

RSA-2418 of 2023 (O&M)

2023:PHHC:112648

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

RSA-2418 of 2023 (O&M)

Date of decision: 25.08.2023

Resham Singh

.....Appellant

Versus

Darshan Singh alias Darshan Sandhu since deceased through his LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Surinder Garg, Advocate,
for the appellant.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 13.01.2020 passed by Civil Judge (Senior Division), Faridkot, whereby suit for recovery filed by the plaintiff-respondent(s) has been decreed as well as against the judgment and decree dated 25.04.2023 passed by Additional District Judge-I, Faridkot, whereby appeal filed by the defendant-appellants against the judgment and decree dated 13.01.2020, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that plaintiff-Darshan Singh filed a suit for recovery pleading therein that plaintiff was an agriculturist by profession and defendant was well known to him. On the demand made by the defendant, the plaintiff advanced a loan of Rs.19,84,110/- to the defendant from his saving accounts i.e. Rs.9,84,110/- on 27.09.2016

through bank entry from H.D.F.C. Bank Ltd, Branch at Nihal Singh Wala, District Moga, Rs.2,00,000/- on 18.03.2017 through bank entry from Punjab and Sind Bank, Branch at Panj Grain Kalan, District Faridkot and Rs.8,00,000/- was transferred to the defendant vide two different bank entries of Rs.4,00,000/- each from H.D.F.C.Bank Ltd, Branch at Panj Grain Kalan, District Faridkot. The defendant had agreed to return the aforesaid amount along with interest at the rate of 12 % per annum. The plaintiff asked the defendant several times to return the amount along with interest, but to no effect.

3. Upon notice defendant appeared and filed written statement taking preliminary objections regarding maintainability of the suit with further plea that the plaintiff has suppressed the true and material facts from the Court. The defendant and the plaintiff were known to each other and the plaintiff, after returning from abroad in the year 2016, told the defendant that he has a lot of money, which he will give to the defendant and the defendant can give the money on interest to the people and the plaintiff assured the defendant to give share of the profit, to which the defendant agreed and thereby, the plaintiff transferred certain amount in the saving account of the defendant and he paid interest every month to the plaintiff and returned the whole of the amount to the plaintiff along with interest as per the following schedule :-

(i) On 07.12.2017, an amount of Rs.13 Lacs was returned to the plaintiff in the presence of Sukhdev Singh son of Gondara Singh, resident of Chakki Wali Gali, near Bus Stand, Moga;

(ii) An amount of Rs.2 Lacs was returned to the plaintiff on 19.12.2017 at the phone call of Jaspreet Singh son of the plaintiff, namely Darshan Singh;

(iii) Lastly, an amount of Rs.4,84,000/- was returned to the plaintiff on 27.12.2017 through his son Jaspreet Singh upon the telephone call of plaintiff Darshan Singh. And in this regard Rs.19,10,000/- had been taken by the defendant and Rs.19,84,000/- including interest had been returned to the plaintiff. On merits, the claim of the plaintiff was denied by the defendant.

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

1. Whether the plaintiff is entitled for recovery of the suit amount from the defendant along with interest, as prayed for ? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether the plaintiff has not come to the Court with clean hands and concealed the material facts from this Court, if so its effect ? OPD
4. Whether suit has not been properly valued for the purpose of Court fee and jurisdiction ? OPD
5. Relief.

5. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record decreed the suit filed by the plaintiff.

6. Feeling aggrieved against the said judgment and decree of the trial Court, defendants preferred an appeal before the lower

appellate Court, which has been dismissed vide judgment and decree dated 25.04.2023.

7. Learned counsel for the appellant contended that the judgments and decrees passed by both the Courts below are against law and the evidence on record. He further contended that both the Courts below failed to appreciate that appellant had returned the amount to the plaintiff-respondent(s). He further contended that both the Courts below failed to appreciate that claim of the plaintiff was based on no evidence.

8. I have heard learned counsel for the appellant and perused the record.

9. Plaintiff (now deceased through his LRs) filed a suit for recovery against the defendant-appellant claiming that he had advanced a loan of Rs19,84,110/- to the appellant from his savings account, which the appellant failed to return. Plaintiff duly proved his case by producing the copy of statement of HDFC Bank Limited, Branch Panj Gain Kalan as Ex.P1 showing transfer of Rs.8 lakh on 05.08.2017 in the account of the defendant-appellant vide two separate cheques of Rs.4 lakhs each and produced on record as Ex.P2 and Ex.P3. Plaintiff also produced on record copy of cheque dated 16.03.2017 as Ex.P4 for an amount of Rs.2 lakhs in favour of defendant-Resham Singh along with copy of statement of account with Punjab and Sind Bank, Branch Panj Grain Kalan, as Ex.P5 showing transfer of Rs.2 lakhs in favour of defendant Darshan Singh. Plaintiff further produced certified copy of cheque dated 27.09.2016 for an amount of Rs.9,84,110 as ExP6 on

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record in favour of defendant-appellant Resham Singh along with copy of statement as Ex.P7. In his written statement appellant has also admitted the transfer of said amount in his account. Appellant has not produced any evidence that he had returned the said amount to the plaintiff. In the lack of any documentary evidence in the shape of bank statement or writing between the parties mere oral statement that he had return the entire amount to the plaintiff does not prove the case of the defendant.

10. Concurrent findings have been recorded by both the Courts below that plaintiff had advanced amount in the shape of loan to the defendant-appellant, which he failed to return. Learned counsel for the appellant has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

11. In view of above, 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.

12. Dismissed.

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

(NAMIT KUMAR)
JUDGE

25.08.2023
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No