A ANITA RANI

v.

ASHOK KUMAR & ORS

(Civil Appeal Nos. 7750-7751 of 2021)

B DECEMBER 16, 2021

**[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]**

*Civil Suit: Suit for Recovery of Money – In the instant case, appellant filed two suits against respondents for recovery of money* C *– Appellant and respondents are relatives – In the first suit, respondents borrowed a sum of Rs.10,50,000/- from the appellant by way of a cheque, out of which Rs.5,00,000/- was refunded by respondents and promised to repay the balance within six months but failed to refund – In the second suit, appellant and her husband joined respondent in his real estate business in which various* D *amounts were either withdrawn from or transferred out of appellant's accounts by the respondent unauthorisedly amounting to Rs.54,50,000/- – Trial Court dismissed both the suits – First appellate court allowed the appeals – Respondents filed appeals before High Court which were allowed resulting in dismissal of the two money suits – On appeal, held: In the first suit, the defence set up by the* E *respondents was that the payment of Rs.5,00,000/- made by them was by way of full and final settlement – However, no receipt and written memorandum of compromise/settlement were taken by respondents from the appellant – When a party pleads part repayment in full and final settlement of certain some of money, the* F *onus is upon him to show that there was a settlement – This onus was not discharged by the respondent – Hence, the appellant entitled to succeed in the first suit – In the second suit, defence of the respondents was that the amounts represented authorized payments for the purchase and sale of properties in a real estate business* G *and that out of those amounts, a sum of Rs.30,00,000/ was treated as a payment made out of love and affection – The onus was on defence to show that there were business dealings, however, no books of accounts were produced by the defence to show that the amounts flowed out for business dealings – If the appellants had treated Rs. 30,00,000/ as one made out of love and affection, there*

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*could have been no occasion for dispute requiring mediation, resulting in the payment of Rs.5,00,000/- by respondents to appellant in full and final settlement in an interval of five months – The only piece of evidence on the basis of which the gratuitous nature of payment is sought to be proved is an affidavit sworn by appellant, but it did not contain the signature of the appellant – Hence, plea of gratuitous payment was not established by the respondents – Suit decree.*

**Allowing the appeals, the Court**

**HELD: 1. The first suit was for recovery of a sum of Rs.5,50,000/-, which remained unrefunded, out of the amount of Rs.10,50,000/- allegedly paid by way of loan. The receipt of Rs.10,50,000/ by way of cheque dated 18.11.2003 was admitted by the respondents. Similarly the repayment of Rs.5,00,000/ by the respondents to the plaintiff appellant on 7.08.2006 is admitted by the appellant. The only defence set up by the respondents was that the payment of Rs.5,00,000/made by them on 7.08.2006 was by way of full and final settlement. To show that there was a full and final settlement, the respondents examined two third party mediators. But no receipt was taken by the respondents from the appellant that the payment of Rs.5,00,000/on 7.08.2006 was in full and final settlement. There was also no written memorandum of compromise/settlement. When payment of a certain amount of money and the repayment of only a portion of the same are admitted, the party pleading that such a part repayment was in full and final settlement, has a huge burden cast upon him to show that there was a settlement. Oral evidence of the so called third party mediators, is not sufficient to establish full and final settlement, in cases of this nature, where all transactions have happened only through banking channels and the defendants claimed that there were business transactions. It is unbelievable that the respondents, who reached such a settlement, failed to have the same recorded in black and white, either in the form of a memo or in the form of a receipt. This onus was not discharged by the respondents in the first suit and, hence, the plaintiff was entitled to succeed in the first suit. The High Court completely overlooked this aspect. [Paras 16,18][971-C-G; 972-D]**

**2. Coming to the second suit, the case of the appellant was that various amounts of money were either withdrawn from or transferred out of their accounts, by the defendants unauthorisedly and that the amounts so taken away totaled to Rs.54,50,000/. The defence of the respondents was that the amounts represented authorized payments for the purchase and sale of properties in a real estate business and that out of those amounts, a sum of Rs.30,00,000/ was treated as a payment made out of love and affection. In such a case, the respondents are obliged to produce the accounts of the real estate business and show how those amounts were accounted for. The respondents could not produce any books of account. Therefore, the respondents thought it convenient to claim that all those amounts were investments in a real estate business and that a portion of it was agreed to be treated as a gratuitous payment. Investments in business dealings and gratuitous payments do not normally go together. As in the first case, the flow of money from the account of the appellant into the respondents' account is admitted. While the appellant termed such a flow of money as unauthorized withdrawal /transfer, the respondents claimed the same to be part of investment in real estate business. In the light of such a defence, the onus, even in the second suit, was on the defence to show that there were business dealings and that the amount stood completely accounted for. No books of accounts were produced by the defence to show that the amounts that flowed out of the plaintiff's bank account were absorbed and accounted for within business. [Paras 19, 20][972-D-H; 973-A-B]**

