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Court : Punjab and Haryana

Decided On : May-23-2014

Appellant : Whether in the Present Case the Evidence Adduced by the

Respondent : Anil Kumar Gupta ...respondent

Judgement :

RSA No.1750 of 1997 (O&M) 1 IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH RSA No.1750 of 1997 (O&M) Date of Decision:

23. 5.2014 Ganga Ram Sharma Appellant Versus Anil Kumar Gupta Respondent
CORAM: HONBLE MR. JUSTICE HEMANT GUPTA Present: Shri Raj Kumar Rana, Advocate, for the appellant. None for the respondent. Hemant Gupta, J.

(Oral) The plaintiff is in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the defendant's appeal was allowed and the suit for recovery of Rs.7066/- i.e. Rs.5200/- as a principal amount and Rs.1866/- as interest, was dismissed. The plaintiff-appellant asserted that the defendant borrowed a sum of Rs.5200/-i.e. Rs.4800/- on 27.11.1979 and Rs.400/- on 26.12.1979 with a promise to pay the same along with interest @ 1-% per month. Since the amount was not paid, the plaintiff filed the present suit for recovery. The stand of the defendant was that he was working as a servant with the plaintiff at a monthly salary of Rs.500/- and after leaving his job, he demanded

salary for five months i.e. Rs.2500/- which made the plaintiff to file the present suit for recovery. In Singh Dalbir 2014.05.30 17:54 I attest to the accuracy of this document High Court Chandigarh RSA No.1750 of 1997 (O&M) 2 support of the assertion that the plaintiff has advanced such loan reliance was placed upon the cheque issued for an amount of Rs.4800/-. The plaintiff has claimed that he has paid the said amount to the defendant in the presence of Shri Vijay Kumar Jain. The plaintiff also asserted that another sum of Rs.400/- was also paid through cheque. The learned first Appellate Court has found that since the cheques issued were the bearer cheques, therefore, even if the same were encashed by the defendant, the same were encashed for the plaintiff alone. In the present Regular Second Appeal, the appellant has claimed the following substantial questions of law:- 1. Whether in the present case the evidence adduced by the Special Power of Attorney relating to the personal knowledge of the defendant is admissible in evidence?.

2. Whether the adverse inference deserves to be drawn against the defendant and his evidence deserves to be ignored?.

3. Whether an unregistered/unattested Special Power of Attorney holder can be allowed to represent and act on behalf of a party in the Court?.

4. Whether the judgment and decree passed by the learned first Appellate Court is liable to be set aside being based on perversity?.

5. Whether the findings recorded by the first Appellate Court are unsustainable being un-substantiated by the pleadings and evidence available on record?.

6. Whether the findings recorded by the learned first Appellate Court on issue Nos. 1, 3 and 4 are legally unsustainable and are liable to be set aside?.

7. Whether grave and manifest injustice has been caused to the appellants in the given facts and circumstances of the case?. The question of law that the Power of Attorney appeared on behalf of the defendant and that too on the basis of unregistered Singh Dalbir 2014.05.30 17:54 I attest to the accuracy of this document High Court Chandigarh RSA No.1750 of 1997 (O&M) 3 Power of

Attorney, is not the question of law. The plaintiff while appearing as PW-1 has admitted that the counterfoils do not bear the signatures of the defendant and both the cheques were the bearer cheques. Father of the defendant appeared as a witness for the reason that the defendant was not well. There is no cross-examination on DW1-Gian Chand that he is not aware of the facts or is not authorized to represent his son. In the absence of such factual position, such an argument cannot be permitted to be raised in the second appeal when no such argument was raised before the first Appellate Court. A perusal of the substantial questions of law shows that in fact, the challenge of the appellant is on the findings of fact recorded by the first Appellate Court. The questions of law are more in the realm of re-appreciation of evidence rather than any substantial question of law. The learned first Appellate Court has rightly drawn the inference that since the cheques, the alleged basis of the suit, are the bearer cheques, the same cannot be considered to be a transaction of loan. Such finding of fact does not give rise to any substantial question of law in the present Regular Second Appeal. Dismissed. (Hemant Gupta) Judge 23.5.2014 ds Singh Dalbir 2014.05.30 17:54 I attest to the accuracy of this document High Court Chandigarh

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