

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

105

RSA No.514 of 1992

Date of decision: 31.10.2023

Avtar Singh

....Defendant-Appellant

Versus

M/s Bhagat Traders

...Plaintiff-Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- None for the appellant.

Mr. Roshan Lal Batta, Senior Advocate with
Mr. Mandeep K. Sajjan, Advocate, for the respondent.

AMAN CHAUDHARY. J.

1. Challenge has been made by the defendant-appellant to the judgment and decree dated 07.12.1989 passed by learned Sub Judge Ist Class, Khanna, whereby the suit for recovery of Rs.54,716.55/- filed by the plaintiff-respondent was allowed with interest @ 12% per annum, against which the appeal filed was dismissed vide judgment dated 10.01.1992 passed by learned Additional District, Patiala.

2. Before moving forward in the matter, it may be worthwhile to refer to the order dated 06.03.1992 passed in this case by this Court restricting the scope of the present second appeal, which reads thus:

“Learned counsel has raised three objections, namely (i) that the plaintiff-respondent could not claim any interest on the amount claimed; (ii) that future interest could not be awarded @ 12% and (iii) that the suit was filed beyond limitation. Point No.(i) & (iii) were not taken before the First Appellate Court and, therefore, I am not persuaded to permit the petitioner’s counsel to take these points for the first time in second appeal. These are questions of facts, which are to be determined on evidence. As far as point No.(ii) is concerned that future interest @ 12% could not be awarded since the

transaction in dispute was not a commercial transaction, let a notice of motion be issued to the respondents to show cause why the appeal be not admitted to hearing on this limited question alone, for 10-4-1992. The execution of the decree to the extent of recovery of future interest at 12% from the date of filing of the suit till realisation is suspended.

After this order has been pronounced in open court, the counsel for the appellant persists in submitting that the question of limitation was argued before the First Appellate Court. The counsel is directed to file an affidavit of the counsel, who represented his client in the First Appellate Court, to the effect that the question of limitation was argued and was not dealt with by that Court. He can file the affidavit of the counsel on the adjourned date of hearing.”(emphasis supplied)

3. While trying to ascertain as regards the aforesaid, a perusal of the paper book reveals that no such affidavit was perhaps filed and placed on record.

4. None has represented the appellant.

5. The learned Senior counsel appearing on behalf of the respondent would submit that the Courts below have properly considered and appreciated the facts and evidence available on record and thus, the present appeal deserves to be dismissed but he has no objection in case the interest component is modified.

6. Heard and perused.

7. The Courts below are found to have evaluated the facts and evidence led by the parties in the right perspective while returning its cogent findings, which cannot be interfered with as held in **Pankajakshi vs. Chandrika**, (2016) 6 SCC 157, by Hon’ble the Supreme Court that, in the second appeal, the finding of fact recorded cannot be interfered with even in terms of Section 41 of the Punjab Courts Act, 1918, which was reiterated in **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026 observing and holding that, “Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the

force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a “question of law”. In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court”.

8. It would also be gainful to refer to **Randhir Kaur vs. Prithvi Pal Singh**, (2019) 17 SCC 71, wherein Hon’ble the Supreme Court observed that “A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.” Further held that, “In view of the above, we find that the High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view....”

9. The rate of interest of 12%, as granted by the Courts below is circling in the appeal, it appearing to the appellant as exorbitant on the ground that the transaction could not be termed as commercial, he being an agriculturist having obtained the loan for his personal use, which was to deliver the produce to the respondent-Commission Agent-firm. In this regard the judgment in **Krishan Lal v. State Bank of Patiala**, 1990(1) PLJ 132, of this Court can aptly be referred to, wherein it was held that when the loan was taken for purchasing a mechanised cart by an agriculturist, it cannot be considered to be a commercial transaction connected with industry, trade or business and future interest more than 6 per cent cannot be granted.

10. On due consideration of this matter, there is no misreading or ignoring of evidence, thus, in light of the enunciation of law, this Court finds no perversity or illegality in the impugned judgments, however, it would be just and equitable to reduce the rate of interest to 6%. Accordingly, the judgments and decrees stand modified to the said extent. Appeal stands disposed of.

(AMAN CHAUDHARY)
JUDGE

31.10.2023
Ankur

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No