

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(120)

RSA No.437 of 2023 (O&M)
Date of Decision: 10.10.2023.

Ishwar

.....Appellant

Versus

Jabir Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWALPresent: Mr. Abhishek Yadav, Advocate
for the applicant/appellant.

VIKRAM AGGARWAL, J. (ORAL)**CM-11206-C-2023**

Prayer in the present application filed under Section 151 CPC is for condonation of delay of 200 days in filing the application for restoration.

Heard.

For the reasons mentioned in the application, which is duly accompanied by an affidavit of learned counsel for the applicant, the same is allowed and delay of 200 days in filing the application for restoration is condoned.

CM-11209-C-2023

Prayer in the present application moved under Order 41 Rule 19 CPC is for restoration of the appeal dismissed for non-prosecution on 16.02.2023.

For the reasons mentioned in the application, which is duly accompanied by the affidavit of learned counsel representing the applicant/appellant, the same is allowed. The order dated 16.02.2023 vide which the appeal was dismissed for non-prosecution is recalled and the appeal is restored to its original number.

RSA No.437 of 2023

1. This is plaintiff's second appeal against current findings of facts recorded by both the Courts below.

2. A suit for recovery of ₹6,12,000/- along with interest @ 18% per annum was filed by the respondent-plaintiff. The averments were that the parties were on friendly terms and the appellant-defendant No.1 had borrowed a sum of ₹3,65,000/- on 11.06.2012. A pronote was executed in the presence of witnesses. Sh. Bajrang Lal, deed writer, Hansi filled up the said pronote and read over the same to the appellant-defendant. The appellant-defendant appended the signatures on the pronote so did the witnesses. The appellant-defendant issued post dated cheques amounting to ₹2,00,000/- each dated 12.02.2013 and 20.02.2013 respectively but the same were dishonoured. Legal notice dated 26.03.2013 was served by the respondent-plaintiff upon the appellant-defendant. However the appellant-defendant refuse to accept the same. A complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short the 'NI Act') was also filed wherein the matter was compromised. The appellant-defendant agreed to pay a sum of ₹6,12,000/- up to 28.05.2015 along with interest @ 18% per annum. However, he did not pay the said amount. Under the circumstances, the suit was filed.

3. The suit was contested by the appellant-defendant. Certain preliminary objections with regard to the maintainability, cause of action, *locus standi*, limitation etc., were raised. On merits, it was denied that the applicant-defendant had taken a loan of ₹3,65,000/-. A stand was taken that the pronote was forged. The issuance of cheques was also denied. From the pleadings of the parties, the trial Court framed the following issues:-

1. *Whether the plaintiff is entitled for a decree of an amount of Rs.6,12,000/- alongwith interest @ 18% per annum till its realization as prayed for? OPP.*
2. *Whether the suit is not maintainable in the present form? OPD.*
3. *Whether the plaintiff has got no cause of action and no locus stand to file the present suit?OPD.*
4. *Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD.*
5. *Whether the plaintiff has not come to this Hon'ble court with clean hands and concealed the true material facts from the Hon'ble Court? OPD.*
6. *Whether the suit of the plaintiff is time barred? OPD.*
7. *Relief."*

4. The trial Court decreed the suit holding that the respondent-plaintiff had proved his case by leading cogent evidence. The appeal was also dismissed by the District Judge, Hisar, vide judgment and decree dated 04.02.2022 leading to the filing of the present second appeal.

5. I have heard learned counsel for the appellant.

6. Learned counsel has submitted that the Courts below erred in decreeing the suit filed by the respondent-plaintiff. It has been submitted that the Courts below did not examine the matter from the correct perspective.

7. I have considered the submissions made by learned counsel for the appellant but find the same to be devoid of merit. The appellant-defendant admitted his signatures and thumb impression on the pro-note while having stepped into the witness-box. While appearing as DW-1, he not only admitted his signatures on the pro-note Ex.P-4 and receipt Ex.P-5, he also admitted the Entry Ex.P-6 made in the register of the deed writer. The Courts therefore rightly held that there was a presumption that consideration had passed.

8. Still further, both Courts placed reliance upon the complaints filed by the respondent-plaintiff under Section 138 of the NI Act, in which a compromise had been arrived at between the parties. The complaint was produced as Ex.P-1 and the statement given by the appellant-defendant in the said case, was produced as Ex.P-8. Though a judgment of the Criminal Court would not be admissible much less binding on the Civil Court, however an admission made by party in previous criminal proceedings would be admissible. Both Courts took note of this fact and held that the appellant-defendant could not be permitted to back out from his earlier statement.

9. I have not found any illegality in the concurrent findings of facts recorded by both the Courts below.

In view of the aforesaid facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

October 10th, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : *Yes/No.*
Whether reportable : *Yes/No.*