



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

(117)

RSA-2862-2023 (O&M)
Date of Decision:-**29.01.2026**

HARVINDER SINGH

... Appellant

Versus

BALWINDER SINGH @ KAKA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Suraj Kundal, Advocate
for the appellant.

VIRINDER AGGARWAL, J. (Oral)

CM-10051-C-2023

1. The application invoking the inherent jurisdiction of this Court under Section 151 of the Code of Civil Procedure has been considered.
2. Having examined the explanation furnished therein, this Court is of the considered view that the delay of **91** days occasioned in re-filing the appeal stands satisfactorily accounted for.
3. In exercise of the inherent powers of this Court and to advance the cause of substantive justice, the said delay is condoned.
4. The application is accordingly disposed of.

RSA-2862-2023 (O&M)

1. Through the present Regular Second Appeal (for short “RSA”), the appellant-plaintiff has approached this Court seeking to set aside the judgment and decree dated 25.11.2022 rendered by the learned



Additional District Judge, Ambala, whereby the judgment and decree dated 15.12.2017 passed by the learned Civil Judge (Senior Division), Ambala was affirmed. The trial Court had dismissed the suit instituted by the appellant–plaintiff seeking a recovery of ₹5,00,000/-. The appellant has questioned the concurrent findings of the Courts below on the ground that the same are manifestly erroneous, legally untenable, and unsupported by the evidence on record.

2. In the majestic sweep of the factual canvas presented in the plaint, the plaintiff's case emerges with crystalline clarity, as set out hereunder:-

“In brief, the case of the plaintiff is that he is a permanent resident of village Gorsian, Tehsil and District Ambala. The plaintiff had earlier been residing in Austria on a temporary visa until August 2011. It is averred that the son of defendant No. 1, Amrik Singh, also resides in Austria on a permanent visa and is gainfully employed there. Upon his return to India in August 2011, the plaintiff sought assistance from a respectable person who could facilitate his permanent relocation abroad.

The plaintiff was acquainted with defendant No. 2, a resident of a nearby village, and approached him for assistance. Defendant No. 2 assured the plaintiff that he was familiar with respectable persons who could help. Thereafter, defendant No. 2 telephonically contacted defendant No. 1, who further assured that the matter would be facilitated and arranged for a meeting at village Jansui. On 29.09.2011, defendant No. 1 visited the house of defendant No. 2, where the plaintiff, his father Sucha Singh, and one Lajja Ram were also present. Discussions were held at the house of defendant No. 2, culminating in an agreement that the plaintiff would pay ₹10,00,000 for the facilitation of the work. It was further agreed that half the amount, i.e., ₹5,00,000, would be paid in



advance, and the balance would be paid upon securing the permanent visa, with the payment scheduled for the following day, 30.09.2011. Defendant No. 1 agreed to stay overnight at the house of defendant No. 2, and defendant No. 2 stood as guarantor for the due performance of the agreement, undertaking to refund the amount with interest in the event of default.

Pursuant to the agreement, a sum of ₹5,00,000 was paid to the defendants on 30.09.2011, with the express assurance that the work would be completed promptly, failing which the amount would be refunded along with interest. Despite repeated requests and follow-ups by the plaintiff, defendant No. 1 continuously delayed performance on one pretext or another. The plaintiff waited until February 2012, repeatedly requesting both defendants to fulfill their obligations. On 07.03.2012, having realized that the defendants were acting in bad faith, the plaintiff filed a complaint with the SHO, P.S. Naggal, seeking intervention.

Following the complaint, the police summoned the defendants, and a panchayat was convened at the police station, with members assembled outside the building. During the panchayat, the defendants admitted the plaintiff's claim and undertook to refund ₹3,60,000 out of the ₹5,00,000 by 11.04.2012, with the date later extended to 18.04.2012. A written agreement reflecting this undertaking was executed and duly signed by the defendants in the presence of the panchayat members. Notwithstanding this, the defendants failed to honor their commitment and did not remit any amount to the plaintiff.

