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

RSA-1475-2022 (O&M)
Date of Decision:-**07.08.2024**

DALJIT SINGH

… Appellant

Versus

AMRIK SINGH

... Respondent

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CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. Govinder Singh Brar, Advocate
for the appellant.

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RITU TAGORE, J.

CM-7881-C-2024

1. Heard on the application.

2. For the reasons mentioned in the application, documents (Annexures A-1 to A-4) are ordered to be taken on record and applicant is exempted from filing certified and true typed copy of the same, subject to all just exceptions.

3. The application stands dispose of accordingly.

CM-4661-C-2024

1. Heard on the application.

2. In view of the reasons mentioned in the application, delay of 42 days in filing the appeal is condoned.

3. The application stands disposed of.

Main Case

1. Appellant-defendant, filed this Regular Second Appeal against the judgment and decree dated 03.03.2022, passed by learned Additional District Judge, Mansa, affirming and upholding the judgment and decree dated 12.04.2016 passed by learned Additional Civil Judge (Senior Division), Sardulgarh, decreeing the suit of the respondent/plaintiff for recovery of principal amount of ₹3,70,000/-.

2. For easy reference, the parties to the *lis*, hereafter shall be referred to by their original status in the suit.

3. The relevant facts for adjudication of this appeal are that plaintiff- Amrik Singh, instituted a suit for recovery of ₹4,73,600/- (₹3,70,000/- as principal amount and ₹1,03,600/- as interest), claiming that defendant in the month of October, 2012, borrowed a sum of ₹3,70,000/- from him, in presence of Tej Kumar, thereafter on 25.03.2013, defendant, in order to discharge his liability issued a cheque No.426700 dated 25.03.2013 for ₹3,70,000/- in his favour. The plaintiff presented the cheque, same was dishonored due to insufficient funds. The plaintiff, issued legal notice on 05.04.2013 to defendant, which returned with report of refusal. The plaintiff also filed a complaint under Sections 138 and 142 of Negotiable Instruments Act 1881 and under Section 420 of Indian Penal Code, 1860 against the

defendant, which was decided against the defendant and was sentenced to imprisonment for two years and was fined ₹5,000/-, which necessitated him to file the present suit against the defendant.

4. Upon being put to notice by learned trial Court, the defendant appeared and while filing a contested written statement, asserted that he never borrowed any amount from the plaintiff. In fact, the plaintiff filed the suit in connivance with Krishan Kumar (sic Kewal Krishan), owner of M/s Sunny Commission Agent, Sardulgarh. His signatures were obtained on the alleged cheque by owner of M/s Sunny Commission Agent and filed a false criminal complaint and the present suit.

5. Plaintiff filed the rejoinder to the written statement of the defendant and reiterated his pleading by denying the assertions of the defendant. Since the parties were at variance, the learned trial Court framed the following issues:-

1. Whether defendant borrowed ₹3,70,000/- from plaintiff in the month of October, 2012? OPP
2. Whether plaintiff is entitled to recovery of ₹3,70,000/- alongwith interest as prayed for? OPP
3. Whether the suit is maintainable in the present form? OPP
4. Whether plaintiff has locus standi and cause of action to file the present suit? OPP
5. Whether the suit is maintainable in the present form? OPP
6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

7. Whether the plaintiff has concealed true and material facts from this court? OPD

8. Whether the defendant is entitled to special costs under section 35-A CPC? OPD

9. Relief

6. In support of his case, plaintiff-Amrik Singh appeared as PW-1 and reiterated his version of the plaint, and examined Tej Kumar as PW-2, who supported the version of the plaintiff regarding borrowing of money by the defendant from the plaintiff in his presence, and also tendered the documentary evidence. On the other hand, defendant examined himself as DW-1 and repeated the assertions of his written statement, whereas Auction Recorder Maninder Singh was examined as DW-2 and he tendered the auction entries of the auction record, besides tendering the documentary evidence as detailed in the judgments of the learned Courts below.

7. On appraisal of the evidence, the learned trail Court answered all the issues except No 2 qua interest in favour of plaintiff and against the defendant. As a result, decreed the suit of the plaintiff for ₹3,70,000/- i.e., principal amount against the defendant.

8. Aggrieved by the findings recorded against him, defendant preferred the first appeal, which was dismissed vide judgment and decree dated 03.03.2022. Dissatisfied, with the findings of the learned Courts below, defendant, preferred this Regular Second Appeal.

