

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

108

**RSA-276-2018 (O&M)
Decided on : 24.08.2023**

NARINDER SINGH

. . . Appellant

Versus

SUKH KANWAL SINGH AND ORS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Tribhawan Singla, Advocate
for the appellant.

SANJAY VASHISTH, J. (Oral)

1. The present Regular Second Appeal has been filed by the plaintiff against the concurrent finding of dismissal of the suit for recovery of an amount of Rs.5,50,000/-.
2. Case of the plaintiff is that respondents/defendants entered into a criminal conspiracy and received an amount of Rs.5,50,000/- from plaintiff on the pretext of sending him abroad i.e. to Germany, but thereafter, neither he was sent to Germany nor the amount was returned.
3. It has been further pleaded by the plaintiff that in the month of October, 2006, Rs.25,000/- was given in cash to defendant No.3-Jasbir Kaur. Thereafter, an amount of Rs.3,50,000/-, Rs.1,60,000/- and Rs.15,000/- was deposited in the bank account of defendant No.1 in Centurion Bank of Punjab, Court Road, Amritsar. One F.I.R. No.98 dated 16.02.2008 under Section 420 I.P.C. was also registered in Police Station Civil Lines, Amritsar against the defendants. However, in regard to the said criminal case, arguing counsel before this Court has submitted that later on, said FIR was cancelled.

4. On the other hand, defendant No.1 was proceeded against *ex parte* whereas, defendants No.2 to 4 filed a written statement by taking the plea that plaintiff-Narinder Singh is cousin of Sukhwant Kaur wife of Kulwant Singh, defendant No.2. He was to purchase land and as such, by making a false representation and assurance, he claimed Rs.5,25,000/- from defendant No.2 in the year 2005 and purchased the land. He had also taken the tractor of defendant No.2 with an excuse to cultivate the land. An amount of Rs.5,25,000/- was paid by defendant No.1 to plaintiff- Narinder Singh after raising the same from Sukhdev Singh and other relatives. Later on, intention of the plaintiff changed and therefore, defendant No.2 had reported the matter to the police for the purpose of taking back the tractor from plaintiff-Narinder Singh. After intervention of the police authorities, said tractor was returned by the plaintiff.

5. However, defendants have specifically denied the averment made by the plaintiff regarding the giving of amount of Rs.5,50,000/- to defendant No.1 as pleaded in the plaint.

6. After going through the pleadings available before the Court, following five issues were framed:-

“1. Whether plaintiff is entitled to recovery of Rs.5,50,000/- alongwith pendente lite and future interest @ 18% p.a.? OPP

2. Whether suit is filed within limitation? OPP

3. Whether suit is properly valued for the purpose of court fee and jurisdiction? OPP

4. Whether plaintiff has filed the present suit by suppressing the material facts from the court? OPD

5. Relief.”

7. Trial Court held that in fact, crediting of amount as pleaded by

the plaintiff is found to be there in the account statement of defendant No.1 but plaintiff has failed to prove that said amount was deposited by whom. In other words, plaintiff could not discharge the onus to prove the aforementioned issue No.1. Accordingly, trial Court held that plaintiff has failed to establish his connectivity of depositing the amount as reflected in the account statement of defendant No.1.

8. Finding has also been recorded that the plea taken by the defendants is well established on record. Rather taking of tractor from defendant No.2 is also admitted by plaintiff, during the course of cross-examination.

9. It is also observed by the trial Court that the facts regarding bitterness in relations of plaintiff with the defendants as pleaded in the written statement filed by the defendants No.2 to 4 had been concealed by the plaintiff, in the plaint.

10. Even, plaintiff failed to produce any evidence on record to establish his financial capacity of returning the amount of Rs.5,50,000/- as pleaded by him in the plaint. Thus, learned trial Court dismissed the suit filed by the plaintiff.

11. Subsequently, when the dispute was taken to the First Appellate Court by the plaintiff, almost similar findings were recorded, while concluding the judgment in its paragraph Nos.31 to 34.

12. It is also recorded that even if, plea of the plaintiff is accepted on its face value, same being the contract/agreement against the 'public policy' is not enforceable through the Court. Thus, appeal was also dismissed.

