

(2014) 09 P&H CK 0089

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 7192 of 2012 (O&M)

Sushil Kumar Gauba

APPELLANT

Vs

Adarsh Kumar Gupta

RESPONDENT

Date of Decision: Sept. 1, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 37 Rule 1, Order 37 Rule 1(2), Order 37 Rule 1(2)(a), Order 37 Rule 37
- Constitution of India, 1950 - Article 227

Citation: (2015) 177 PLR 554

Hon'ble Judges: Inderjit Singh, J

Bench: Single Bench

Advocate: Ashish Gupta, Advocates for the Appellant; Sudhir Aggarwal, Advocates for the Respondent

Judgement

Inderjit Singh, J.

Petitioner Sushil Kumar Gauba has filed this revision petition against Adarsh Kumar Gupta respondent under Article 227 of the Constitution of India for setting aside the impugned order dated 21.08.2012 passed by learned Civil Judge (Junior Division), Gurgaon, whereby learned trial Court has treated the suit under Order 37 C.P.C. of the petitioner as ordinary suit for recovery. Notice of motion was issued and respondent appeared through counsel and contested the petition.

2. I have heard learned counsel for the parties and have gone through the record.

3. From the record and specially from the impugned order, I find that the case was fixed for the consideration on application for granting leave to defend to the defendant. At this stage, it came to the knowledge of the Court that present suit is not maintainable in the present form as Order 37 C.P.C. specifically deals with the suits based upon bill of exchange, hundies and promissory notes. As per the pleadings set up in the plaint by the plaintiff, the plaintiff advanced loan to

defendant through cheque and defendant had failed to repay the loan amount. It is held by learned Civil Judge (Junior Division) that it is nowhere the case of the plaintiff that repayment has been made on the basis of bill of exchange, hundi and promissory note. Therefore, plaintiff is entitled to file an ordinary suit for recovery and suit filed by the plaintiff under Order 37 C.P.C. was treated as ordinary suit for recovery and defendant was given opportunity to file the written statement.

4. The perusal of the record and impugned order further shows that impugned order is correct and as per law. The plaintiff has advanced loan by way of cheque and no loan has been repaid by the defendant as per the plaintiff's case. It is nowhere plaintiff's case that loan amount has been repaid by way of cheque etc.

5. Learned counsel for the respondent has cited judgment passed by the Hon'ble Rajasthan High Court in [Lalchand Jain Vs. Smt. Gheesi](#), in which it is held that suit for recovery of amount on the basis of bank draft drawn in favour of the defendant; suit not covered under Order 37 Rule 1(2)(a) as bank draft is not drawn in favour of plaintiff; initial presumption of genuineness of claim also cannot be drawn. Bank draft can be taken as written contract. No written contract between parties for alleged loan transaction. It is also held in that case that suit cannot be tried under Order 37 C.P.C. Learned counsel for the respondent further cited judgment passed by the Hon'ble Delhi High Court in [Syed Moosa Emami Vs. Sunil Kumar](#). In that case also, it is held that Order 37 Rule 1(2) prescribes summary procedure and it applies to suit based on cheque. It is further held that Order 37 Rule 1 apply to the based on cheque as cheque is certainly a bill of exchange. It is also held that for a suit said to be based on cheque, the cheque must be in favour of plaintiff. When somebody files a suit on the basis of bill of exchange, hundies or promissory notes, the documents are annexed with the plaint and are drawn in favour of the plaintiff or endorsed in his favour. It is further held in this case whether the cheque on the basis of which suit was allegedly filed, had already been honoured by the bankers of the plaintiff and were in favour of the defendant-respondents and the money was utilized by the defendants, the suit could not be called a suit based upon a cheque. It was in fact based on loan transaction. To such a suit the provisions of Order 37 Rule 1 would not apply.

6. I have gone through the above cited two judgments and the same fully apply to the facts of the present case.

7. On the other hand, learned counsel for the petitioner has cited judgment passed by this Court in [I.J. Transport Company and Others Vs. Ganga Auto Agency](#). I have gone through this cited judgment and the same having distinguished facts will not apply in the present case as in that case, the suit was filed under Order 37 for recovery based on cheque and the Court held that cheque is bill of exchange as defined in the Negotiable Instruments Act, 1881, therefore, provisions of Order 37 C.P.C. shall apply. The perusal of this cited judgment shows that cheques were issued by the defendant and the suit was filed on the basis of those cheques. Thus,

the cheques were issued in favour of plaintiff, which is not the situation in the present suit filed by the plaintiff where the plaintiff issued the cheque in favour of the defendant. In view of the above discussion, the impugned order dated 21.08.2012 passed by learned Civil Judge (Junior Division), Gurgaon, is correct and as per law and does not require interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.