



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

138

RSA-1364-2025 (O&M)

Date of decision : 29.04.2025

Harbhinder Singh**..... Appellant**

versus

Gurcharan Singh**..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Sunny K. Singla, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. Pure finding of facts have been recorded by the Courts below after plaintiff successfully proved execution of pronote as well as receipt in his favour by the defendant Ex.P-1 and Ex.P-2.

2. In view thereof, the plea raised by counsel for the appellant with respect to financial capacity of the plaintiff cannot be gone into while exercising jurisdiction under Section 41 of the Punjab Courts Act. Reliance can be placed upon ***Randhir Kaur Versus Prithvi Pal Singh & Ors. 2019(17) SCC 71*** wherein it was held as under :-

*"14. The Division Bench of Punjab and Haryana High Court in a judgment reported in **Sadhu v. Mst. Kishni, 1980 AIR (Punjab) 85** set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:*

*"12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty***



Paitabhiramaswami v. S. Hanyamaya [AIR 1959 Supreme Court 57.], Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 Supreme Court 1633.], Bithal Dass Khanna v. Hafiz Abdul Hai [1969 S.C. Notes 481.] and Afsar Shaikh v. Soleman Bibi [(1976) 2 SCC 142 : AIR 1976 Supreme Court 163.]. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.

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14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by the District Judge. The parties are, however left to bear their own costs.

15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

3. The said dictum was further elaborately echoed by three Judges Bench in **Satyender and Ors. Versus Saroj and Ors. 2022 AIR**



(Supreme Court) 4732 as under :-

“XXXX XXXX XXXX

17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

4. Resultantly finding no merit in the present appeal, the same is ordered to be dismissed.

5 Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

29.04.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No