

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

RSA-309-2015 (O&M)

Reserved on: 25.05.2023

Date of pronouncement: 31.05.2023

Bal Ram

...Appellant

Versus

Satbir

...Respondent

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

Present: Mr. Atul Yadav, Advocate for the appellant.

Mr. Parveen Kumar, Advocate for

Mr. Abhimanyu Singh, Advocate for the respondent.

H.S. MADAAN, J.

1. Briefly stated facts of the case are that plaintiff Satbir son of Ram Lal, resident of House No.C/84, Gurgaon had brought a suit for recovery of Rs.4,75,000/- along with interest and costs against defendant Balram son of Mehar Chand, R/o House No.1845, Sector 10-A, Gurgaon. As per version of the plaintiff, the parties to the suit were on friendly terms for the last more than 10 years and in the month of September, 2008 at request of the defendant, the plaintiff advanced a loan of Rs.4,75,000/- to him, vide cheque No.464463 dated 04.09.2008 drawn on Punjab & Sind Bank, Sector 10-A, Gurgaon to meet expenses for the on going construction of the house of defendant; this amount was duly credited in the account of defendant; at the time of taking the loan, the defendant had

agreed to repay the same with interest @ 18% p.a., within a period of six months, however, the defendant did not do so and rather kept delaying the matter on one pretext or the other, giving rise to a cause of action to the plaintiff to bring the suit in question.

2. On being given notice, the defendant appeared and filed a written statement, contesting the suit, raising preliminary objections with regard to maintainability of the suit, arising of cause of action in favour of the plaintiff to file the suit, the plaintiff being estopped by act and conduct from filing the suit and lacking locus standi to do so. On merits, the defendant submitted that he had good terms with one Jitender who visited his house in the month of August 2006 asking for a friendly loan of Rs.3 lacs; the defendant paid that amount to Jitender, vide two cheques bearing No.418047 for Rs.2 lacs and cheque No.418049 for Rs.1 lakh, both dated 26.08.2006 drawn on Punjab & National Bank, Gurgaon in the name of one Dayal and Jitender assured the defendant to return the amount within a period of six months. But he did not do so, then the defendant started visiting house and business place i.e. tent house being run by him under the name and style of M/s Pooja Tent House as well as his business place under the name Bharti Associates to get back the money; according to the defendant, Jitender was running business of property dealer along with the present plaintiff Satbir; in the month of May 2007, said Jitender offered to sell 85 sq. yards of land belonging to him @ Rs.18,000/- per sq. yards for a total sale consideration of Rs.15,30,000/- to the defendant orally; the defendant agreed to purchase

the land and Jitender permitted the defendant to make construction over the said land; he has constructed a godown over that piece of land which was completed in the month of February 2008, then Jitender demanded further amount of Rs.9 lacs from the defendant; the defendant paid that amount to Jitender through cheques; after receiving the two cheques, Jitender assured the defendant for getting the sale deed executed and registered in his favour on receipt of balance sale consideration; thereafter, the defendant requested Jitender to either execute the sale deed in his favour or return the amount received by him from the defendant, then Jitender sent two cheques bearing No.116306 for Rs.5,25,000/- and cheque No.464463 for Rs.4,75,000/- both dated 29.08.2008 which were delivered by one Virender Singh who told the defendant that those two cheques had been sent by Jitender in lieu of discharging the liability of an amount of Rs.18,62,235/- which had been paid by the defendant to Jitender; said Virender further assured the defendant that the balance amount would be paid to him by Jitender very soon; under bona fide belief, the defendant did not try to go through the cheques to find out as to by whom those had been issued; as a matter of fact, the cheques had been got issued by Jitender from his business partner in the tent house and property dealer business in favour of the defendant; in that way, the amount was credited in the account of the defendant; the defendant denied having raised any loan from the plaintiff or his liability to return the same with interest; he prayed for dismissal of the suit.

3. From the pleadings of the parties, following issues were

framed:-

1. Whether the plaintiff is entitled to recover an amount of Rs.4,75,000/- along with interest, costs from the defendant on the ground so mentioned in the plaint? OPP.
2. Whether the plaintiff has no locus standi and no cause of action to file the present suit? OPD.
3. Whether the suit of the plaintiff is not maintainable ? OPD.
4. Whether the suit of the plaintiff is bad for non joinder and mis joinder of necessary parties? OPD.
5. Whether the plaintiff has not come to the Court with clean hands? OPD.
6. Relief.

