

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.110

Case No. : RSA No.286 of 2020

Date of Decision : July 18, 2023

Anil Jain		Appellant
vs.		
Sarabjit Singh		Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Rajiv Kataria, Advocate
for the appellant.

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GURBIR SINGH, J. :

1. The present Regular Second Appeal has been filed against the concurrent findings recorded by the courts below. The plaintiff-appellant (hereinafter referred to as – the plaintiff) filed suit under Order XXXVII Rule 1 and 2 CPC, for recovery of Rs.10,00,000/- as the principal amount and Rs.2,40,000/- as interest @ 8% on the said amount from 01.10.2008 to 29.09.2011, total amounting to Rs.12,40,000/-.

2. The brief facts of the case are that the plaintiff had entered into an agreement to sell with the defendant-respondent (hereinafter referred to as – the defendant) on 03.11.2003, for a total consideration of Rs.5,00,000/-. A sum of Rs.2,50,000/- was paid by the plaintiff as advance money, which was duly acknowledged and received by the defendant on the back of first page of the aforesaid agreement. Later, the defendant received another sum of Rs.1,50,000/- on 10.04.2004 from the plaintiff. The last date for

execution of sale/transfer deed was fixed as 15.05.2004. The defendant failed to perform his part of the agreement and failed to execute the sale deed. When the plaintiff was about to file suit for specific performance, then defendant issued a post-dated cheque dated 05.03.2007 for a sum of Rs.10,00,000/- in order to return the earnest money as well as to pay damages to the plaintiff for cancellation of agreement to sell. However, the defendant kept on extending the dates of the said cheque from 05.03.2007 to 05.07.2007, then to 31.01.2008 and again to 31.09.2008 (which was required to be written as 30.09.2008 but wrongly mentioned by the defendant as 31.09.2008). Still the defendant asked the plaintiff not to present the aforesaid cheque and the plaintiff did not present the same for payment.

3. Learned counsel for the plaintiff has submitted that even if the cheque was not presented for encashment, but the suit could not be dismissed on this ground. The suit was wrongly dismissed on account of non-presentation of cheque. It has further been argued that although the property was situated at Ropar, but agreement to sell was executed at Chandigarh. Therefore, the court at Chandigarh was having jurisdiction to try the suit. Since the agreement was cancelled by both the parties, there was no need to file the suit for specific performance and only recovery suit was required to be filed and further, issuance of cheque by the defendant was admission on his part to pay the amount to the plaintiff and he extended the limitation by extending the date for payment of cheque.

4. I have heard submissions made by learned counsel for the appellant/plaintiff.

5. As per version of the plaintiff, agreement to sell was executed on 03.11.2003 and later, a sum of Rs.1,50,000/- was paid on 10.04.2004. A suit for recovery can only be filed within three years from the date of accrual of cause of action. In this case, it was 10.04.2004, whereas the cheque in question was initially bearing the date as 05.07.2007. The cheque, at the most, can be considered as payment of the time barred debt. The said cheque was never presented, so, the plaintiff lost the remedy to recover the amount. The recovery suit was not filed within three years of accrual of cause of action. The learned Trial Court has rightly held that the suit is barred by limitation.

6. Learned courts below, relying on the judgment of Delhi High Court in **Bal Dev Singh vs. M/s Rare Fuel & Automobiles Technologies (P) Ltd. - 2005 (119) DLT 44**, has held that it is necessary to present the cheque to the Bank for filing suit under Order XXXVII CPC. The parties are not residents of Chandigarh. The cheque was drawn on Canara Bank, Roop Nagar. It was not presented in Chandigarh for encashment. The suit is based on cheque only. The learned courts below have rightly held that Court at Chandigarh has no jurisdiction to try the suit.

7. In view of the aforesaid, I find no merit in the instant second appeal. The concurrent finding recorded by both the courts below is based on proper appreciation of evidence and does not suffer from any perversity or illegality. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.

7. Pending applications, if any, shall stand disposed of along with this judgment.

July 18, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.