

RSA-1264 of 2023 (O&M)

2023:PHHC:152785

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

RSA-1264 of 2023 (O&M)

Date of decision: 30.11.2023

Jet Education Consultants Pvt. Ltd. And another

.....Appellants

Versus

Jai Raj Kapoor

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Ashish Kumar Gupta, Advocate,
for the appellants.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 21.02.2017 passed by the Court of learned Civil Judge (Junior Division), Chandigarh, whereby suit of the respondent-plaintiff for recovery was partly decreed as well as against the judgment and decree dated 13.12.2022 passed by the Court of learned Additional District Judge, Chandigarh, vide which the appeal filed by the appellant-defendants against the judgment and decree of the trial Court, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly stated, plaintiff filed a suit for recovery of Rs.5,16,800/- (Rs.3,80,000/- as principal and Rs.1,36,800/- as interest calculated upto 30.11.2013) along with interest @ 18% per annum pleading therein that in the year 2005 he was

looking for overseas education of his two sons and for permanent immigration in Australia. Defendants who were engaged in business of facilitating the services for immigration and consultancy services approached him with the assurance that they will make proper arrangements for his sons in Australia for helping them. Believing them, he agreed to send his sons to Australia in the year 2005 through defendants. For the said purpose, he paid all the amount demanded by them. As defendants made all the arrangements for his sons and got them settled in Australia, their relations became very cordial with each other. In the year 2010, as plaintiff wanted to settle in Australia with his sons, he again approached defendants. They assured him to arrange permanent resident visa for him and his wife, for which they initially demanded Rs.2 lacs. He initially paid Rs.1 lac by way of account payee cheque which was duly encashed on 13.12.2010 and handed over his own and his wife's passport to them. Thereafter, an amount of Rs.1.80 lacs was again paid by way of another cheque and Rs.1 lac in cash on 30.12.2010. In the month of December, 2010, on his request, defendants informed him that their applications were rejected. In the month of January, 2012, defendants returned the passports to him, but did not return the amount. Hence, the filing of present suit for recovery of Rs.5,16,800/- (Rs.3.8 lacs as principle and Rs.1,36,800/- as interest).

3. Upon notice, defendants appeared and filed written statement challenging the suit on the grounds of maintainability, concealment of facts, *locus standi* and mis-joinder of parties. It is admitted that defendant no.1 was a company dealing in overseas and

education consultancy for student visa and it never dealt into the business of immigration. Defendant no.2 is the director of defendant no.1. Defendants no.3 and 4 never engaged in any business or professional activity for defendant no.1. Defendants no.3 and 4 have nothing to do with respect to present case. It is further submitted that plaintiff approached defendant no.2 in the year 2005 for getting advice and guidance for overseas education of his two sons at Australia. His sons were properly guided and extended every possible help by defendant no.2 and also provided consultancy services. The first son of plaintiff got student visa in the year 2005 while the second son got visa in the year 2006. As the relationship between plaintiff and defendant no.2 became very friendly, therefore, his sons were extended all possible help, financial or otherwise, by defendant no.2 for their education and other day to day requirement in foreign country. In the year 2010, plaintiff paid Rs.1 lac by way of cheque no. 0775086 dated 10.12.2010. But, plaintiff did not pay all the amount borne by defendant no.2 for the purpose of providing consultancy services. He requested plaintiff several times to clear the amount, but to no avail. In the year 2013, plaintiff flatly refused to pay the amount due. It is denied that plaintiff ever approached defendant no.2 for getting visa for himself or his wife. It is further denied that the plaintiff has paid the amount of Rs.1 lac by way of cheque and thereafter, amount of Rs.1.80 lac by way of another cheque to defendants no.1 and 2 for the purpose of sending him or his wife abroad. It is also denied that any amount of Rs.1 lac was paid by plaintiff to defendant no.4. Defendant no.4 never

involved herself in any business as she is a housewife. Rest of the averments were denied and a prayer for dismissal of suit was made.

4. Replication was not filed. From the pleadings of the parties, following issues were framed :-

1. Whether plaintiff is entitled for recovery of Rs.5,16,800/- along with interest as prayed for? OPP.
2. Whether the plaintiff has not approached this court with clean hands? OPD.
3. Whether plaintiff has no locus standi to file the present suit? OPD.
4. Whether the suit is bad for mis-joinder of parties? OPD.
5. Whether the suit is time barred? OPD 6. Relief.

5. Parties led oral as well as documentary evidence in support of their respective contentions.

6. After hearing arguments and after appreciating evidence on record, trial Court partly decreed the suit of plaintiff vide judgment and decree dated 21.02.2017.

7. Aggrieved against the judgment and decree of the trial Court, defendants No.1 and 2 preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 13.12.2022.

8. Learned counsel for the appellants contended that the judgments passed by the Courts below are based on surmises and conjectures. He further contended that both the Courts below failed to appreciate that respondent-plaintiff failed to prove his case and the

Courts have wrongly decreed his suit without appreciating the evidence on record.

9. I have heard learned counsel for the appellants and perused the record.

10. Respondent-plaintiff filed a suit for recovery against the appellant-defendants. To prove his case, respondent-plaintiff examined PW 2 Bhupinder Singh, Cashier from Indian Bank, Sector 9- D, Chandigarh, who produced statement of account bearing no. 815439849 in the name of Madhu Kapoor and Jai Raj Kapoor w.e.f. 01.12.2010 to 31.12.2010 and proved the same as Ex.PW2/1. He deposed that as per said statement, Rs.1 lakh was debited vide cheque no. 775086 on 13.12.2010 and credited in the name of Jet Education Consultants and produced said original cheque dated 10.12.2010 issued by Jai Raj Kapoor in favour of Jet Education Consultants Pvt. Ltd. and same was encashed and proved attested copy of said cheque as Ex.PW2/2. Ms. Gurpreet Sandhu, Officer from Punjab & Sind Bank, Sector 35, Chandigarh was examined as PW3, who produced statement of account bearing no.2471 in the name of Jai Raj Kapoor and Madhu Kapoor w.e.f. 01.10.2010 to 31.03.2011 and proved the same as Ex.PW3/1, vide which Rs.1.80 lakh was debited vide cheque no. 961779 on 01.01.2011. She also produced said original cheque issued by said Jai Raj Kapoor in favour of Jet Consultants which was duly encashed and proved attested copy of said cheque as Ex.PW3/2 along with its rear side as Ex.PW3/3. Narinder Pal Singh, Branch Manager, Oriental Bank of Commerce, SCO No.21, Sector 33-D, Chandigarh

appeared as PW4 and produced statement of account of Jet Education Consultants Pvt. Ltd., bearing no. 51101131000045 w.e.f. 01.12.2010 to 31.01.2011 in which Rs.1.80 lakh was credited vide cheque no. 961779 dated 01.01.2011 and proved the statement Ex.PW4/1. Thus, from the testimony of the above witnesses it is duly proved that respondent-plaintiff transferred Rs.2.80 lakh by way of cheques in the account of the appellant-defendants, whereas appellants failed to prove the contrary. The claim of the respondent-plaintiff that he had handed over Rs.1 lakh in cash to the appellants, has rightly been discarded due to lack of any evidence on the part of the respondent-plaintiff.

11. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellants has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

13. In view of the above, present appeal is dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

30.11.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No