Subsequently, the plaintiff approached the police again, but no action was taken. Ultimately, the plaintiff lodged a complaint before the Court, which was directed for investigation under Section 156(3) Cr.P.C., leading to the registration of an FIR against the defendants. Despite



their clear undertaking, the defendants have not paid any portion of the amount, although they had formally admitted the claim by executing a written instrument. The plaintiff, therefore, having no other efficacious remedy, has instituted the present suit for recovery. Although, under compulsion during the panchayat, the plaintiff had agreed to accept ₹3,60,000 out of ₹5,00,000 to avoid litigation, the failure of the defendants to pay the agreed sum entitles the plaintiff to claim the entire amount of ₹5,00,000, along with interest at the rate of 12% per annum.”

3. Upon service of summons, the defendants appeared and filed their respective written statements, which are as follows:-

“Defendant No. 1, in his written statement, raised preliminary objections regarding maintainability of the suit, asserting that the plaintiff had not approached the Court with clean hands, had suppressed material facts, and that the suit was false, vexatious, and without merit. On the merits, it was contended that the plaintiff is a shrewd individual who had previously resided in Austria in violation of immigration laws and was subsequently deported by the authorities. It was further submitted that the plaintiff filed the present suit with the ulterior motive of extorting money.

It was specifically denied that defendant No. 1 ever promised to facilitate a permanent visa for the plaintiff. Defendant No. 1 averred that he is a poor, illiterate, rustic villager engaged in agricultural work, without personal experience or knowledge of visa procedures, and therefore incapable of arranging any such work. It was contended that any alleged meetings at the house of defendant No. 2, including on 29.09.2011 or 30.09.2011, did not occur, and that defendant No. 2 never stood as a guarantor for any agreement.

The defendant asserted that the true facts are that the plaintiff had previously been employed as a driver and caretaker for the business



of the son of defendant No. 1, Amrik Singh, in Austria, during which period the plaintiff allegedly caused a financial loss of approximately ₹18,00,000 to the son of defendant No. 1. It was further submitted that funds were periodically credited to the plaintiff's account by Amrik Singh in the ordinary course of business, and that any claims by the plaintiff of payments or agreements regarding permanent visas were fabricated. The defendant maintained that the plaintiff subsequently filed a false complaint and procured an FIR with the intention of extorting money, and that the police had obtained the defendant's thumb impressions on blank papers under the pretext of compromise. It was emphatically denied that any amount was received or any agreement entered into with the plaintiff, or that any Panchayat was convened where payments were promised. The defendant accordingly prayed for dismissal of the suit.

Defendant No. 2, in his written statement, adopted the same stance as defendant No. 1, reiterating preliminary objections on maintainability, mis-joinder and non-joinder of necessary parties, and contending that the suit is false, frivolous, and filed for the purpose of extortion. He specifically denied that he had ever assured the plaintiff of access to respectable persons capable of arranging a permanent visa, that any telephonic communication with defendant No. 1 took place in that regard, or that any meeting was held at his residence on 29.09.2011. It was also denied that any payment of ₹5,00,000 or any part thereof was made by the plaintiff, or that any agreement regarding repayment or panchayat settlement was executed.

While reiterating the averments and defenses raised by defendant No. 1 and denying all other claims of the plaintiff, defendant No. 2 prayed for the dismissal of the suit.”

4. The learned trial Court vide order dated **08.07.2013**, passed the following issues to determine the disputes between the parties:-



1. *Whether the plaintiff is entitled for ₹5,00,000/- with interest as demanded? OPP.*
2. *Whether the suit is not maintainable in the present form? OPD.*
3. *Whether the plaintiff has not come to the court with clean hands? OPD*
4. *Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
5. *Relief*

5. Following the framing of issues, both parties were afforded full and unhindered opportunity to adduce their respective oral and documentary evidence. Upon an exhaustive and meticulous evaluation of the evidentiary record, the learned Trial Court concluded the proceedings by dismissing the suit in favour of the appellant–plaintiff. The subsequent appeal preferred by the appellant–plaintiff before the learned First Appellate Court was also dismissed, thereby affirming the findings of the Trial Court. It is against these concurrent and consistent determinations that the appellant has approached this Court by way of the present Regular Second Appeal.

