

(2013) 09 P&H CK 0466

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 5705 of 2013

Oginder Singh

APPELLANT

Vs

Haripal Pilaniya

RESPONDENT

Date of Decision: Sept. 19, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Constitution of India, 1950 - Article 227
- Contract Act, 1872 - Section 2(d)

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Vivek Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

Defendant, being aggrieved by order dated 06.08.2013 Annexure P- 4 passed by the trial Court, thereby dismissing application Annexure P-2 filed by defendant under Order 7 Rule 11 of the CPC for rejection of plaint Annexure P- 1 instituted by respondent-plaintiff against the defendant-petitioner, has approached this Court by way of instant revision petition filed under Article 227 of the Constitution of India to challenge order Annexure P-4. Plaintiff alleged in the plaint that the parties had friendly relations. On demand of friendly loan by the defendant, the plaintiff advanced Rs. 50,370/- to the defendant by transfer from bank account of plaintiff's wife Neelam to bank account of the defendant. The plaintiff has filed suit for recovery of the said amount along with interest.

2. The defendant alleged in application Annexure P-2 that the plaintiff has not attached any document regarding alleged loan. It was also pleaded that the plaintiff is not entitled to file the suit for the amount which was allegedly transferred from the account of plaintiff's wife. The plaintiff has also not paid appropriate Court fee

on the interest amount for pre-suit period.

3. The plaintiff by filing reply Annexure P-3 opposed the application and controverted the averments made therein.

4. Learned trial Court vide impugned order Annexure P- 4 has dismissed application Annexure P-2 filed by the defendant but has directed the plaintiff to pay requisite Court fee. Feeling aggrieved, defendant has filed this revision petition to challenge order Annexure P- 4.

5. I have heard counsel for the petitioner and perused the case file.

6. Counsel for the defendant-petitioner reiterated the version of the petitioner pleaded in application Annexure P- 2 as noticed hereinbefore. I have carefully considered the same. The plaint cannot be rejected at the threshold on assertion of defendant regarding disputed questions of facts. It is to be determined after trial of the suit as to whether plaintiff is entitled to recover the suit amount from the defendant or not. On the other hand, consideration for a contract can flow even from a third person in view of Section 2(d) of the Indian Contract Act, 1872. If the plaintiff advanced the alleged loan to the defendant by transfer of the amount from the account of plaintiff's wife, it cannot be said that there was no valid advancement of loan by the plaintiff to the defendant. As regards non-attaching of any document with the plaint, this is not sufficient ground for rejecting the plaint because the same is matter of production of evidence. On the contrary, the plaintiff has attached document with the plaint depicting payment of the aforesaid amount by plaintiff's wife as mentioned in application Annexure P-2 by the defendant himself.

7. In the aforesaid circumstances, it is apparent that there is no ground for rejecting the plaint at the threshold. On the other hand, the defendant has raised the disputed questions on facts in application Annexure P- 2 which purport to be defence of the suit on his behalf. The same can be adjudicated upon after the suit is put to trial. For the reasons aforesaid, I find that application Annexure P-2 filed by the defendant-petitioner has been rightly dismissed by the trial Court. There is no perversity, illegality or jurisdictional error in impugned order of the trial Court so as to warrant interference by this Court in exercise of power of superintendence under Article 227 of the Constitution of India. The revision petition is meritless and is accordingly dismissed in limine. Nothing observed hereinbefore shall be taken to be expression of opinion on merits of the suit. The defendant shall be at liberty to take all pleas, available to him in accordance with law, during trial of the suit.