

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

RSA-875-2021 (O&M)

Reserved on: 24.01.2023

Date of pronouncement: 30.01.2023

Jaswinder Singh and others

...Appellants

Versus

Radhe Sham Malik and another

...Respondents

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

Present: Mr. J.S. Randhawa, Advocate for the appellants.

Mr. Rajesh Khurana, Advocate for the respondents.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiffs Radhe Sham Malik and his wife Mrs. Prem Lata Malik, both residents of H.No.376, Sector 38-A, Chandigarh had brought a suit for recovery of Rs.18,80,000/- against defendants i.e. Jaswinder Singh, his wife Smt. Ranjit Kaur and M/s Citi Investment Centre, Sector 17-C, Chandigarh through proprietor Jaswinder Singh on the averments that defendants No.1 and 2 had allured the plaintiffs to invest money in shares with promise of doubling the invested amount within six months. Taken in by such representation, plaintiffs started investing money in shares from 01.03.2001 onwards till 15.06.2007 by making payment to defendants through cheques. The total amount so paid by the

plaintiffs to the defendants was Rs.10,64,545/-.

The defendants gave details of the investment made in purchasing shares of TCS, SBI, Wipro, HDFC Bank, RIL, Maruti, L&T, etc., in the month of July, 2010 of the value of Rs.10,64,545/-. After calculating bonus and bonus shares, total amount comes to Rs.18,80,050/-. The defendants had agreed and admitted those calculations, however, in order to mislead the plaintiffs, the defendants had opened one Demat account of plaintiffs. The plaintiffs used to give cheques to defendant No.1 in the name of defendant no.3, however, subsequently, the plaintiffs came to know that defendants had invested their hard earned money for purchase of shares in their own names.

Whenever the plaintiffs asked the defendants to show the purchase of shares, profits and dividend etc, they kept making lame excuses. Finally, the plaintiffs called a computer expert to verify the account and came to know that no share had been purchased by defendant No.1 in the name of plaintiffs and their Demat account namely Master Capital Service Limited, Chandigarh was blank. Plaintiff No.1 was having Demat account No.10641868 whereas plaintiff No.2 was having Demat account No.10641173 which had been opened by the defendants in order to mislead the plaintiffs. The defendants had projected themselves to be trading in bulk shares, giving an assurance to the plaintiffs that amount of shares was to be invested in re-purchase of shares of blue chip companies and certain

blank transfer forms were got signed from the plaintiffs. The plaintiffs visited the defendants to refund their money and on 02.07.2010, the defendants issued two cheques in the sum of Rs.6 lacs each to the plaintiffs, which were to be got encashed on 16.03.2011. However, the defendants took back both the cheques on 10.03.2011 with an assurance that they would give one cheque of the whole amount, however, despite repeated requests of plaintiffs, no such cheque was given and the plaintiffs had to file a complaint to police.

On 09.04.2012 a compromise was effected between the parties with the intervention of Mr. Naveen Sharma, Inspector of Police according to which the defendants issued a cheque for Rs.18,80,000/- dated 09.04.2012. The compromise was to take effect after encashment of that cheque. On the same date, the defendants requested to present the cheque by 15.05.2012 with an undertaking that no further extension would be taken. The plaintiffs presented the cheque on 29.05.2012, but, it was dishonoured. Therefore, the plaintiffs filed another complaint to the police on which FIR No.211 dated 05.07.2012 was registered against the defendants and they remained behind bars upto 11.09.2012. When the defendants failed to make payment of Rs.18,80,000/- despite several demands raised by the plaintiffs and service of legal notices dated 22.09.2012 and 05.12.2012 upon the defendants, feeling aggrieved, the plaintiffs had brought the suit in question.