**3. In regard to the defence of gratuitous nature of payment, the only piece of evidence on the basis of which the gratuitous nature of payment is sought to be proved is Exhibit D3, but it does not contain the signature of the appellant. Therefore, the plea of gratuitous payment is unbelievable and was not established by the respondents. Hence, the Judgment and decrees of the High Court are set aside and the Judgment and decrees of the First Appellate Court are restored. [Paras 24, 28][974-E; 975-D]**

*State of West Bengal v. B.K. Mondal & Sons* **AIR 1962 SC 779 : [1962] 1 Suppl. SCR 876 – referred to.**

**Case Law Reference**

**[1962] 1 Suppl. SCR 876 referred to Para 26**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7750-7751 of 2021.

From the Judgment and Order dated 20.03.2018 of the High Court of Punjab and Haryana at Chandigarh in RSA No.6134 of 2015 (O&M) and RSA No.130 of 2016 (O&M).

Rajiv Bhalla, Ms. Jyoti Mendiratta, Advs. for the Appellant.

Nidhesh Gupta, Sr. Adv., G. Balaji, Advs. for the Respondents.

The Judgment of the Court was delivered by

**V. RAMASUBRAMANIAN, J.**

1. Leave granted.

2. The two money suits filed by her having been dismissed by the trial Court, but decreed by the First Appellate Court and the decrees so passed by the First Appellate Court having been reversed by the High Court in two second appeals, the plaintiff-appellant is back to square one and is before us in the above appeals.

3. We have heard Shri Rajiv Bhalla, learned counsel for the appellant and Shri Nidhesh Gupta, learned senior counsel for the respondents.

4. The appellant herein filed two suits in Civil Suits No.15643 and 15592 of 2007 against the respondents herein, on the file of the Court of the Civil Judge (Junior Division), Chandigarh, for recovery of ***(i)*** a sum of Rs.10,48,000/- in the first suit; and ***(ii)*** a sum of Rs.67,31,000/- in the second suit. The averments in the first suit were as follows: ***(i)*** that the second respondent herein is the sister of the appellant's husband; ***(ii)*** that the first respondent is the husband and the third respondent herein is the son of respondent No.2; ***(iii)*** that the respondents herein (defendants in the suit) were carrying on the business of dealing in building materials under the name and style of Prem Chand Amar Chand; ***(iv)*** that the appellant and her son are having a joint account in ICICI Bank, Sector-9, Chandigarh, where the respondents also maintain an account; ***(v)*** that the respondents borrowed a sum of Rs.10,50,000/-from the appellant on 18.11.2003, by way of a cheque; ***(vi)*** that though the respondents refunded

A a sum of Rs.5,00,000/- on 7.08.2006, promising to repay the balance within six months, they failed to honour the commitment; ***(vii)*** that, therefore, the respondents were liable to pay a sum of Rs.5,50,000/- towards principal and a sum of Rs.4,98,000/- towards interest, thus, totaling to Rs.10,48,000/-.

B 5. The averments in the second suit in brief were as follows: ***(i)*** that in the year 2001-2002, respondent No.1 lured the plaintiff and her husband to join him in his real estate business: ***(ii)*** that since the appellant and her family were residing in Kurukshetra and the respondents were living in Chandigarh, the respondent No.1 got the signature of the appellant in some blank papers, on the ground that it was not possible to shuttle C every time between these two places, whenever a transaction was to be completed; ***(iii)*** that the appellant and her son were having account in the same branch of the same bank in which respondent Nos.1 and 2 were also having account; ***(iv)*** that with a view to make available necessary funds, for the use of respondent No.1 in real estate dealings, D the appellant and her son kept substantial amounts to their credit in their bank account; ***(v)*** that in March, 2006 the appellant and her husband were shocked to find that substantial amounts totaling to Rs.54,50,000/- had been withdrawn from their account on different dates by the respondents; ***(vi)*** that on her request, the bank officers produced the records, which disclosed that a cheque dated 30.12.2005 for a sum of E Rs.25,00,000/-, signed by respondent No.3 by forging the signature of the plaintiff had been encashed, apart from the withdrawal of a sum of Rs.9,50,000/- on 9.05.2005 and the transfer of another sum of Rs.20,00,000/- purportedly on the written request of the appellant on 27.8.2005; ***(vii)*** that the withdrawals/ transfer of these amounts were F not authorized by the appellant, but had been done by misusing the signatures obtained from the appellant; ***(viii)*** that after finding out these facts, the appellant lodged a complaint in FIR No.195 on 14.12.2006 against the respondents for the offences punishable under Sections 420, 467, 468 and 471 read with Section 120-B of the Indian Penal Code; ***(ix)*** that the respondents were granted anticipatory bail in the criminal case, G upon their furnishing bank guarantee for a sum of Rs.50,00,000/- and ***(x)*** that the amounts withdrawn by/transferred to the account of the defendants, together with interest @ 12% per annum worked out to Rs.67,31,000/- and ***(xi)*** that therefore they were filing the suit for recovery of the said amount.

