IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-3166-2024 (O&M)
Date of decision:17.01.2025

Ram Rattan ... Appellant

Vs.

Balbir Singh ... Respondent

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Gursharan Singh Dhaliwal, Advocate for the appellant.

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SUKHVINDER KAUR, J.

1. Instant regular second appeal has been filed by the defendant/ appellant against the concurrent finding recorded by both the Courts below vide which suit of the plaintiff was decreed.

2. Brief facts of the case as unfolded by the plaint are that the defendant, who was acquainted with the plaintiff, was in need of Rs.3,20,000/- for household/business purposes and borrowed it from plaintiff in the mid of year 2015 with the assurance to return the same within a period of six months. It is alleged that thereafter defendant did not return the borrowed amount within the said period and in order to discharge his liability, issued cheque bearing No.666242 dated 20.08.2017 drawn on Punjab National Bank, Branch Gorakhpur from Account No.1354002100000938 for a sum of Rs.3,20,000/-. Said cheque was presented in Punjab National Bank, Branch Gorakhpur on 26.09.2017 where the plaintiff was also having account No.1354000101038305 for collection. The said cheque was dis-honoured with the remarks 'account closed' since

the account of the defendant had already been closed on 20.06.2017. A legal notice was served upon the defendant on 03.10.2017 through his counsel. Thereafter defendant contacted the plaintiff and requested not to file complaint under Section 138 of the Negotiable Instruments Act, 1881 and assured him to make the payment of Rs.3,20,000/- along with interest within five days but failed to do so. Thereafter when plaintiff contacted the defendant for making the aforesaid payment, he refused to pay the same and threatened him with the dire consequences. Thereafter on 10.10.2017, plaintiff moved an application before the Superintendent of Police, Fatehabad, upon which the defendant entered into a compromise in the Panchayat on 21.10.2017. On 22.10.2017, defendant assured before the police officials to repay amount of Rs.3,20,000/- to the plaintiff within a period of two years i.e. upto 21.10.2019. Thereupon he withdrew the said complaint on 22.10.2017. When defendant did not repay the said amount till 21.10.2019, then plaintiff again contacted him that why he was lingering on the matter. Plaintiff moved an application on 28.11.2019 before Smt. Sonia, Sarpanch, Gram Panchayat, Gorakhpur where defendant was summoned, but he refused to repay the said amount. Plaintiff also got issued registered legal notice through counsel to defendant calling upon him to pay the aforesaid amount within 15 days. After receiving the same, neither this notice was replied nor any payment was made to the defendant. Hence, the present suit was filed seeking recovery of Rs.4,53,500/- i.e. Rs.3,20,000/- being principal amount and Rs.1,33,500/- as interest @ 18% per annum from 20.08.2017 to 15.12.2019 along with future interest @ 18% per annum on

Rs.4,53,500/- from 16.12.2019 till realization of the amount from the defendant.

3. Upon notice, defendant appeared and filed written statement taking preliminary objections regarding cause of action, *locus standi*, maintainability, limitation etc. On merits it was averred that after opening of the account by the defendant in Punjab National Bank, he got issued cheque book which was lost and from the said cheque book, cheque No.666242 was also lost. He closed the said bank account, so the lost cheque may not be misused. It was denied that he gave any signed cheque to the plaintiff or made any transaction through the said cheque. It was averred that by misusing his lost cheque bearing No.666242, plaintiff got it dis-honoured in order to defraud him. He never borrowed any amount from the plaintiff, so question of repayment does not arise. It was further averred that plaintiff in connivance with police officials had moved a complaint. Thereafter by threatening and giving him beatings, they got his signatures. His signatures on the compromise were obtained under pressure of the police. Plaintiff used to come to his shop and used to abuse and threaten to kill him and prayer for dismissal of the present suit was made.

4. From the pleadings of the parties, the following issues were framed:

> *1. Whether the defendant borrowed Rs.3,20,000/- from the plaintiff and in discharge of his liability issued cheque no.666242 dated 20.08.2017 in favour of plaintiff as alleged in the plaint? OPP*
>
> *2. Whether the plaintiff is entitled to recover the borrowed*

amount from the defendant with interest @ 18% per annum as alleged in the plaint? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD

4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD

5. Whether the suit of the plaintiff is time-barred? OPD

6. Relief.

5. Thereafter both the parties led their respective evidence. In order to prove his case, plaintiff himself stepped into the witness box as PW1 and deposed on oath all the averments in verbatim as made in the plaint. He also examined PW2 Fakir Chand, who corroborated him.

6. To rebut his evidence, defendant – Ram Rattan appeared as DW2 and also examined DW1 – Anshul Sharma, Manager, Punjab National Bank, Branch Gorakhpur, District Fatehabad. In his statement, defendant has reiterated the contents of the written statement on oath DW1 brought summoned record of application Ex.D1 given by the defendant on 20.06.2017 to close his bank account.

7. Vide judgment and decree dated 18.05.2023, suit of the plaintiff was partly decreed. Aggrieved of the said order, defendant – Ram Rattan filed an appeal before the First Appellate Court which was dismissed vide judgment and decree dated 19.09.2024. Hence, defendant/appellant – Ram Rattan has knocked the doors of this Court by way of filing the present Regular Second Appeal.

