

In the High Court of Punjab and Haryana, at Chandigarh

**Regular Second Appeal No. 419 of 1994 (O&M) And
Cross Objection No. 5-C of 1995**

Date of Decision: 06.03.2024

Rattan Kumar Singla
... Appellant(s)
Versus
Ram Nath and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ashok Singla and Aakash Singla, Advocates
for the appellant(s).

Mr. Saksham Mahajan, Advocate
for the respondents (In RSA-419-1994) and
for the objector (In XOBJS-5-C-1995).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. Defendant No.2-Rattan Kumar Singla assails the correctness of the concurrent findings of fact arrived at by both the Courts below while decreeing the plaintiff's suit for recovery of ₹23,748/-.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiff claims to be the proprietor of M/s Ram Nath and Company, Kotkapura. He has

supplied wood material worth ₹20,126.08 to defendant No.1 vide invoice

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No. 11 dated 29.05.1981. Defendant No.2-Rattan Kumar Singla (appellant herein) received a draft of ₹16,000/- from defendant No.1 issued in favour of the plaintiff. Subsequently, he endorsed the aforesaid draft in favour of defendant No.3 who got it encashed. Thus, the suit was filed for recovery of the amount of ₹23,748/-.

4. Defendant No.1 admitted the claim of the plaintiff. It was claimed that an amount of ₹16,000/- was paid in full and final settlement of the accounts. Defendant No.2 claimed that he was working as an Agent of the plaintiff firm and he endorsed the draft of ₹16,000/- in favour of defendant No.2 on the instructions of the plaintiff.

5. The Trial Court, on appreciation of evidence, decreed the suit. The First Appellate Court, in appeal, has affirmed the findings of fact arrived at by the Trial Court. The suit has been decreed against defendant No.2 (the appellant).

6. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the scanned requisitioned record which is available on the website of the High court.

7. The learned counsel representing the appellant submits that the suit filed by the plaintiff was beyond the prescribed period of time as he initially filed a suit along with an application to sue as an indigent person, which was dismissed. The plaintiff shall not be entitled to benefit of Section 13 of the Limitation Act, 1963 (hereinafter referred to as “the 1963 Act”) to exclude the aforesaid time because he was not prosecuting the suit in good faith. Perusal of invoice No.11 (Mark X) proves that the payment of the

aforesaid amount has already been received by the plaintiff and the entire

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suit of the plaintiff is based upon the aforesaid invoice. Hence, both the Courts below have erred. Defendant No.3 was not properly impleaded as a party and therefore, the suit was liable to be dismissed.

8. This Court has considered the submissions and evaluated the arguments of the learned counsel representing the appellant.

9. It shall be noted here that both the Courts below have decreed the suit for recovery of the amount only against the appellant (defendant No.2). Both the Courts below have found that defendant No.2 was working as an Agent on behalf of the plaintiff. The appellant does not dispute the receipt of draft of ₹16,000/- which was got prepared by defendant No.1 in favour of the plaintiff. He also does not dispute that he endorsed the aforesaid draft in favour of defendant No.3 which resulted in its encashment. The appellant claims that the aforesaid draft was endorsed in favour of defendant No.3 as per the directions of the plaintiff, however, he failed to prove that fact.

10. With respect to the first submission of the learned counsel representing the appellant, it shall be noticed that both the Courts below have found that originally the plaintiff filed an application for permission to sue as *forma pauperis* which was dismissed. He also filed an appeal in which the order was upheld, however, he was granted time to make good the deficiency in the court fee which was later on made good. In these circumstances, in the absence of evidence to prove that the plaintiff was not prosecuting his application in good faith, this Court, in the regular second appeal, does not find it appropriate to interfere on the aforesaid aspect.

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11. The second submission of the learned counsel representing the appellant lacks substance. In this case, an application to sue as *forma pauperis* was filed on 29.08.1984, whereas the draft was handed over to defendant No.2 in the month of June, 1981. Hence, the suit was filed within a period of three years.

12. With reference to the last argument of the learned counsel representing the appellant, it shall be noticed that the suit has been decreed against defendant No.2 (the appellant). He was working as an Agent on behalf of the plaintiff. He is liable to render accounts to his principal. Even if defendant No.3 was not impleaded as a party, still the decree against defendant No.2 (the appellant) does not call for any interference.

13. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

14. Since the suit was filed in the year 1984 and the amount has already been paid, therefore, this Court does not find it appropriate to grant any interest. Hence, the cross-objections filed by the objectors are disposed of.

15. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 06, 2024
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No