

2025:PHHC:035565



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA-3441-2018 (O&M)
Reserved on : 03.03.2025
Pronounced on : 17.03.2025**

KEHAR SINGH DHULKU ...Appellant

VERSUS

AMARJIT KAURRespondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravi Kant Sharma, Advocate for the appellant.

ALKA SARIN, J.

CM-9128-C-2018

1. This is an application for condonation of delay of more than 64 days in refiling the main appeal.

2. For the reasons stated in the application, the same is allowed and the delay of more than 64 days in refiling the main appeal is condoned.

CM-9129-C-2018

3. This is an application for condonation of delay of 51 days in refiling the main appeal.

4. For the reasons stated in the application, the same is allowed and the delay of 51 days in refiling the main appeal is condoned.

RSA-3441-2018

5. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 03.05.2014 passed by the Trial

Court and the judgment and decree dated 11.11.2016 passed by the First Appellate Court whereby his suit for declaration has been dismissed.

6. Brief facts relevant to the present *lis* are that the parties were married to each other. On 28.08.1981 a decree of divorce was also passed. Both parties initiated litigations against each other. According to the plaintiff-appellant on 30.03.2005 the defendant-respondent approached him through her counsel Sh.Ashok Kumar and G.S.Ahuja, Advocates in order to end the litigations and live a peaceful life. Resultantly, a compromise was arrived at between the parties as per which the plaintiff-appellant would withdraw his cases, and the defendant-respondent would withdraw one execution application and not pursue another case filed by the plaintiff-appellant. However, soon after the compromise the defendant-respondent had filed an application for restoration of her execution application and subsequently had also got the ex-parte order against her set aside in the suit pertaining to the Kothi in Sector 36, Chandigarh and had thus backed out from the compromise. It was averred that though the defendant-respondent had received 2½ acres of agricultural land as a gift on 15.01.2001, she had sold it to various persons on the basis of a power of attorney of 1999 and it was to cover-up her misdeeds that the compromise was entered into. Thus, the present suit alleging that the compromise deed dated 30.03.2005 was fraudulently obtained by the defendant-respondent. In her written statement the defendant-respondent raised preliminary objections regarding maintainability, court fee, cause of action, etc. On merits the stand taken was that it was the plaintiff-appellant who had backed out from the compromise.

The plaintiff-appellant had not withdrawn the name of the defendant-respondent from the case which was pending in the Court of Sh. Balwinder Kumar, the then learned Civil Judge(Jr. Division), Chandigarh and as a result the case was decided ex-parte against the defendant-respondent due to her non-appearance. In the replication the contents of the written statement were denied and those of the plaintiff were reiterated.

7. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled for decree of cancellation of compromise dated 30.03.2005 entered into in between the parties on the grounds taken in plaintiff? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the plaintiff has concealed the material facts from the court? OPD
4. Whether the plaintiff has not affixed proper court fee? OPD
5. Whether the plaintiff has not properly verified the suit? OPD
6. Whether the plaintiff has no cause of action to file present suit? OPD
7. Relief.

8. The Trial Court vide judgment and decree dated 03.05.2014 dismissed the suit. Aggrieved by the decision of the Trial Court, an appeal

was preferred by the plaintiff-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 11.11.2016. Hence, the present regular second appeal by the plaintiff-appellant.

9. The learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing the suit of the plaintiff-appellant. It is urged that the compromise dated 30.03.2005 was entered into fraudulently by the defendant-respondent only to cover her mis-deeds and that she never had any intention of actually settling the disputes with the plaintiff-appellant.

10. Heard counsel for the plaintiff-appellant and perused the record.

11. In the present case both the Courts have non-suited the plaintiff-appellant. He could not convince this Court also as to how and why the compromise dated 30.03.2005 was to be set aside. The fact finding First Appellate Court found that “...*the appellant had instituted the present suit for setting aside the deed of compromise dated 30.3.2005 entered into between him and the defendant being illegal and having obtained it by the respondent with fraudulent intention, but perusal of the statement of the appellant himself leads to the only inference that the appellant has misused the process of the Court by filing the present suit and it appears that he is habitual of initiating such type of litigations as the appellant himself has admitted during the cross-examination that he himself had got the compromised Ex.P1 typographically prepared and all the cases mentioned in his affidavit were got dismissed as withdrawn on the basis of the impugned compromise Ex.P1 in accordance with the terms and conditions*

incorporated therein. Besides it, cases pending before Hon'ble High Court were also got dismissed as withdrawn on the basis of the said compromise. The appellant has further admitted that on 31.3.2005, he along with the respondent had gone to Fatehgarh Sahib and his statement was recorded in the Court which was also based on the impugned compromise and the civil suit pending there was dismissed as withdrawn on the basis of the said compromise. The appellant has further admitted that another case was also dismissed as withdrawn on the basis of statement recorded by Permanent Lok Adalat on the basis of impugned compromise on 11.4.2005. Besides it, the respondent had also got a maintenance petition dismissed as withdrawn which was instituted by her against the appellant and that petition was also withdrawn on the basis of the compromise which was effected between them". This Court is unable to comprehend as to why despite the above reproduced events having taken place by the parties in the different litigations between them, the plaintiff-appellant is seeking the declaration in the present suit. Several factors which led the Courts to dismiss the case of the plaintiff-appellant have been dealt with by both the Courts which have not been satisfactorily dislodged by counsel for the plaintiff-appellant. No cogent and reliable evidence has been pointed out by counsel for the plaintiff-appellant in support of the case set-up by him. In absence of any evidence in this regard, the plaintiff-appellant is not entitled to the relief of declaration as prayed for by him. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No credible and reliable evidence has been highlighted by the counsel for

the plaintiff-appellant for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

12. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.03.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No