205 **2023:PHHC:069382**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1145-2012 (O&M)
Date of decision: 12.05.2023

Gaurav Goyal …Appellant

VS

Megh Raj and others …Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. A.K.Kansal, Advocate,
For the appellant.

Mr. R.S.Randhawa, Advocate,
For respondents No.1 and 2.

Service upon respondent No.3 already dispensed with vide order dated 18.07.2017.

***

ARUN MONGA, J. (ORAL)

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, plaintiff is in second appeal before this Court assailing learned trial Court judgment and decree dated 10.06.2010, whereby suit of the plaintiff was decreed with costs partly i.e., for recovery of Rs.3,70,550/- with interest @ 6% per annum from 14.05.2003 till realization against the claimed amount of Rs.5,92,814/-,as upheld by learned First Appellate Court vide its judgment and decree dated 14.10.2011.

3. Briefly stated, facts as noticed by Courts below are as under:-

> *"Plaintiff filed this present suit for recovery against the defendants with the averments that defendants are running a brick-kiln under the name and style of M/s Megh Raj Rajiv Kumar, BKO, Nadani, District Jind. On 8.1.2002 defendant no. 2 contacted the plaintiff alongwith his father and requested him to invest a sum of Rs. 6,00,000/in his brick-kiln*

with an assurance that plaintiff would be a partner of 25% share in the said brick-kiln. Plaintiff agreed to the said request and gave a sum of Rs. 6,00,000/- in cash to defendants on 20.1.2002. On 25.1.2002 defendant no. 2 got effected a partnership deed showing 25% partnership of plaintiff in the said brick- kilnwithout disclosing the fact that said brick-kiln, all stock vehicle etc. are completely mortgaged with a bank against loan amount. On 14.5.2003 defendants voluntarily entered into an agreement with plaintiff in the presence of witnesses Sham Lal and Shri P.P. Singh Advocate thereby admitting their liability to repay the foresaid amount of Rs. 6,00,000/- plus Rs. 30,000/- as profit up to 31.12.2002. The said agreement was signed by the parties to it in the presence of aforesaid witnesses and the same was got attested on 15.5.2003 from Shri Mohan Dass Notary, Jind. Defendants specially admitted the w.e.f. 1.1.2003, said amount to Rs. 6,30,000/- will remain deposited as entrustment with them and their aforesaid concern. After adjusting the payment of Rs. 1,08,450/- out of the above total amount, it was settled that a sum of Rs.5,16,550/- remained due and payable by defendants to plaintiff. Thereafter defendants paid a sum of Rs.1,16,000/- up to 10.08.2003Thus a sum of Rs4,00,550/- was outstanding against them. Plaintiff is also entitled to get interest @18% per annum as prevailing in the business community on the amount of Rs. 4,00,550/- for the period 11.8.2003 to 7.4.2006 amounting to Rs1,92,264/- as the defendants have utilized the aforesaid amount of plaintiff and gained interest for their own benefit. Thus a total sum of Rs.5,92,814/- is outstanding towards the defendants for which plaintiff is entitled to recover the same alongwith interest. Plaintiff demanded the outstanding amount of Rs.5,92,814/- from them but they flatly refused to pay even a single penny to him. Hence he filed the present suit."

4. Upon notice, defendants appeared and filed written statement taking preliminary objections on the grounds of maintainability, cause of action, locus standi, mis-joinder of parties, limitation etc.,

4.1 On merits, it was submitted that defendant No.1 has no concern with firm, in any manner, and defendant No.2 is the sole proprietor of the said firm. Plaintiff himself contacted defendant No.2 for inducting him as partner in their business. Plaintiff never deposited any money with defendant No.2. Defendant never entered into alleged agreement with plaintiff. Plaintiff is not entitled to recover any amount from the defendants. Alternatively, it was submitted that if plaintiff was inducted as partner in the business of defendants then he is also to be fastened with liabilities. Defendant No.2 had suffered heavy losses in his business and thus plaintiff is also liable to pay losses. Due to losses suffered by defendant No.2, he sold the firm on 30.09.2005. Now, he has no concern with the said firm in any manner. All other averments were also denied.

