

108. 2024:PHHC:015168
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.4272 of 2019 (O&M)
Date of decision: 10.01.2024

Rajiv ... Appellant

Versus

Joginder ... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Jai Bhagwan Sharma, Advocate, for the appellant.

GURBIR SINGH, J.

CM-11962-C-2019

Prayer in this application filed under Section 5 of Limitation Act read with Section 151 of CPC is for condonation of delay of 21 days in filing the present appeal.

For the reasons stated in the application, same is allowed and delay of 21 days in filing the present appeal is condoned.

CMs-11958-59-C-2019

Prayer in application i.e. CM-11958-C-2019 filed under Section 149 read with Section 151 CPC is to make good deficiency of court fee of Rs.3,906/- and application i.e. CM-11959-C-2019 is for condoning the delay of 5 days in re-filing the present appeal.

It is submitted that the present appeal was filed on 31.05.2019 and the case was returned with objection that there is

deficiency of ad valorem court fee of Rs.3,906/-. Now, the applicant-appellant has affixed the same. In this way, delay of 5 days has occurred in re-filing the appeal as well.

For the reasons stated in the applications, same are allowed. The applicant-appellant is permitted to make good the deficiency of ad valorem court and also delay of 5 days in re-filing the present appeal is condoned.

RSA No.4272 of 2019

1. Present regular second appeal has been filed against the judgment and decree dated 06.02.2019 passed by learned District Judge, Faridabad, whereby the appeal filed by the respondent-defendant against the judgment and decree dated 30.03.2018 passed by learned Civil Judge (Junior Division), Faridabad, has been allowed.

2. Briefly stated, the appellant-plaintiff, namely, Rajiv (hereinafter called "plaintiff") filed a suit for recovery of Rs.1,60,000/- along with pendente-lite and future interest @ 24% per annum. As per the plaintiff, the respondent-defendant, namely, Joginder (hereinafter called, "defendant") used to run committee/lottery under the name and style of Radha Rani Group. The plaintiff joined the said committee/lottery along with other persons of the village. The defendant failed to make the payment of said committee to the plaintiff. A settlement took place between them on 04.07.2016 Ex.P-1, vide which, the defendant

agreed to pay Rs.1,60,000/- within two months. But when despite expiry of said period, the defendant failed to make payment, the plaintiff served a legal notice dated 09.12.2016, but to no avail.

2.1 Upon notice, defendant filed written statement and denied that he ever run any alleged committee or lottery and also stated that no settlement took place between the plaintiff and defendant. It was submitted that defendant was not liable to pay any amount to the plaintiff in any manner.

2.2 From the pleadings of parties, the following issues were framed:-

- “1. Whether the plaintiff is entitled for decree of recovery of Rs.1,60,000/- alongwith interest @ 24% per annum as prayed for? OPP*
- 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 3. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD*
- 4. Whether the suit of the plaintiff is bad for want of proper court fee?*
- 5. Whether the plaintiff has suppressed the true and material facts from the court? OPD*
- 6. Relief.”*

2.3 In support of his case, the plaintiff examined himself as PW1, Sukhi Ram as PW2 and Devender as PW3 and placed reliance upon Ex.P1-compromise dated 04.07.2016; Exs.P2 to P-12, register of name of members; Ex.P13-statement of account; Ex.P14-lottery booklet; Ex.P15-legal notice; Ex.P16-postal receipt; Ex.PW3/B-Adhar card; Ex.PW2/B-Driving Licence; Mark A-FIR No.1068; Mark B to Mark D-

Complaint to the Superintendent of Police (Palwal); Mark E-complaint before SC/ST Commission. On the other hand, defendant examined himself as RW1 and also placed reliance of above said documents i.e. Mark A, Mark B to Mark-D and Mark E.

2.4 After appreciating the evidence on record, the trial Court vide judgment and decree dated 30.03.2018 decreed the suit of recovery of Rs.1,60,000/- with cost alongwith interest @ 6% per annum from the date of settlement till realization.

2.5 Against the said judgment and decree, the defendant went in appeal and the learned appellate Court, vide judgment and decree dated 06.02.2019 allowed the appeal and set aside the judgment and decree dated 30.03.2018 passed by the trial Court.

2.6 Aggrieved against the judgment and decree dated 06.02.2019 of the learned appellate Court, the plaintiff has approached this Court by way of present appeal.

3. Learned counsel for the appellant-plaintiff would contend that the respondent-defendant admitted the compromise dated 04.07.2016 Ex.P-1, vide which, he had to make payment of Rs.1,60,000/- to the appellant-plaintiff, but despite expiry of stipulated period, he did not make payment. Even the respondent did not reply the legal notice served upon him by the appellant. His case was supported by the witnesses so produced by him. The trial Court has rightly decreed the

suit in his favour but the learned appellate Court has illegally reversed the findings of trial Court.

4. I have heard the submissions of learned counsel for the appellant and have gone through the file.

5. The issue in this case is whether the alleged payment of Rs.1,60,000/- was to be made by the respondent-defendant to the appellant-plaintiff or not. Though the signatures on the compromise/settlement Ex.P-1, effected between the parties before the panchayat, were admitted by the respondent whereby the respondent-defendant had agreed to pay Rs.1,60,000/- to the appellant-plaintiff within the stipulated period, but PW-2 Sukhi Ram, who is one of the attesting witness to said compromise/settlement, admitted in his cross-examination that said settlement was got prepared forcibly by ASI Vijay Pal, while confining respondent-Joginder and his son Pawan. Said witness further admitted that he was neither a member of any committee nor he knew who was running the alleged Committee. He further deposed that he had stated only at the instance of appellant-plaintiff who was a resident of his village. PW3 also deposed in the same lines during cross-examination. The statement of PW2 was further corroborated from the statement of DW1 who stated that his signatures were taken forcibly by ASI Vijay Pal on some plain paper and in this respect, he also made a complaint to Superintendent of Police concerned.

6. The respondent-defendant also admitted his signatures on the last page of lottery booklet i.e. Ex.P14, but no suggestion was put to him that said exhibit or any other document bears his signature.

7. So, the appellant-plaintiff failed to prove Ex.P1, the basis of this case. During cross-examination, PW2-Sukhi Ram stated that compromise Ex.P-1 was effected by ASI Vijay Pal by confining respondent and his son. Thus, compromise was not entered voluntarily, so, same is void. Moreover, the lottery/committee, allegedly run by the defendant, being illegal, so any contract, consideration or the purpose of which also was illegal and is void, as held under Section 23 of the Indian Contract Act. Thus, Ex.P-1 is void on the ground that the purpose of the same was illegal.

8. No substantial question of law arises for consideration in this regular second appeal.

9. In view of above, the findings recorded by the learned appellate Court are well reasoned and this Court does not find any ground for interference. Accordingly, the present regular second appeal is dismissed.

(GURBIR SINGH)
JUDGE

January 10, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No