6. The appellant, seeking redressal, has invoked the appellate jurisdiction of this Court to assail the judgments and decrees rendered by the Courts below. In the considered view of this Court, it was appropriate to first examine the merits of the appellant’s contentions before issuing notice to the respondents. Accordingly, the appeal was initially subjected to preliminary scrutiny and heard in full on the submissions advanced exclusively by learned counsel for the appellant.



7. This Court has heard learned counsel for the appellant at considerable length and has accorded anxious, reasoned, and judicious consideration to the submissions in the context of the parties' pleadings, the evidentiary record, and the concurrent findings rendered by the Courts below. The entirety of the record has been subjected to a thorough, comprehensive, and scrupulous examination with a view to determining *“whether the impugned judgments and decrees exhibit any jurisdictional defect, manifest perversity, misappreciation of evidence, or any other substantial legal infirmity warranting interference in the exercise of this Court’s appellate jurisdiction”?*

8. Assailing the concurrent findings recorded by the learned Courts below, learned counsel for the appellant contended that the evidence on record had not been appreciated in its correct legal perspective and that the conclusions drawn suffer from a manifest misinterpretation of material evidence. It was urged that respondent No.2, being a guarantor for respondent No.1, was a necessary witness and his non-appearance in the witness-box fatally undermines the defence. It was further submitted that the learned Courts below failed to accord due weight to the testimony of PW-5, who had produced on record a compromise allegedly effected between the appellant and the respondents in the presence of Panchayat Members, whereby the respondents had agreed to refund the amount in dispute. On these premises, it was argued that the findings returned by both the learned Courts below are vitiated by misreading of evidence and, therefore, liable to be set aside.



9. Upon a careful and anxious consideration of the submissions advanced and the evidence available on record, it emerges that the learned First Appellate Court has returned a categorical and reasoned finding that the documents relied upon by the appellant-plaintiff in support of his claim, namely the complaint Ex.PW5/A and the compromise Ex.PW5/B, were never produced in original. The appellant-plaintiff's prayer to prove the said documents by way of secondary evidence was expressly declined by the trial Court vide order dated 27.11.2017. Significantly, no evidence was led to establish that the originals of Ex.PW5/A and Ex.PW5/B were lost, destroyed, or otherwise unavailable, rendering the photocopies inadmissible in evidence. It has further been noticed that a criminal case instituted by the appellant-plaintiff against the respondent-defendants on the same set of allegations culminated in acquittal, a copy whereof stands exhibited as Ex.D1. Though it is well settled that findings recorded by a criminal Court are not binding on a Civil Court, which is required to independently assess the evidence before it, the fact remains that the appellant-plaintiff failed to prove any receipt evidencing the alleged payment made to respondent No.1. He further failed to legally establish the complaint Ex.PW5/A and the compromise Ex.PW5/B, the originals whereof were not brought on record and the foundation for leading secondary evidence was never satisfactorily laid. In this backdrop, this Court finds no substance in the allegation of misreading of evidence. On the contrary, the findings concurrently recorded by both the learned Courts below are founded upon a proper and judicious appreciation of pleadings and evidence.



10. For the reasons aforesated and upon an overall conspectus of the factual matrix and the settled principles governing appellate scrutiny, this Court finds no justifiable ground warranting interference with the impugned judgments and decrees. The appeal, being wholly devoid of merit, is accordingly dismissed.

11. In view of the final adjudication of the principal matter, all pending miscellaneous applications, if any, also stand disposed of. No further orders are required to be passed.

29.01.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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