8. Learned counsel for the defendant/appellant has contended that the Courts below have failed to appreciate that the suit in itself was not

maintainable. As per plaint, plaintiff lent the alleged amount of Rs.3,20,000/- to the defendant in the year 2015 by issuing receipts Ex.P8 to P10, but only one receipt was bearing his signatures. He has further contended that this fact has also been ignored that much prior to the presentation of the cheque, appellant had given intimation to the bank that his cheque book had been lost and plaintiff had presented the cheque in dispute after the same, from which it is obvious that the cheque had been misused and same could not have been relied upon for extension of limitation. He has argued that Courts below have wrongly placed reliance upon the compromise before the Panchayat and submission of appellant was brushed aside that signatures of plaintiff had been obtained through pressure and coercion. He has urged that plaintiff has failed to prove that when and how he had lent the entire sum of Rs.3,20,000/- as there was no averment that the same was given to the appellant in parts as well as that it was paid to his clerk. He has submitted that the impugned judgements and decrees are based on conjectures and surmises and same are liable to be set aside and suit of the plaintiff is liable to be dismissed.

9. I have heard learned counsel for the appellant at length and have gone through the record.

10. Claim of the plaintiff is that he has paid Rs.3,20,000/- to the defendant in the year 2015. Thereafter cheque No.666242 dated 20.08.2017 amounting to Rs.3,20,000/- was issued by the defendant against the said liability. The said cheque Ex.P1 has been produced on record which bears signatures of the defendant. Bank memo Ex.P2 has also been proved on

record regarding the account being closed and cheque having been dishonoured on the said ground. Notice Ex.P3 given to the defendant through registered post and receipt Ex.P4 regarding sending of said notice have also been proved on record. It also stands proved that application Ex.P5 was given to Superintendent of Police, Fatehabad by the plaintiff claiming amount of Rs.3,20,000/- against the defendant in which compromise was effected and then complaint was filed by the police and this fact stands proved from the documents Ex.P6 and Ex.P7. It is again the admitted fact that statements of the parties got recorded on the basis of compromise Ex.P6, are bearing signatures of the plaintiff, PW2 Fakir Chand and defendant. Application Ex.P11 given to Sarpanch of village Gorakhpur has also been produced on record. Perusal of Ex.P15 compromise dated 21.10.2017 effected between the parties reveals that defendant agreed to repay amount of Rs.3,20,000/- upto 21.10.2019. Interest was waived off but defendant did not adhere to the said compromise and failed to pay the amount upto 21.10.2019 as agreed. The deposit slips Ex.P8 to Ex.P10 of amount of Rs.3,20,000/- in the name of defendant - Ram Rattan have also been placed on record by the plaintiff. So the Courts below in these circumstances rightly held that the plaintiff was successful to prove that he had paid an amount of Rs.3,20,000/- to defendant in the year 2015 which was to be returned upto 21.10.2019 as per the compromise, but defendant failed to repay the said amount and was thus liable to pay the said amount along with interest.

Though defendant admitted his signatures on compromise

Ex.P5 as well on cheque Ex.P1, but he has denied his liability to pay the said amount. Defendant has also admitted his signatures on Ex.P6 statement recorded before the police. Defendant has taken the defence that cheque Ex.P1 was lost and he had got closed his account by moving application Ex.D1 to the bank. It has been rightly observed by the Courts below that perusal of Ex.P1 reveals that at time of moving the said application, he has mentioned some cheque numbers thereon, which were cancelled/destroyed but cheque No.666242 Ex.P1 has not been mentioned therein. As such loss of said cheque is not proved, though specific plea has been taken by the defendant regarding loss of said cheque. This plea taken by the defendant is not tenable that his signatures on compromise Ex.P15 were taken under pressure of police. Number of other persons have also signed the compromise Ex.P15 including Sarpanch of village Gorakhpur as well as father of defendant, namely, Shiv Dutt. The defendant has not led any cogent evidence to prove pressure of the police for effecting compromise Ex.P15. It has also not been explained that why the defendant did not move any complaint before the appropriate authority if his signatures had been obtained by pressurizing him. Mere bald statement of defendant is not sufficient to prove the same.

This argument of learned counsel for the defendant is also without any substance that the present suit is time barred. The amount was advanced to defendant by the plaintiff in the year 2015 whereas the present suit has been filed on 24.02.2020. Defendant acknowledged his debt in the year 2017 firstly through cheque dated 20.08.2017 Ex.P1 and then through compromise dated 21.10.2017 Ex.P15 and promised to pay the said amount upto 21.10.2019. So cause of action arose in favour of plaintiff after 21.10.2019 whereas the present suit has been filed by the plaintiff on 24.02.2020 which is well within limitation.

The receipts Ex.P8 to Ex.P10 have been alleged to be forged by the defendant but defendant did not bother to get the same examined through any expert to substantiate this contention. Learned Appellate Court has rightly observed that once the defendant admits his signatures on cheque Ex.P1, it can be discerned that aforesaid cheque was issued by him in favour of the plaintiff in order to discharge his legally enforceable liability, which got dis-honoured due to closure of account as observed above and defendant failed to make the payment. Courts below have rightly reached at the conclusion that evidence led by the plaintiff is sufficient to establish that defendant failed to repay the borrowed amount to the tune of Rs.3,20,000/- along with interest.

11. No question of law much less substantial question of law arises for determination in the present second appeal. Accordingly, the appeal is without any merits and is hereby dismissed.

12. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

17.01.2025
harjeet

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No