9. Learned counsel for the appellant-defendant urged that findings of the learned Courts below is the result of improper appreciation of the

evidence. Learned counsel contends that the defendant categorically pleaded and proved that he was not in need of money, therefore, had no occasion to borrow any money from the defendant and issue cheque in lieu thereof. The cheque Ex.P1 for ₹3,70,000/- is a manipulated document, prepared in connivance with witness Tej Kumar and owner of M/s Sunny Commission Agent, Sardulgarh, who had obtained his signatures on the alleged cheque. Learned counsel submits that learned Courts below, in arbitrary and erroneous manner, discarded the explanation of the defendant on conjectures and surmises. The Courts below, failed to appreciate that both the plaintiff and defendant are farmers, used to sell their agricultural products, through M/s Sunny Commission Agent, Sardulgarh and they had no transactions between each other. Learned counsel further submits that Courts below failed to appreciate that the plaintiff led no evidence to establish his financial capacity to pay the alleged amount to the defendant and further failed to appreciate as to why the cheque in question was issued on 25.03.2013 i.e., after six months of the alleged advance given in October, 2012. It is stated that revenue entries Ex.P6, in fact, reveal that the plaintiff had mortgaged his land to secure loan from bank. This clearly supports the version of defendant that his signatures were obtained by the plaintiff on the cheque and then manipulated, with a concocted story of alleged advance against the defendant. Learned counsel submits that the Courts below materially erred in appreciating the evidence, raising substantial question of law resulting in miscarriage of justice. A prayer is made to allow the appeal.

10. I have heard learned counsel for the appellant and have gone through the record, with his valuable assistance and find, no infirmity in the findings recorded by the Courts below for the reasons and findings recorded herein.

11. Firstly, the defendant failed to establish the probable reason for the plaintiff to prepare the cheque, in his favour. The defendant has not pleaded any instance to show and suggest that plaintiff harbored any enmity against him to falsely embroil defendant in criminal and civil litigation. The defendant also failed to establish any prior enmity with the witness Tej Kumar or M/s Sunny Commission Agent, as the reason for them to connive with the plaintiff and testify against him. Instead, the defendant deposed that he and plaintiff are farmers and used to sell their crops through M/s Sunny Commission Agent. He admits in his deposition that he issued cheque Ex.P-1 at the shop of M/s Sunny Commission Agent. The admission of defendant, as DW-1 rather supports the version of the plaintiff. The defendant admits that he made no complaint to the police regarding manipulation of his signatures on the cheque Ex P-1, issued in favour of plaintiff. He also admits, he gave no reply to the legal notice given by plaintiff to him demanding money based on the cheque Ex P1. He also admits he did not call any *panchayat* regarding the dispute over the statement of money, based on cheque. On the contrary, he admitted that he was convicted and sentenced in a criminal complaint filed by the plaintiff, against him under Negotiable Instruments Act, 1881. However, he explained that appeal is

pending against the judgment. All this material evidence failed to probablise his version, instead substantiated the version of the plaintiff.

12. It is now well settled by a large catena of the authorities that the plea of fraud or forgery must be proved to the hilt, beyond doubt, akin the criminal charge. In view of the material admissions made by the defendant, as discussed above and the wholesome positive evidence led on record by the plaintiff, the defendant failed to probablise his case and rebut the version of the plaintiff.

13. The plaintiff (PW-1) during his cross-examination has deposed that the defendant had been borrowing money from him on several occasions and used to return the same. His aforesaid statement has not been confronted by the defendant. He denied that cheque (Ex.P-1) was given as a security to M/s Sunny commission Agent, who later on misused the same with his connivance. However, defendant presented no tangible evidence to support his version that cheque Ex.P-1 was obtained from him in connivance with plaintiff. As discussed above, the defendant led no evidence to suggest any probable reason for the plaintiff to conspire and act against him.

14. The argument that the revenue entries i.e. *Jamabandies* for the year 2011-12 and 2012-13 (Ex.P-6 and Ex.P-7) indicate that the agricultural land owned by the plaintiff was under mortgage, suggesting that plaintiff was not in a good financial position to advance the loan to defendant. This undermines the plaintiff's claim of having advanced the claimed money to the defendant. No doubt, the revenue entries do reveal that plaintiff had mortgaged his land, this fact alone does not negate the evidence of the

plaintiff, substantiating his version of advancing money to the defendant. Furthermore, the loan was advanced in the year 2012 and mortgage entries pertain to the subsequent period i.e. of the year 2013 to 2015. In fact, the evidence indicates that plaintiff owns agricultural land and has income from his agriculture farming. Additionally, the defendant has not provided any evidence to show that plaintiff had no independent source of income.

15. The other contention that issuance of cheque belatedly, six months after the loan was advanced suggests manipulation, is devoid of merits. This is because defendant has failed to establish any manipulation as alleged. In fact, defendant admits to issuing of the cheque, though he claims it was issued in favour of M/s Sunny Commission Agent as security. However, failed to prove this claim. The issuance of cheque itself raises a presumption that it was issued against outstanding liability. This presumption of consideration in favour of the plaintiff under Section 118(a) of the Negotiable Instruments Act, 1881 though a rebuttal, has not been successfully rebutted by the defendant by bringing any cogent and reliable evidence or circumstances in this regard.

16. No other point urged.

17. All these factors taken together, makes no ground to form a different opinion to bring the findings of the learned Courts below within the realm of perversity.

18. For the reasons aforementioned, I do not find any illegality or perversity, in the concurrent findings, which are based on sound application

of oral and documentary evidence. Hence no ground for interference is made out, much less involvement of any substantial question of law.

19. Resultantly, there is no merit in the appeal and is, hereby, dismissed.

20. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

(RITU TAGORE)
JUDGE

07.08.2024
Gaurav Sorot

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