IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-6026-2016(O&M)
Date of decision: 23.09.2025

Mrs. Kanta Rani & Another

...Appellant(s)

Vs.

Gian Singh Rawat & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Varun Dhawan, Advocate for
Mr. K.R. Dhawan, Advocate
for the appellants.

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NIDHI GUPTA, J.

Present second appeal has been filed by plaintiffs against the concurrent judgments and decrees of the learned Courts below whereby suit of the appellants for *"recovery of Rs.1,37,550/- on account of principal and interest on the basis of an agreement dated 7.11.2000/revival letter dated 7.9.2003/cheque bearing no.337960 dated 24.1.2006 for Rs.1,14,114/- drawn on The Haryana State Cooperative Apex Bank Ltd., Sector 20-D, Chandigarh"*, has been dismissed by both the Courts below.

2. Brief facts of the case are that plaintiff No.1 Kanta Rani had constituted her husband Sant Kumar as her General Power of Attorney (hereinafter 'GPA') holder vide duly notarised GPA. It was the case of the plaintiffs that defendant No.1 had approached Sant Kumar and plaintiff No.2

on 07.11.2000 for loan of Rs.32,000/- which was agreed and paid to him in cash on the same date. It was pleaded that defendant No.1 in consideration had signed and executed an Agreement and agreed to pay an amount of Rs.39,200/- in 10 monthly instalments of Rs.3,920/- starting with effect from 07.12.2000 comprising of principal amount and interest @ 27% per annum. The defendants No.2 to 4 had stood as guarantors for defendant No.1 and signed the Agreement as guarantor. However, defendant No.1 had failed to repay a single instalment to the plaintiffs. Thereafter, defendant No.1 had signed and executed a revival letter dated 07.09.2003 thereby acknowledging to pay Rs.39,200/- to the plaintiffs. Defendant No.1 had then issued a cheque bearing No.337960 dated 24.01.2006 for an amount of Rs.1,14,114/- in favour of the plaintiffs. The said cheque was received back dishonoured with the remarks "Drawer's Signatures differs" vide memo dated 01.02.2006. The plaintiffs had then served a legal notice dated 09.03.2006 to the defendants. However, as no payment was still made by the defendants, the present suit was instituted on 30.11.2008.

3. Upon notice, the defendants had filed written statement contesting the suit by averring that the suit had been filed on the basis of documents which are result of cheating, forgery and use of blank papers received at the time of giving of loan amount. It was admitted that defendants had taken loan of Rs.32,000/- on 07.11.2000, however, the defendants had also issued 10 blank cheques to secure the payment of the

loan amount. Rate of interest was stated to be 18% per annum and not 27% per annum. It was further averred that the defendants had regularly paid 10 instalments. Every month the plaintiff No.2 received the payment of instalments and returned one cheque every month. However, no receipt was issued by plaintiff No.2. It was averred that on demand of receipt, plaintiff No.2 had assured that he is returning the cheques and as such, receipt is not required. The 10th cheque was never returned by the plaintiff as he claimed that the same had been misplaced. The defendants had never executed the revival letter dated 07.09.2003 as averred by the plaintiffs. It was stated that the defendants had never met the plaintiffs since October 2001 as he had made the complete repayment of loan. Therefore, revival letter dated 07.09.2003 is a forged document by misusing the blank papers which the plaintiffs had got signed at the time of issuing the loan. It was denied that the defendants had ever issued the cheque dated 24.01.2006 for Rs.1,14,114/- in favour of the plaintiffs in discharge of any liability. It was contended that there was no liability of the defendants towards plaintiffs as full and final payment of loan amount was made on 07.10.2001; therefore, there was no occasion for issuing the said cheque dated 24.01.2006. Even an FIR No.476 dated 25.08.2008 under Sections 406, 467, 468 and 471 read with Section 120-B had been registered against the said persons/plaintiffs for such acts of forgery and cheating. Accordingly, dismissal of the suit was prayed for.

4. Upon appraisal of oral and documentary evidence, vide judgment and decree dated 28.07.2014, the learned Civil Judge (Junior Division), Chandigarh had dismissed the suit of the plaintiffs. The appeal filed by the plaintiffs was also dismissed by the learned Additional District Judge, Chandigarh vide judgment and decree dated 13.07.2016. Hence, present second appeal by the plaintiffs.

5. It is inter alia submitted by learned counsel for the appellants that the learned Courts below were in error in non-suiting the appellants as they failed to appreciate the fact that the cheque for repayment of loan amount was issued in January 2006 prior to the expiry of period of 3 years from execution of revival letter dated 07.09.2003. As such, the Courts have wrongly dismissed the suit of the appellants being barred by limitation without appreciating that issuance of cheque also amounts to acknowledgment of liability under Section 18 of the Limitation Act.

