



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH  
229 RSA-5187-2014 (O&M)  
Date of decision: 15.01.2025

Harvinder Singh @ Soni

...Appellant(s)

Vs.

Gurpreet Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. R.K. Arya, Advocate  
for the appellant.

Mr. Dheeraj Mahajan, Advocate  
for the respondent.

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**NIDHI GUPTA, J.**

The plaintiff is in second appeal before this Court against the judgment and decree dated 09.04.2014 passed by the learned Additional District Judge (F.T.C.) Gurdaspur **reversing** the judgment dated 14.09.2011 passed by learned Civil Judge (Junior Division), Gurdaspur whereby the suit filed by the plaintiff/appellant for recovery of ₹85,000/- along with interest at the rate of 9% per annum from the date of filing suit till its realisation with consequential relief of decree of mandatory injunction, directing the defendant to return the passport of the plaintiff to him, was decreed with costs. Vide judgement and decree dated 14.9.2011, the learned Civil Judge held the plaintiff entitled to recover the amount of ₹85,000/- with interest at the rate of 9% per annum from date of filing of suit till its realisation; and further mandate was issued, directing the



defendant to return the passport of the plaintiff to him within three months from the date of the judgement.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. The appellant herein shall be referred to as the plaintiff; and the respondent as defendant.

3. The case of the plaintiff as set out in the plaint is that the appellant/plaintiff is an unemployed young man, whereas his father is having landed property in the village and his brother is also running a shop. The sister of the defendant is married in the village of plaintiff; therefore they are known to each other. The defendant is working as a travel agent, therefore in the month of November, plaintiff and his brother Malkiat Singh requested the defendant with request to provide him job. The defendant demanded Rs. 85,000/- to arrange visa for Dubai for plaintiff and in the month of December 2007, plaintiff and his brother visited the house of defendant at village Virk and paid Rs. 85,000/- along with passport to the defendant. Despite taking payment, neither the defendant arranged visa for the plaintiff nor he returned back the money to the plaintiff. Thus, the plaintiff filed instant suit for recovery of Rs. 85,000/- against the defendant.

4. Upon notice, the defendant had put in appearance and filed written statement denying the averments made in the plaint. No replication was filed by the plaintiff. On the basis of the pleadings of the parties, following issues were framed: -



- “1. Whether the plaintiff is entitled to recovery of rupees 85,000/- along with interest @ 9% per annum as prayed for?OPP*
- 2. Whether the plaintiff is entitled to mandatory injunction directing the defendant to return the passport of the plaintiff to him ? OPP*
- 3. Whether the suit is not maintainable in the present form ? OPD*
- (v) Relief.”*

5. On the basis of oral and documentary evidence adduced by the parties, the suit of the plaintiff was decreed with costs by the learned Civil Judge, and he was held entitled to recover the amount of Rs.85,000/- with interest @ 9% per annum from the filing of the suit till its realisation; and further mandate was issued directing the defendant to return the passport of the plaintiff to him within three months from the date of the judgment. In appeal filed by the defendant, the learned Additional District Judge, (FTC), Gurdaspur vide impugned judgment and decree dated 09.04.2014 set aside the decree dated 14.09.2011 of the learned trial Court and dismissed the suit of the plaintiff with costs.

6. Learned counsel for the appellant-plaintiff submits that a bare perusal of the facts as set out in the plaint, shows that the defendant had played fraud upon the appellant and cheated him of Rs.85,000/- on the pretext of arranging of visa for Dubai but neither he arranged visa nor he returned the said amount of Rs.85,000/- to the appellant despite repeated requests. It is submitted that therefore, the



suit of the appellant was rightly decreed by the learned Civil Judge (Junior Division), Gurdaspur vide judgment and decree dated 14.09.2011 which deserves to be restored. It is submitted that the learned Additional District Judge has committed grave error while setting aside the well-reasoned judgment of the learned trial Court on the basis of conjectures and non-appreciation of material evidence, thus, the impugned judgment is liable to be set aside. It is submitted that the perusal of the testimony of appellant/plaintiff as well as the PWs examined by the plaintiff itself shows that the defendant has played fraud and cheated amount of Rs.85,000/- from the plaintiff. But the Id. Appellate court without considering material evidence available on the record set aside the well reasoned judgment and decree dated 14.09.2011 passed by the Id. Civil Judge (Jr. Divn) Gurdaspur.

7. On the other hand, learned counsel for the defendant submits that the judgment dated 14.09.2011 of the learned trial Court is based on conjectures. It is submitted that the suit of the plaintiff was decreed only because discrepant statements of the prosecution witnesses were misread by the learned trial Court. It is submitted that valuable evidence on record was misconstrued and/or ignored by the Id. Civil Judge. It is accordingly prayed that the present appeal be dismissed.

8. No other argument is raised on behalf of the appellant.

9. I have heard learned counsel for the appellant and perused the case file in great detail.



10. I find merit in the submissions advanced on behalf of the defendant. Perusal of the record shows that the judgment of the learned trial Court is indeed based on conjectures and far-fetched surmises; and the suit of the plaintiff was decreed, despite the fact that it had been irrevocably established on record that the plaintiff had failed to prove that the defendant was doing the business of travel agent or he ever sent anyone abroad. Admittedly, no evidence was led by the plaintiff to prove that the defendant was doing the business of travel agent or sending people abroad. Even there is no documentary evidence to show that the defendant was doing the business of travel agent or providing visas for going abroad. There are no company/agency documents produced by the plaintiff to prove his case. Merely bald statement has been made in the plaint and during oral evidence that the defendant was doing the business of travel agency; which was duly denied by the defendant in his written statement. Even no replication was filed by the plaintiff controverting the assertions made by the defendant in his written statement. In this regard, there is no other case of such nature against the defendant.

