
(2006) 01 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 177 of 2004

Mukesh Kumar Goel

APPELLANT

Vs

Himgiri Steel Industries and Others

RESPONDENT

Date of Decision : 09-01-2006

Acts Referred:

Citation : (2006) 143 PLR 95(1) : (2006) 1 RCR(Civil) 828

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : P.K. Gupta, for the Appellant; Vivek Sharma, for the Respondent

Judgement

Hemant Gupta, J.—The plaintiff is in revision aggrieved against the order passed by the learned trial Court on 20.11.2003, whereby his application for reframing of the issues was declined.

2. The plaintiff has filed a suit under Order 37 of the CPC for recovery of Rs. 5,35,000/- i.e. Rs. 5 lacs as principal amount advanced as loan and Rs. 35,000/- as interest, on the basis of two cheques issued by the plaintiff to the defendants.

3. It is the case of the defendants that the said amount was received not as a loan but as a security which attracts interest @ 12%. On the basis of the pleadings, the trial Court has re-framed the issues, which read as under:-

1. Whether the defendants took loan of Rs. 5 lacs from the plaintiff, as alleged?
OPP

2. Whether the defendants agreed to pay interest @ 18% per annum as alleged?
OPP

3. Whether the plaintiff is entitled to the recovery of Rs. 5,35,000/- as alleged?
OPP

4. If issue No. 3 is proved, whether the plaintiff is entitled to get future interest? If so, at what rate? OPP

5. Whether the defendants took amount of 5 lacs as security as alleged? OPD
6. Whether the defendants are entitled to counter claim/set of Rs. 17,34,576/- as alleged? OPD
7. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD
8. Whether the counter claim is bad for non-joinder of necessary parties? OPD
9. Whether the counter claim is liable to be returned to the claimant, as alleged?
10. Relief.

4. Learned Counsel for the petitioner has vehemently argued that once the receipt of Rs. 5 lacs is admitted by the defendants, then the issues framed are not proper and in fact the issue required to be framed is whether the defendant has taken the amount of Rs. 5 lacs as security, the onus of which is required to be placed on the defendants. However, the learned trial Court has framed incorrect issues, which is causing serious prejudice to the rights of the plaintiff and delay the decision of the suit.

5. After hearing learned Counsel for the parties, I am of the opinion that Issue Nos. 1 to 5 are required to be recast in the following manner:-

1. Whether the amount of Rs. 5 lacs was received by the defendants as security, as alleged in para No. 4 of the written statement? OPD
2. Whether the plaintiff is entitled to interest @ 18% p.a.? OPP

Consequently, Issue Nos. 6 to 10 stand re-numbered as Issue Nos. 3 to 7. It is clarified that except Issue Nos. 2 & 7, the onus of proof is on the defendants and that Issue Nos. 2 & 7 are consequential issues to the other issues, therefore, it is for the defendants to lead evidence in affirmative in the first instance.

The revision petition is disposed of accordingly.

Parties through their counsel are directed to appear before the learned trial Court on 6.2.2006, for further proceedings in accordance with law.