6. It is further submitted that the Ld. Courts below failed to appreciate that the respondent no.1 has issued cheque Ex.P-4 dated 24.1.2006 for Rs.1,14,114/- favouring appellants and the same was dishonoured with remarks "Insufficient Funds" vide memo Ex.P-5 dated 1.2.2006 and when the cheque Ex.P-4 was dishonoured on 1.2.2006 by the banker of the respondent no.1, the cause of action accrued to the appellants/plaintiffs to file the present civil suit and the period for limitation to file the civil suit is within three years from the date of dishonor of the

cheque i.e. it will start from 1.2.2006 and end on 31.1.2009. The findings arrived at by the Ld. Lower Courts on issue no.2 are contrary to established principals of law of limitation and are thus liable to be reversed and the suit filed by the appellants/plaintiffs is liable to be decreed.

7. Learned counsel accordingly prays for setting aside of the impugned judgments and decrees.

8. No other argument is made on behalf of the appellants.

9. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellants.

10. It is the contention of the appellants that the present suit is not barred by limitation as the defendants had acknowledged their liability by issuing cheque dated 24.01.2006; and therefore, the same amounts to acknowledgment under Section 18 of the Limitation Act. I find no merit in the said argument as the defendants have categorically denied issuing the cheque No.337960 dated 24.01.2006 (Ex.P4). Moreover, it is the own admitted case of the appellants that the said cheque when presented for credit was received back dishonoured with the remarks that “Drawer’s Signatures differs” vide memo dated 01.02.2006. Thus, signatures of the respondents over the said cheque were never proved and were admittedly different. As such, it cannot be said that issuance of the said cheque dated 24.01.2006 would amount to acknowledgment of liability by the defendants;

as there is nothing on record to establish that the said cheque was indeed issued by the defendant.

11. Even otherwise, the plaintiffs have instituted suit for performance of the alleged Agreement dated 07.11.2000 on 30.11.2008. The same is barred by limitation in terms of Section 18 of the Limitation Act. Findings of the learned First Appellate Court as contained in Para 11 of the judgment dated 13.07.2016 are relevant, and read as follows: -

> *"12. Now the core question which is to be decided in this case is as to whether the period of limitation is to be calculated from the revival letter dated 7.09.2003 or from the issuance of cheque Ex.P-4 dated 24.1.2006. PW-1 Sant Kumar during his cross examination stated that there is no revival letter executed by the defendants after 7.9.2003. The plaintiffs-appellants have sought the recovery on the basis of the agreement dated 7.11.2000, revival letter dated 7.9.2003 which is stated to be executed in order to repay the loan amount, the cheque dated 24.1.2006 for Rs. 1,14,114/- was issued by the defendant. The provisions of Section 18 of Limitation Act is to be gone through which is as under:-*
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> *"18. Effect of acknowledgement in writing - (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.*

(2)………………………………….”

13. The acknowledgement has to be made prior to the expiration of prescribed period for filing the suit. The revival letter was executed on 7.9.2003 and the suit was filed on 29.11.2006. The cheque was issued on 7.9.2003, which shows that the limitation for filing the suit had already expired. The issuance of cheque would not revive the limitation itself. Thus, by the issuance of cheque dated 24.1.2006, it cannot be held that by virtue of Section 18 of the Act, the period of limitation is revived afresh from that date.”

12. I am in complete agreement with the abovesaid findings. Ld. Counsel for the appellant is unable to dispute or controvert the above findings.

13. Moreover, in second appeal, it is not open to this Court to re-appreciate, reconsider or interfere in the concurrent findings of fact returned by the Courts below. It is not open to this Court to re-examine the evidence and/or said concurrent findings unless an error apparent is made out in the procedure or Law. I am supported in my view by the judgment of Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559** wherein it is held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by the appellants.

14. The Hon'ble Supreme Court in the judgment of "**Mst. Sugani vs. Rameshwar Das and another" Law Finder Doc Id# 123580**, has gone on to further hold that "*the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers in second appeal*". Again, in **Avtar Singh Vs. Bimla Devi and others, 2021(4) RCR (Civil) 402** Hon'ble Apex Court has held that finding of fact cannot be interfered with in exercise of second Appellate jurisdiction.

15. In view of the above noted factual and legal position, present second appeal is **dismissed.**

16. Pending application(s) if any also stand(s) disposed of.

(Nidhi Gupta)
Judge

23.09.2025
Sunena

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