13. Findings given in concluding paragraphs No.31,32,33 and 34,35

and 36 are reproduced herebelow:

*“**31.** On the analysis of entire evidence, it reveals there is no cogent or convincing evidence led by the plaintiff to show that the defendants assured him to send him abroad i.e. to Germany and duped him to the extent of Rs.5,50,000/-. PW.2 Balwinder Singh in his cross-examination has categorically stated that he was not present at the time of transaction entered into with the defendants. Learned trial Court has rightly observed that once it has not been pleaded by the plaintiff that Balwinder Singh son of Rattan Singh has been witness to the transaction entered into by him with the defendants, his testimony is of no help to the case of the plaintiff. The sole testimony of plaintiff remained uncorroborated on the record. The defendants have specifically pleaded in the written statement that the plaintiff took a sum of Rs.5,25,000/- from the defendants for purchasing the land and the defendants paid the same by raising same from Sukhdev Singh and other relatives. It is also case of the defendants that plaintiff had also taken tractor for cultivation purposes but thereafter intention of plaintiff became malafide and he did not return the same. The version of the defendants find due corroboration from the testimonies of DW:6 Baljinder Singh who has specifically deposed that in the month of May/June 2006 Sukh Kanwal Singh approached him saying that his relative Narinder Singh needs Rs.3,00,000/- as he was to purchase some land and he gave him a personal loan of Rs.3,00,000/-, DW.2 Gurjit Singh has also deposed that on 22.2.2007, he advanced a personal loan of Rs.2,00,000/- to Kulwant Singh son of Saudagar Singh. Kulwant Singh also reiterated his version while stepping into witness box as DW.10. The learned trial Court has rightly observed that plaintiff has neither rebutted the case of the defendants in the pleadings nor by way of evidence. Rather part of the transaction has been admitted by the plaintiff himself in his cross-examination. The learned trial Court has also rightly observed that plaintiff was required to specifically plead the entire set of transaction with the defendants only then it could have been determined as to for which part of the transaction this amount was deposited in the account of the defendant No.1.*

***32.** Perusal of Ex.D1 shows that plaintiff has taken tractor from the defendants for cultivation purposes but did not return the same of his own, rather the defendants have to approach the appropriate authority for the same. Even if it is presumed that he paid Rs.5,50,000/- to the defendants for sending him abroad*

and the defendants neither send him abroad nor returned the money, even then such a contract/agreement being against public policy cannot be enforced. The rulings cited by learned counsel for the respondents are fully applicable to the facts of the present case. The plaintiff has not come to the Court with clean hands and has filed the suit by suppressing the material facts. The findings of learned trial Court on Issue No.1 and 4 are based on correct appreciation of the evidence on record and law on the point and same are, thus, affirmed.

33. *Now adverting to the issue No.2 "as to whether suit filed by the plaintiff is within limitation. Though the learned trial Court had taken issues No.1 and 2 together but no finding was given on this issue. As per the pleadings of the plaintiff a sum of Rs.1,60,000/- was deposited in the account of Sukh Kanwal Singh in the bank on 22.12.2006 and he has filed the suit on 21.12.2009 but since the plaintiff has failed to prove the deposit of amount by him in the account of defendants, so suit filed by him is time barred. Hence, this issue is decided against the plaintiff and in favour of the defendants. The point for determination is decided accordingly.*

34. *Now, adverting to the issue No.3, the plaintiff has filed suit for recovery of Rs.5,50,000/- and has affixed the requisite Court fee of Rs.7748/- on the plaint, so, the suit has been properly valued for the purposes of Court fee and jurisdiction and learned trial Court has rightly decided this issue against the defendants and in favour of the plaintiff. The findings of the learned trial Court on the issue No.3 are, thus, affirmed.*

35. *There is no illegality or impropriety in the impugned judgment and decree passed by the learned trial Court. It warrants no interference by this Court and same are, thus, upheld.*

36. *Resultantly, appeal being devoid of merit must fail, hence, the same is dismissed with costs. Decree sheet be prepared. Lower Court record alongwith copy of this judgment be returned forthwith. Appeal file be consigned to the record room."*

14. Before this Court also, arguing counsel for the appellant vehemently submits that once, there is no explanation with the defendants that as to through whom the amount reflecting in the account statement of

defendant No.1 was deposited, Court could decree the suit by raising a presumption in favour of plaintiff.

15. This Court also asked the learned counsel for the appellant whether the original receipts were well proved on the record of the case or not. However, answer is in negative, because no bank official has affirmed the receipts/counter-foil/deposit voucher **marked as P-1, P-2 and P-3**. Moreover, plaintiff failed to produce any bank official as witness for confirmation of the seal of the bank and the signature over it. Therefore, such a weak evidence cannot be accepted by raising an assumption that it is only the plaintiff who deposited the amount and who even failed to prove the same by producing the concerned bank official.

16. Thus, there being no connectivity established on record by the plaintiff regarding the depositing of the pleaded amount, the plea raised in the suit by the plaintiff (appellant herein) is unacceptable in law.

17. By maintaining the impugned judgment(s) and decree(s), the present appeal stands **dismissed**.

(SANJAY VASHISTH)
JUDGE

August 24, 2023
Lavisha

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