IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of Decision: 28.08.2023

R.S.A. No. 17 of 2023 (O&M)

M/s Harbans Lal Pushpinder Kumar through LRs.

……Appellants

Versus

Ritu Jindal and another

……Respondents

R.S.A. No. 18 of 2023 (O&M)

M/s Harbans Lal Pushpinder Kumar through LRs.

……Appellants

Versus

Ajay Jindal and another

……Respondents

BEFORE: ***HON'BLE MR. JUSTICE SANJAY VASHISTH***

*****

Present:- Mr. Arvind Mittal, Advocate,
for the appellants.

Mr. Saurabh Kaushik, Advocate,
For the respondent/caveator(s).

SANJAY VASHISTH, J.(Oral)

C.M.No.44-C of 2023 in R.S.A. No.17 of 2023

This is an application for impleading the legal representatives of deceased Smt. Dayawanti, widow of Sh. Harbans Lal.

For the reasons stated in the application, the same is allowed. Legal representatives of deceased Smt. Dayawanti, widow of Sh. Harbans

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Lal, as mentioned in para no.4 of the application, are brought on record.

Application stands disposed of.

C.M.No.53-C of 2023 in R.S.A. No.18 of 2023

This is an application for impleading the legal representatives of deceased Smt. Dayawanti, widow of Sh. Harbans Lal.

For the reasons stated in the application, the same is allowed. Legal representatives of deceased Smt. Dayawanti, widow of Sh. Harbans Lal, as mentioned in para no.4 of the application, are brought on record.

Application stands disposed of.

R.S.A.Nos.17 and 18 of 2023 (O&M)

By this common order, two appeals i.e. Regular Second Appeal No.17 of 2023 titled as ***M/s Harbans Lal Pushpinder Kumar through its sole proprietor*** vs. ***Ritu Jindal and another;*** and Regular Second Appeal No.18 of 2023 titled as ***M/s Harbans Lal Pushpinder Kumar through its sole proprietor*** vs. ***Ajay Jindal and another*** are being decided together as the facts and the issue involved in both these appeals are one and same, except the details and particulars of the cheque and the amount involved for the purpose of recovery, as claimed by the plaintiff(s).

For the sake of convenience, facts are being extracted from R.S.A. No.18 of 2023 ***M/s Harbans Lal Pushpinder Kumar through its sole proprietor*** vs. ***Ajay Jindal and another***.

2. Defendant concerned i.e. M/s Harbans Lal Pushpinder Kumar had taken a cash loan of Rs.10,95,000/- on 14.03.2007 from the plaintiff,

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which was advanced on the basis of a cheque issued by the plaintiff. Said loan was agreed to be repaid along with its interest @ 18 per cent per annum. After the encashment of said cheque, amount was duly entered in the account books of the defendant concerned i.e. M/s Harbans Lal Pushpinder Kumar, Shop No.50, New Grain Market, Nabha, through its sole proprietor Sh. Harbans Lal. Said Harbans Lal, (the sole proprietor) expired on 12.11.2007 *intestate* and left behind defendant Nos.1(a) to 1(g) as his legal representatives, who are statutorily bound to succeed the rights and also the liabilities of the defendant concerned. Amount advanced to the deceased Harbans Lal was credited to his individual saving bank account No.65017264677 in the State Bank of Patiala, Grain Market, Nabha.

3. Thus, in R.S.A. No.18 of 2023, the total amount claimed in the suit was Rs.13,74,225/- (Rs.10,95,000 as principal amount+Rs.2,79,225/- as interest w.e.f. 14.03.2007 to 14.08.2008 @ 18 per cent per annum).

4. In R.S.A. No.17 of 2023, the total amount claimed in the suit was Rs.18,82,500/- (Rs.15,00,000/- as principal amount + Rs.3,82,500/- as interest w.e.f. 14.03.2007 to 14.08.2008 @ 18 per cent per annum).

5. Upon notice, defendant No.1(a) and (c) completely denied that any loan amount was ever received by the defendant-Firm. Defendant No.1(g) Naresh Jindal took the stand that father of the plaintiff, namely, Pushpinder Kumar used to run his business along with defendant no.1(g)'s father Harbans Lal. Therefore, amount was transferred for the mutual

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settlement on the wish of the father of the plaintiff.

After framing of the issues, evidence was led by the parties and trial Court categorically held that the amount in both the suits was received by deceased-Harbans Lal in his individual bank account bearing No.65017264677. Therefore, there is no escape for the successors of the proprietor of the Firm from making payment to the plaintiff which was received by deceased Harbans Lal (sole proprietor).

6. One common argument addressed in both the appeals is that Naresh Kumar Jindal was not impleaded as party in the suit and, therefore, his impleadment at subsequent stage is time barred. Thus, suit could not be decreed against said Naresh Kumar Jindal.

