

Ram Kishan Sharma Vs Layak Ram Sharma

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Court : Delhi

Decided On : Jul-02-2010

Judge : Ms. Aruna Suresh, J.

Acts : Code Of Criminal Procedure (CRPC) - Order 12 (6), Order 12 Rule 8 ; 37

Appeal No. : RSA 125/2006

Appellant : Ram Kishan Sharma

Respondent : Layak Ram Sharma

Advocate for Def. : Mr. K.S. Goswami, Adv.

Advocate for Pet/Ap. : Mr. Pravir K. Jain, Adv.

Judgement :

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not? Yes

(3) Whether the judgment should be reported in the Digest? Yes

1. Challenging the order of the learned Additional District Judge dated 20.02.2006, appellant (plaintiff in the suit) has filed this appeal.

2. Succinctly, the case of the appellant is that he filed a suit for recovery of Rs.1,51,458/- under the summary provision of Order 37 CPC alleging that on

verbal request of the Respondent (defendant in the suit) he advanced a sum of Rs.75,000/- vide cheque No.684717 on 10.08.1998 drawn on Syndicate Bank, Banda Bahadur Marg, Delhi @ 20% per annum for a period of five years in the presence of two witnesses. Thereafter, he sent letters dated 9.06.2003, 07.07.2003 and 16.08.2003 demanding back the money advanced to the defendant. As defendant failed to pay the amount due from him, he filed the suit.

3. On an application filed by the defendant, he was granted leave to defend the suit. Defence raised by the defendant was that plaintiff needed a sum of Rs.1,50,000/- for purchasing land in the year 1997. However, defendant paid Rs.1,45,000/- in all by giving Rs.65,000/- on 21.05.1997, Rs. 20,000/- on 10.10.1997 and Rs.60,000/- on 24.10.1997. Plaintiff returned back a sum of Rs.75,000/- by way of a cheque to the defendant leaving the balance amount of Rs.70,000/-. Out of this amount he paid Rs.50,000/- in cash in a Mandir at village Bhaipur, District Aligarh, U.P. in the presence of neighbours and relatives in full and final settlement of the balance amount. Defendant also took a plea that plaintiff had made false and fabricated cheque receipt of Rs.75,000/- with forged signatures of the defendant.

4. The Trial Court framed following issues:- " ISSUE NO.1: Whether the defendant had RSA 125/2006 Page 2 of 11 advanced a loan of Rs.1,45,000/- to the plaintiff?
OPD

ISSUE NO.2: Whether there is no cause of action in favour of the plaintiff to file the present suit and the same is liable to be dismissed? OPD.

ISSUE NO.3 : Whether the plaintiff is entitled for a money decree for Rs.1,51,458/- with interest at the rate of 20% per annum? OPP.

ISSUE NO.4: Relief."

5. Trial Court rejected the defence of the defendant that he had advanced loan of Rs.1,45,000/- to the plaintiff. Simultaneously, the court rejected claim of the plaintiff that he had advanced loan of Rs.75,000/- with interest @ 20% per annum to the defendant. Consequently, trial court dismissed the suit vide judgment and

decree dated 07.07.2005.

6. Aggrieved by the judgment and decree of the Trial Court dated 07.07.2005, plaintiff filed an appeal being Appeal No.65/2005. While concurring with the findings of the trial court, Appellate Court dismissed the appeal vide order dated 20.02.2006.

7. Being unsuccessful in the courts below, plaintiff has filed the present appeal.

8. Vide order dated 3rd November, 2008, this court formulated RSA 125/2006 Page 3 of 11 following substantial question of law:-

"Whether the plaintiff in the suit is entitled to a decree on admissions made by the defendant in the suit along with future interest?"

9. Mr. Pravir Kumar Jain Advocate appearing on behalf of the appellant has submitted that defendant has admitted that he had received a cheque of Rs.75,000/- from the plaintiff in the year 1998 and that the said cheque was encashed in his account and therefore, in view of this admission, plaintiff was entitled to a decree for the amount claimed by him which included interest @ 20% per annum.