11. Further admittedly there is nothing stated in the plaint or anything on record to indicate in what manner the plaintiff had handed over Rs.85,000/- to the defendant - whether payment was made in cash or by cheque or by any other mode. Admittedly no documents to show any transaction have been brought on record by the plaintiff. Thus, there



is nothing mentioned in the plaint as to in what manner payment was made to the defendant.

12. Moreover, there is nothing on record to show as to how the plaintiff arranged/procured the amount of ₹85,000/-. The learned trial Court came to the conclusion that the plaintiff had made payment of Rs.85,000/- to the defendant merely on the basis of testimony of PW2/Mukhtar Singh who admitted in his cross-examination that he gave Rs.85,000/- to the plaintiff. However, the learned trial Court overlooked the fact that even PW3/Malkiat Singh in his cross-examination had stated that Rs.85,000/- was given to the plaintiff by his father Ravail Singh. The learned trial court failed to reconcile the above said contradictory testimonies. Even further, the learned trial court ignored the fact that the plaintiff in his cross-examination as PW1 admitted that he had borrowed money from 'someone', however, was unable to elaborate thereupon. Thus, it could not be clear on record as to how the plaintiff arranged the amount of ₹85,000/-. Even no criminal proceedings were initiated by the plaintiff against the defendant.

13. It had further been alleged by the plaintiff that he had handed over his passport to the respondent. However, there is nothing whatsoever on record to remotely indicate that: a) the plaintiff even ever possessed a passport; b) no passport number is mentioned anywhere in the entire proceedings; and c) admittedly no FIR was lodged regarding loss of passport. In this scenario, the mandate of the learned trial Court



directing the defendant to return the passport of the plaintiff to him within three months was clearly unsustainable. In this regard, findings of the learned lower Appellate Court are relevant as contained in Paras 11 and 12 of the judgment dated 09.04.2014, which are as under:-

*“11. Perusal of pleadings and evidence available in the lower court file patently suggest that judgment and decree under challenge have been passed by the Learned court without proper appreciation of evidence on record. Cross-examinations of witnesses have not been given any weight. The entire thrust of plaintiff version is around delivery of Rs. 85,000/- and passport by him to defendant. Plaintiff claims that he is knowing defendant since latter's sister is married in village Narpur where plaintiff is residing. The cross-examination of PW-1 shows no such iota of evidence. During this cross-examination defendant was asked about the matrimonial place of his aunt and not of his sister. The basis which might had brought plaintiff and defendant before each other is missing in the evidence on record. Plaintiff has failed to show if any sister of defendant resides in village Narpur. Plaintiff also claims that defendant was a travel agent. In cross-examination as PW-1 plaintiff has failed to state the name of the shop and agency for which allegedly defendant was working as an agent. This concise but terse cross-examination reveals that there is no -evidence as to from where he allegedly had arranged Rs. 85,000/-. Plaintiff is silent regarding the source from where he had arranged Rs. 85,000/-. He also nowhere depicted the name of PW-2 Mukhtiar Singh from whom allegedly he had arranged/borrowed any amount or if this PW-2 ever had accompanied plaintiff and PW-3 to the house of defendant.*



12. Another bewildering development available in the version of PWs is that none of them is aware as to from where Rs. 85,000/- were arranged by the plaintiff. At the outset it must be observed that a person who arranged such amount from anybody must have disclosed the name of such lender when asked in cross-examination. However, when asked, he gave vague reply that he had arranged this amount from "somebody". Had such lending been there in presence of plaintiff, he would not have addressed such lender as "somebody". Such cross-examination of PW-1 infers that he had no knowledge about the name of such lender which brings out that no such borrowing ever had taken place. PW-2 Mukhtiar Singh presented a new picture while stating in cross-examination that he had lent Rs. 85,000/- to plaintiff for the purpose. This witness stated that he had collected this amount after withdrawing from the bank. No such evidence came on record. It is relevant to mention here that PW-2 is nowhere named in plaint. The cross-examination of PW-3 is again at variance to that of remaining PWs. He presented another version by claiming that entire Rs. 85,000/- were paid to plaintiff by his father Ravail Singh. This version is not owned by plaintiff. These all circumstances left no reasons with the lower court to believe that Rs. 85,000/- were arranged by the plaintiff and then were paid by him to defendant. Then there is no proof on file if plaintiff had been holding any passport. No passport number nor name of issuing office is part of the record. Mere claiming he was possessing a passport and had given it to defendant cannot be taken as proved by default of mere non-cross-examination of PW-1, about delivery of passport, on the part of defendant.



*Perusal of cross-examination of DW-1 reveals that the answer regarding U.K visa pertains to his own visa application and not about any visa application regarding plaintiff. Learned Trial court misread this part of evidence thereby ultimately basing its opinion on such piece of evidence in para no. 8 of the judgment.”*

14. Learned counsel for the appellant/plaintiff is unable to dispute or controvert the above said evidence/findings of the Id. First Appellate Court or give any satisfactory explanation for the same.

15. In view of the above, present appeal is **dismissed**.

16. Pending application(s) if any also stand(s) disposed of.

**15.01.2025**  
Sunena

**(Nidhi Gupta)**  
**Judge**

Whether speaking/reasoned: Yes/No  
Whether reportable: Yes/No