7. Said submission has also been discussed by the learned trial Court as well as by the learned Appellate Court observing that said Naresh Jindal was not sued at the first instance because he was adopted by Kasturi Lal, and merely impleading him at a later stage, does not make the suit time barred qua him.

8. Finding given by the First Appellate Court is reproduced here-in-under:-

> *"11. Admittedly, Pushpinder Kumar, father of plaintiff Ajay Jindal is the son of deceased defendant Harbans Lal. In other words, Ajay Jindal is grandson of deceased defendant Harabans Lal. True to his pleadings, it has been evidenced by the plaintiff that a sum of Rs.10,95,000/- was advanced as loan by him through two cheques dated 14.3.2007 in favour of his grandfather Harbans Lal. Ex.P1 is a copy of statement of bank account of plaintiff Ajay Jindal (bearing*

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no.65003003073), in which a sum of Rs.10,95,000/- has been debited from his account for the purpose of its transfer in the account of Harbans Lal. Ex. P2/A is a copy of statement of bank account of Harbans Lal (bearing no.65017264677), which clearly reflects credit of Rs.10,95,000/- having been received by way of transfer from the account of plaintiff. Ex.P3 is a copy of cheque dated 14.3.2007 for Rs.95,000/- and Ex.P4 is a copy of cheque dated 14.3.2007 for Rs.10 lacs drawn by plaintiff Ajay Jindal in favour of Sh. Harbans Lal.

Although learned counsel for appellant urged that it was Pushpinder Kumar, who had signed the deposit vouchers Ex.P5 and Ex.P6, but even if it is presumed for a while that it was Pushpinder Kumar, who deposited cheques Ex.P3 and Ex.P4 in the account of his father, even then it does not absolve Harbans Lal from the liability to repay the said amount to his grandson Ajay Jindal. As already noted, a sum of Rs.10,95,000/- was transferred from the bank account of plaintiff Ajay Jindal on the basis of instruments Ex.P3 and Ex.P4 in the bank account of defendant (now deceased) Harbans Lal. The said money has not been returned either by Harbans Lal to Ajay Jindal or by the surviving legal heirs of Harbans Lal. As such, it has rightly been concluded by the learned Lower Court that Harbans Lal was liable to repay the said amount to Ajay Jindal from whom he had borrowed the money.

Admittedly, Harbans Lal has since died. His surviving legal heirs have rightly been held liable to repay the said money to the extent of inheritance. In fact Harbans Lal was survived by seven legal heirs, which includes his widow Dayawanti, daughters Darshana Rani and Pushpa Devi, sons Dewan Chand, Pushpinder Kumar, Satpal and Naresh Jindal. It appears that his son Naresh Jindal has since been adopted

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by Kasturi Lal. On this account, originally Naresh Jindal was not sued. Subsequently by moving an application under Order 1 rule 10 CPC, Naresh Jindal was also arrayed as legal heir of deceased Harbans Lal, but this factum in itself does not make out that the suit brought against Harbans Lal through his abovesaid legal heir, is barred by time. Learned Lower Court has rightly rejected this argument of legal heir Naresh Jindal.

It was also sought to be argued that plaintiff Ajay Jindal had no source of income and as such he could not have lend that much money, but all such arguments are inconsequential especially when it has been proved through the testimonies of bank witnesses (PW2 and PW3) that through cheques ex.P3 and Ex.P4, a sum of Rs.10,95,000/- was transferred from the bank account of plaintiff to the bank account of deceased Harbans Lal. Once the money has been transferred through bank, it cannot be explored as to from where Ajay Jindal had brought that money.

It was also sought to be argued that plaintiff Ajay Jindal had no source of income and as such he could not have lend that much money, but all such arguments are inconsequential especially when it has been proved through the testimonies of bank witnesses (PW2 and PW3) that through cheques Ex.P3 and Ex.P4, a sum of Rs.10,95,000/- was transferred from the bank account of plaintiff to the bank account of deceased Harbans Lal. Once the money has been transferred through bank, it cannot be explored as to from where Ajay Jindal had brought that money.

12. As such, for my own supplementary reasons, I uphold the findings of learned Lower Court qua all the issues.

13. As a result, the appeal fails and the same is dismissed with costs throughout.

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Decree sheet be prepared. Lower Court file along with copy of this judgment be sent back. Appeal file be consigned to the record room."

9. Since, both the suits were decided by the Courts below on the basis of the documentary evidence available on record and on the contrary, there was no admissible evidence led by the defendants, I do not find any reason to interfere with the well reasoned judgments and decrees passed by the Courts below. Accordingly, same are maintained and both the appeals i.e. R.S.A. No.17 of 2023 and R.S.A. No.18 of 2023 stand dismissed sans merit.

Photocopy of this order be placed on the file of connected case.

(*SANJAY VASHISTH*)
JUDGE

August 28, 2023
poonam

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

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