10. He has urged that the courts below erred in declining the claim of the plaintiff by not considering the admission made by the defendant in his written statement as well as in his evidence as DW1. The courts below also failed to consider the document Ex.PW-1/1 which was executed by the defendant at the time of receipt of the cheque as loan, while dismissing the suit of the plaintiff.

11. Mr. K.S.Goswami learned counsel for the Respondent has submitted that there is no admission made by the defendant within the meaning of Order 12 Rule VI CPC so as to entitle the plaintiff for a decree on admission. He has argued that defendant has taken a defence that the said amount was paid by the plaintiff towards repayment of loan taken by him from the defendant for purchase of piece of land in the year 1997 and since plaintiff failed to repay the balance amount, relationship between the parties became strained and plaintiff had to pay the amount of Rs.50,000/- in cash in full and final settlement of the balance amount

and that the receipt Ex.PW1/1 dated 10.08.1988 is a forged document and therefore, the courts below rightly dismissed the suit of the plaintiff.

12. To appreciate submissions made by respective counsel for the parties, court has to keep in mind the principles underlying the provision of Order 12 (6) CPC for passing a decree on admission.

13. Order 12 (6) CPC empowers a court to make such an order or give such judgment as it may deem proper having regard to the admission of facts made either in the pleadings or otherwise, whether orally or in writing, either on its own or on an application of any party without waiting for the determination of any other question between them.

14. The expression "admission" is wide enough to take within its ambit admissions made by a party in pleadings or otherwise, orally or in writing. These provisions thus are capable of liberal construction and without imposition of any unreasonable restriction, must be permitted to operate. However, the Courts have to be careful while passing a decree on admission. While doing so, the Court should look into the fact that all essential ingredients of an admission are satisfied before such a decree is passed in favour of any of the parties to the suit.

15. Admission has to be unambiguous, clear and unconditional. The law would not permit admission by inference as it is a matter of fact. Admission of a fact has to be clear from the record itself and cannot be left to the interpretative determination by the Court unless there is a complete trial and such finding cannot be on the basis of cogent and appropriate evidence on record. Admission has to be a specific admission. There is a very fine distinction between unambiguous and specific admission on the one hand and vague averments of facts which, if proved, could even tantamount to an admission by the party making it. The Court has to consider the need for passing a decree on admission under these provisions only in the case it is unambiguous and decline in the cases where admission is in the form of vague averments of facts, which need to be proved in evidence.

16. In para 1 of preliminary objection of the written statement, defendant while averring that he had loaned a sum of Rs.1,45,000/- to the plaintiff, namely, Rs.

65,000/-, 20,000/- and Rs.60,000/- on three different dates, has alleged that plaintiff had repaid a sum of Rs.75,000/- by way of a cheque in the year 1998 leaving the outstanding amount of Rs.70,000/- which he failed to pay despite efforts. However, on account of intervention of respected persons of the society, plaintiff paid him a sum of Rs.50,000/- in cash against balance amount of Rs.70,000/- on 2nd June, 2003 in a temple at Village Bhaipur, District Aligarh, U.P.

17. It is also his case that cheque receipt for Rs.75,000/- is forged and fabricated document and is not signed by him and that the signatures appearing on the receipt are forged signatures. He re-asserted his defence as raised in the preliminary objections even on merits of the case.

18. From bare reading of the written statement, it is obvious that defendant did not make any unambiguous, clear, specific, unconditional, unequivocal and positive admission that he had received the cheque for Rs.75,000/- towards loan on interest @ 20% per annum for a period of five years.

19. Denial by the defendant in his written statement is specific with reference to each allegation of facts made in the plaint. Therefore, it cannot be said that defendant admitted averment of facts made in the plaint.

20. Written statement has to be read and construed as a composite document and therefore, this Court cannot pick up a particular line and treat it as an admission out of the context in which the line is written.