2. On being given notice, the defendants appeared and filed a joint written statement, contesting the suit, raising preliminary objections that the suit was not maintainable and the plaintiffs had concealed true facts. Plaintiff no.1 himself had approached defendant No.1 for investment in mutual funds and at that time, plaintiff No.1 was informed about the procedure for investment in mutual funds. Defendant no.1 is only a service provider/financial adviser running M/s Citi Investment Centre and he is not a broker, therefore, he cannot deal in shares as alleged by the plaintiffs. According to the defendants, M/s Master Capital is the broker of the plaintiffs and after opening of the demat account, plaintiffs did not give any direction to the broker to purchase any shares in their names. Whatever amount was given by plaintiffs, same was invested in mutual funds. Plaintiff no.1 himself withdrew the invested amount from mutual funds without knowledge of defendant No.1. Defendant no.1 has already returned back a sum Rs.2,87,000/- through cheques to plaintiff No.1 as plaintiff No.1 had requested the defendants to purchase shares, but defendant No.1 at that time was not dealing in shares. One cheque in the sum of Rs.3 lacs had been given to plaintiff No.1 in the year 2006 but he returned the same and received Rs.3 lacs from defendant No.1 in cash in presence of witnesses, in that way, the entire amount paid by plaintiff No.1 was returned to him. As alleged in the written statement, defendant No.1 was called to the police station and his signatures were obtained on

some blank papers along with one cheque No.583498, which was converted into alleged compromise, whereas defendant No.1 had not entered into any such compromise because there was no need for the same. The plaintiffs being government servants were required to take permission from Government before purchasing shares. They have not annexed any income tax return to show that they had invested money in shares. Defendant No.1 never promised the plaintiffs to double the money in six months and return back the money, however, nothing was due towards the plaintiffs.

Going further, the defendants stated that brother of plaintiff No.1 is working in Governor house and under his influence, a false case was registered and defendant No.1 was pressurized to give a blank cheque to the plaintiffs and to sign some blank papers. That cheque was filled in by plaintiff No.1 in his handwriting and got bounced without intimation to defendant No.1. Because there was no legal liability, as such no complaint u/s 138 of the Negotiable Instruments Act was filed by plaintiffs. Defendants denied that defendant No.1 had purchased shares on behalf of plaintiffs.

According to the defendants, there was no document to prove such purchase or that total amount was worked out to Rs.18,80,000/-. In the list attached at Sr. No.15 plaintiffs have mentioned that on 12.03.2005, a sum of Rs.20,000/- was paid through cheque no.408540 and same entry has been mentioned at Sr. No.18

vide which same cheque was mentioned but date was different which showed that all the entries were false and fabricated. The amount shown in list did not come in account of defendant No.1 in one go. The plaintiffs were trying to blackmail the defendants in order to derive illegal benefit. The suit was time barred because plaintiff No.1 has himself admitted that he had given payment from 01.03.2011 till 15.6.2007, thus, suit was required to be filed within three years from 15.06.2007. Defendant No.2 is only a housewife and has been falsely implicated. She is neither proprietor nor partner of defendant No.3. Reply on merits is almost reiteration of the contentions raised in preliminary objections.

3. Plaintiffs filed replication, controverting the allegations in the written whereas reiterated the averments in the plaint.

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

1. Whether the defendants no.1 and 2 had misrepresented and fraudulently induced plaintiffs to invest money in shares with the promise that they will double the money in six months? OPP.
2. Whether on account of this investment, plaintiff had paid a sum of Rs.10,64,545/- ?OPP.
3. Whether the plaintiffs investment appreciated to Rs.18,80,000/- which they are entitled to recover from defendant? OPP
4. Whether the plaintiffs are entitled to interest @ 18% p.a.? OPP
5. Whether the suit is not maintainable in the present form? OPD
6. Whether the suit is barred by limitation? OPD
7. Relief.

5. The parties were afforded sufficient opportunities to lead

evidence in support of their respective claims.

6. After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.) Chandigarh, vide judgment and decree dated 25.10.2017 decreed the suit partly with proportionate costs for recovery of Rs. 18,80,000/- against the defendants No.1 and 3 alongwith pendente lite and future interest @ 6% p.a. from the date of filing of the suit till realization. Defendant No.2 was not found liable to pay any amount to the plaintiffs and suit qua her was dismissed.

7. The judgment and decree passed by the trial Court were challenged by the defendants by way of filing an appeal before District Judge, Chandigarh, that appeal was assigned to Addl. District Judge, Chandigarh, who vide judgment and decree dated 11.02.2020 dismissed the appeal, leaving the defendants still dissatisfied and they have approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/plaintiffs who have put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. In this case, learned counsel for the appellants has attacked the judgment mainly on two grounds, firstly that no evidentiary value can be attached to list Ex.PW4/1, which has been relied upon by the Courts below to return the finding that the appellants/defendants own money to the plaintiffs, however, learned counsel for the respondents/plaintiffs has contended that they had

successfully proved their case by leading cogent and convincing evidence both oral as well as documentary and the case of the plaintiffs is not solely based upon such list which even otherwise has been properly proved by the plaintiffs on record.