4. The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.), Gurgaon, vide judgment and decree dated 07.08.2013 by giving issue-wise findings decreed the suit of plaintiff for recovery of Rs.4,75,000/- along with interest @ 6% p.a., from September 2008 till its realization from the defendant.

6. Feeling aggrieved by the judgment and decree passed by the trial Court, the defendant had preferred an appeal before District Judge, Gurgaon, that appeal was assigned to Addl. District Judge, Gurgaon, who vide judgment and decree dated 17.09.2014 had dismissed the same.

7. Still feeling dissatisfied, the defendant has approached this Court by way of filing the present Regular Second Appeal, notice of which was given to the respondent/plaintiff, who has put in appearance through counsel.

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

through the record.

9. In this case, the trial Court considering the facts and circumstances and scrutinizing the evidence brought on record by the parties had found merit in the case of plaintiff whereas the version set up by the defendant was not found to be cogent and convincing and as such, was rejected. While coming to this conclusion, the trial Court had observed that the defendant had not placed any document regarding his alleged transaction with Jitender and that the explanation rendered by the defendant that he had not seen the cheque to find out as to who had issued it and simply got it deposited in his account was not believable. As regards the defendant placing on record two visiting cards Ex.D1 and D2 to prove that the plaintiff and Jitender are business partners, those cards were rightly not relied upon in the absence of any corroborative evidence. The statement of account of the plaintiff Ex.PW3/A showing that the cheque bearing No.464463 amounting to Rs.4,75,000/- had been duly credited in the account of defendant.

10. The Ist Appellate Court of Addl. District Judge, Gurgaon by giving valid reasons had also found itself in agreement with the trial Court that the plaintiff had advanced a loan amount of Rs.4,75,000/- to the defendant and defendant was liable to return the same to the plaintiff along with interest. The story set up by the defendant with regard to his transactions with Jitender, plaintiff being business partner of Jitender, Jitender sending cheque to him through Virender Singh and defendant then depositing that cheque in his account without realizing that it was

not issued by the plaintiff, was not found to be worthy of reliance. It being established on record that the defendant had received a sum of Rs.4,75,000/- from the plaintiff through cheque and it is not the case of defendant that he has returned any amount to the plaintiff, the liability of the plaintiff does exist towards the defendant to return that amount. The plaintiff is to be compensated for in the form of interest since the defendant has retained such money belonging to the plaintiff for such a long time. Interest granted by the trial Court @ 6% p.a., is quite reasonable and it is certainly not on higher side.

11. The judgments passed by the Courts below are quite detailed, well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. While Admitting this appeal, the single Judge who had heard the matter had framed the following substantial questions of law, vide order dated 07.09.2015:-

1. Whether the Courts below failed to note that the cheque on the basis of which the plaintiff was sued was not a transaction of loan filed by the defendant from the plaintiff but a repayment of portion of liability which the plaintiff and his partner in business Jatinder under an oral agreement of sale.

2. Whether the courts below failed to notice an important circumstance that on the same day when the cheque was issue by the plaintiff, yet another cheque for Rs. 5,25,000/- had been issued by Jatinder in favour of the defendant aggregating to Rs. 10,00,000/- out of total liability of Rs. 12,00,000/- which they had already received from the

defendant in consideration on oral agreement to sell the property owned by Jatinder.

3. *Whether the Courts below omitted to take notice of several circumstances like admissions of the plaintiff and documentary evidence that showed the plaintiff's active involvement with Jatinder and the suit was only an attempt to cheat the defendant of the admitted liability of the plaintiff towards the defendant.*

4. *Whether the appreciation of evidence by the two Courts below not perverse having been rendered without reference to substantive evidence produced before the Courts below.*

12. In view of the detailed discussion above, the questions are answered accordingly. The judgments passed by the Courts below are legal and valid and certainly not perverse and no material evidence was omitted to be taken into consideration or was misread. I do not see any reason to interfere with such judgments. The appeal is found to be without merit and is dismissed accordingly.

13. Since the appeal stands dismissed, the application for vacation of stay has become infructuous and is dismissed as such.

31.05.2023

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(H.S. MADAAN)
JUDGE

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