21. Document Ex.PW-1/1 is a cheque receipt dated 10.08.1998. It is attested by two witnesses and is purportedly signed by the defendant, which fact is disputed by him. Document was got examined with specimen signatures of the defendant from Forensic Science Laboratory, Govt. of NCT of Delhi. However, Mr. Anurag Sharma, Senior Scientific Assistant who examined the questioned signatures with the specimen signatures of the defendant could not give any specific opinion if document Ex.PW-1/1 was signed by the defendant.

22. It is pertinent that plaintiff did not examine any of the attesting witnesses to Ex.PW-1/1. Therefore, the Trial Court did not accept this document in favour of the

plaintiff.

23. Observations made by the trial court while dismissing the suit of the plaintiff are reproduced as below:-

"1. Affidavits of DW2, DW3 and DW4 are only hearsay evidence as no transaction i.e. defendant paying Rs.1,45,000/- took place in their presence. Further no document is filed by the defendant to prove that he paid Rs.1,45,000/- to the plaintiff.

2. Defendant failed to prove that he paid Rs.1,45,000/- to plaintiff as he never sent any notice under Order 12 Rule 8 CPC to the plaintiff for producing original of PW1/D1 and even the photocopy so given is faded and not readable. Thus Ex.PW1/D1 is not proved.

3. Cause of action arose in favour of the plaintiff to file the present suit as in the written statement, the defendant had admitted that in 1998 plaintiff had paid a sum of Rs.75,000/- by cheque to the defendant.

4. Defendant had admitted that he had received a cheque of Rs.75,000/- from the plaintiff in the year 1998 and the said cheque was encashed in the account of the defendant but the said cheque was given by the plaintiff for discharging his dues towards the defendant as alleged by the defendant.

5. The plaintiff in order to prove and discharge the burden cast upon him that he gave Rs.75,000/- as loan to the defendant, he relied on Ex.PW1/1 i.e. the receipt dated 10.08.1998.

6. Plaintiff failed to prove that he is entitled for a money decree for Rs.1,51,458/- with interest @ 20% per annum as Ex.PW1/1 which is a receipt dated 10.8.1998 by which plaintiff had given a loan of Rs.75,000/- to the defendant is not proved as no attesting witness was examined and further he himself admitted that revenue stamp was pasted by him not on day of execution of Ex.PW1/1. (Receipt dated 10.8.1998 is Ex.PW1/1)."

24. While accepting observation of the Trial Court, the Appellate Court in the impugned order dated 20.02.2006 further made following relevant observations:-

"1. For proving transaction dated 10.8.1998 (Ex.PW1/1) wherein the plaintiff had advanced a sum of Rs.75,000/-, such transaction ought to have been proved on record.

2. Finding of the court below on issue No.3 that burden was upon the plaintiff to prove that he had advanced Rs.75,000/- as loan to the defendant, was not proved.

3. Plaintiff should have proved the document i.e. Ex.PW1/1 (showing the contents as a pro note) by bringing witnesses who should have been examined on record, which he has not done so as to satisfy/fulfill the issue No.3.

4. Affidavit of S.C. Sharma was filed by plaintiff but he remained absent from the Court.

5. The defendant has not admitted any had denied in toto averments in para 2 and 3 of the plaint pertaining to above."

25. I do not find any infirmity or illegality in the findings of the courts below in dismissing the suit as well as the appeal of the plaintiff.

26. As discussed above, though defendant admitted having received cheque for Rs.75,000/- from the plaintiff but he disputed that this cheque was received by him as a loan carrying interest @ 20% per annum. He has not admitted his liability to pay the amount as claimed by the plaintiff. Had it been a case of clear admission, plaintiff would have been successful in getting a decree under the provisions of order 37 CPC.

27. Hence, I conclude that plaintiff is not entitled to a decree along with future interest as claimed on alleged admission made by the defendant as there are none.

28. Hence, appeal is hereby dismissed.