going through the record.

11. Both the courts below by proper analysis of evidence and correct interpretation of law have returned concurrent findings that the defendant owed a sum of Rs.3 lakhs to the plaintiff and for that reason he had issued a cheque in that sum in favour of the plaintiff from his bank account, which on presentation had bounced, as such he was liable to pay a sum of Rs.3 lakhs with interest to the plaintiff. The contention raised on behalf of the defendant that he had neither borrowed the amount nor issued the cheque were discussed and rejected being without merit. It was

also taken into consideration that the defendant had been convicted by the trial Magistrate in the cheque bouncing case, though he was acquitted by the First Appellate Court. The Courts below were rightly of the view that judgment of criminal Court is not binding upon the Civil Court and Civil Court is to reach its own conclusion in light of the facts and circumstances of the case and evidence brought on file by the parties. It need not be emphasized that the yardsticks for deciding a criminal case and case of civil nature are different because in case of former the complainant/prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt, whereas in case of later the burden of proof is not that heavy and matter is decided by preponderance of probabilities.

12. The judgments passed by the Courts below show due application of mind to the facts and circumstances of the case proper marshalling of facts and correct understanding and use of relevant law. With concurrent findings being there in favour of the plaintiff and against the appellant/defendant with which I find no reason to disagree with both the Courts which have given valid and detailed reasons for arriving at the conclusion drawn. No substantial question of law arises in this case.

13. Finding no merit in the present appeal, the same stands dismissed with costs.

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

11.1.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No