I find that it cannot be said that the case of the plaintiffs is based upon a solitary document Ex.PW4/1, which has not been proved in accordance with law or that it is a self created document as per argument advanced by counsel for the appellants. Such argument lacks depth and cannot be accepted.

10. The next argument put-forward was that the suit is clearly barred by limitation. It could be filed upto 17.06.2010 but it was filed much later on 23.03.2013, therefore, it is hopelessly time barred.

Whereas, learned counsel for the respondents has contended that limitation is a mixed question of law and fact and the Courts below on thorough appraisal of evidence, in the light of legal position, have held that the suit is not time barred.

11. After hearing counsel for the parties and going through the record, especially the judgments passed by the trial Court and Ist Appellate Court, I find that the suit was rightly held to be not barred by limitation. I do not see any reason to differ with the Courts below on that point.

12. Learned counsel for the appellants has then contended that appellant/defendant Jaswinder Singh has since been acquitted by the Court of Judicial Magistrate Ist Class, Chandigarh in FIR No.211 dated

05.07.2012, for offences under Sections 420 and 120-B IPC, Police Station Sector 17, Chandigarh. May it be so, but that judgment does not help the appellant Jaswinder Singh in getting the judgments and decrees passed by the Courts below set aside. The judgments passed by a criminal Court is not binding upon the Civil Court which is to reach its own conclusion on the basis of material on record which includes pleadings and evidence adduced by the parties etc.

13. Learned counsel for the appellants had referred to judgments, first being **Sait Tarajee Khimchand & Ors. Vs. Yelamarti Satyam & Ors.**, 1971 AIR (Supreme Court) 1865. That judgment basically deals with a document providing that mere marking of a document as an exhibit does not dispense with its proof. There cannot be dispute with such proposition of law. However, there is nothing on record to show that any of the documents relied upon by the plaintiffs including document Ex.PW4/1 has not been proved in accordance with law, rather it comes out that sufficient evidence to prove the document had been led by the plaintiffs.

As regards the second judgment pressed into service by learned counsel for the appellants **Narbada Devi Gupta Vs. Birendra Kumar Jaiswal & Anr., 2003(4) RCR (Civil) 683**, is on the similar point and for the reasons given earlier, this judgment also does not help the appellants.

14. With regard to next two judgments **B.S. Dhillon Vs. Corporation Bank & Anr., 2020(4) RCR (Civil) 108** and **Smt.**

Mukesh Yadav Vs. Yadvender Singh, 2021(1) RCR (Civil) 554,

where dealing with point of limitation for filing a civil suit for recovery stating that a suit filed beyond period of limitation is barred by time. Again there cannot be any quarrel with such proposition of law. However, as has been rightly pointed by learned counsel for the respondents, limitation is a mixed question of law and facts and straightway no finding can be given that a particular suit is barred by limitation.

15. Although, Section 3 of the Limitation Act provides that subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. However, in terms of Section 5 of the Limitation Act, the delay in filing of the suit can be condoned under certain circumstances. Therefore, both the Courts below, after considering all the aspects have arrived at a conclusion that the suit is not time barred.

I do not see any reason to differ with such conclusion and dismiss the suit being time barred.

16. Learned counsel for the respondents also referred to various judgments i.e. **The National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad & Ors., 2011(2) RCR (Rent) 293,**
Sahara India Real Estate Corp. Ltd. Vs. Securities and Exchange

Board of India in Civil Appeal No.9813 and 9833 of 2011, decided on 31.08.2012 by the Apex Court, **Hiralal & Ors. Vs. Badkulal & Ors.**, 1953 AIR (SC) 225, **Saroop Singh Vs. Rattan Singh (dead) through LRs**, 2015(4) RCR (Civil) 825 etc.

17. I do not find any merit in the present Regular Second Appeal. No substantial question of law arises in this appeal. The appeal stands dismissed accordingly.

30.01.2023

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No