5. Based on rival pleadings, following issues were framed:

> *"1. Whether the plaintiff is entitled to a decree for recovery of Rs5,92,814/-alongwith interest @18% per annum as alleged? OPP*
> *2. Whether the suit is not maintainable in the present form? OPD.*
> *3. Whether the plaintiff has no cause of action to file the present suit? OPD*
> *4. Whether the suit is bad for mis-joinder of necessary parties? OPD*
> *5. Whether the suit is time barred? OPD*
> *6. Relief"*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, issues No.1 to 3 were decided in favour of plaintiff and against defendants and issues No. 4 and 5 were disposed of against defendants, being not pressed. Consequently, suit of plaintiff was partly decreed with costs and a decree for a recovery of Rs.3,70,550/- along with interest @6% per annum simply thereon from the date of execution of agreement Ex. P1 i.e. 14.05.2003 till realization of the decretal amount was passed in favour of plaintiff and against the defendants and the defendants were held liable to pay the decretal amount jointly or severally along with interest by learned trial Court vide its impugned judgment and decree dated 10.06.2010.

8. Feeling aggrieved, both parties filed cross-appeals, which were dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by plaintiff before this Court.

9. Learned counsel for the appellant submits that learned Courts below committed an error in passing the impugned judgment and decree. On one hand, the Courts have upheld the sanctity of agreement dated 14.05.2003 (Ex. P-1) but on the other hand decree was not passed for the total amount of Rs.5, 92,814/-. He submits that respondents have admitted their liability to pay Rs.30,000/- as profits to the appellant but learned Courts below have not granted the said amount by observing that plaintiff is not sharing the losses so he cannot be allowed to share profits. This observation is without any evidence on record, which shows that the firm has not suffered losses at any point of time. He submits that transaction between the parties were purely commercial in nature and as such interest at the prevailing market rate should have been awarded to the appellant.

10. Per contra, learned counsel for respondents No.1 and 2 strenuously opposes the second appeal.

11. In its judgment, learned First Appellate Court, *inter alia*, observed as below:

> *"16. It is case of plaintiff that defendant no.2 was his friend. He was owner of a brick-kiln situated in village Nidani. He had asked him to invest Rs.6 lacs. He agreed to it. Consequently, a partnership deed was prepared. It has been disputed by defendants/cross-appellant. It is. claimed that partnership deed Ex.P2 is result of fraud. He says that it was got prepared by plaintiff by taking advantage of the fact that his father was a lawyer, but there is no evidence to prove any fraud Rather after this partnership deed an agreement Ex.PI was executed in the presence of Shyam Lal and Shri Padam Parkash Singh Advocate. They both have appeared before the court as PWI and PW3, respectively. These documents, therefore, stand*

> *duly proved. It has to be believed that defendants approached plaintiff and at their representation he invested Rs.6 lacs.*
>
> *17. It is admitted in the pleadings that Rs1.08.450/and Rs1.16,000/- were paid. As per Ex.PI Rs.30,000/were added as profit which has been ignored by learned trial court. It is claimed that trial court committed error while deducting this amount. But it is not acceptable due to the fact that plaintiff/appellant himself claimed that partnership deed was result of misrepresentation or that he was actually not made a partner then he cannot claim any share in the profit. If his averment is believed then he will have to shoulder loss also for which he is not ready. In these circumstances learned trial court has rightly deducted this amount from his total amount.*
>
> *18. Now take the question of interest. It is claimed that he is entitled to 18% interest per annum because that is prevalent in the market. Moreover, he says there is no provision of interest Court can award it as per Section 34 CPC. But this argument cannot be considered because as per Section 34 CPC court may grant interest at such rate as it deems reasonable. There is no evidence to prove that prevalent rate of interest is around 18%, then 6% cannot be said to be unreasonable. It is, therefore, held to be appropriate and reasonable. In these circumstances, there is no merit in appeal.*
>
> *19. In so far as cross-objections preferred by respondents/defendants are concerned same have no merit because as per evidence on file it is proved clearly that defendants had obtained Rs.6 lacs from appellant/plaintiff and failed to repay the same.*
>
> *20. In view of above discussion, appeal filed by appellant/plaintiff and cross-objections filed by defendants/respondents are dismissed with costs."*

12. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same.

12.1. No new arguments have been raised other than reiteration of the stand taken before learned Courts below.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out. In any case, it transpires that appeal was filed way back in the year 2012 and has been pending ever since. No stay was granted of any kind given the number of adjournments sought over the years. On a Court query, it also transpires that decree stands satisfied.

15. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. Pending application/s, if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

12.05.2023
Vandana

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