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6. The case of the respondents in the first suit for recovery of Rs.10,48,000/- was: ***(i)*** that they never borrowed any money from the appellant; ***(ii)*** that the amount received by them under the cheque dated 18.11.2003 was for the purpose of investment in a property, which was part of the real estate business; ***(iii)*** that the payment of Rs.5,00,000/- made by them on 7.08.2006 was in full and final settlement of the claim, after a compromise was arrived at the intervention of three persons by name Satish Kumar, Prem Raj Aggarwal and O.P. Gupta; and ***(iv)*** that since there was no borrowing, the question of payment of interest does not arise and that the suit was liable to be dismissed.

7. In their written statement of the second suit, it was contended by the respondents: ***(i)*** that the appellant and the respondents started doing real estate business jointly from the year 2001-2002; ***(ii)*** that they purchased and sold many properties and shared the profits; ***(iii)*** that the respondents never got the signatures of the appellant in blank papers; ***(iv)*** that the amounts represented by the cheques dated 9.05.2005, 27.08.2005 and 30.12.2005 were towards the investment made by the appellant and her son in the real estate business; ***(v)*** that the appellant issued confirmation letters to the bank, which showed that the payments under those cheques were authorized payments; ***(vi)*** that the appellant's son actually gave an affidavit both on his behalf and on behalf of the appellant; ***(vii)*** that in the said affidavit, it was admitted by the appellant's son that out of the amounts paid under the three cheques, a sum of Rs.30,00,000/- was given, out of love and affection; ***(vii)*** that the appellant filed a false complaint, as though the respondents cheated her and withdrawn money by forging the signatures; ***(viii)*** that in view of the allegations against the bank, the appellant ought to have impleaded the bank as a party to the suit and ***(ix)*** that no money is due and payable by the respondents to the appellant.

8. Before the trial Court, the appellant examined her husband as PW-1 and examined herself as PW-2. The first respondent examined himself as DW-1 and he examined as DWs 2 and 3, the third party mediators, in the presence of whom a settlement was purportedly arrived at. The respondents marked a photocopy of the letter addressed to the Manager of the bank bearing the signature of the appellant as Exhibit D-1. They also filed the confirmation letter dated 2.01.2006 as Exhibit D-2 and the affidavit purportedly signed by the appellant's son both on his behalf and on behalf of the appellant, as Exhibit D-3.

A 9. By a judgment and decree dated 23.01.2013, the trial Court dismissed the first suit on the ground that the appellant-plaintiff failed to establish the advancement of the loan and that her failure to examine her son, who was the joint account holder, as a witness in the suit, was fatal. The trial Court also held the suit was not within the period of limitation.

B 10. By a separate Judgment and decree dated 22.07.2013, the trial Court dismissed the second suit on the ground that the parties were in real estate business and that the payment of Rs.5,00,000/- in full and final settlement on 7.08.2006, stood proved by the version of third party mediators examined as DW-2 and DW-3. The Court also held that the C appellant failed to establish fraud on the part of the respondents.

11. The district Judge, Chandigarh by two separate Judgments dated 18.03.2015, allowed the first appeals filed by the appellant in Civil Appeal Nos.903 and 1056 of 2013 and granted a decree in the first suit for recovery of Rs.5,50,000/- together with interest @ 7.5% per annum D from the due date till the date of decree and interest @ 6% per annum from the date of the decree till realization. In the second suit, the trial court granted a decree for recovery of Rs.54,50,000/- together with interest @ 7.5 % per annum till the date of the decree and @ 6% per annum from the date of the decree till realisation.

E 12. The respondents filed two second appeals in RSA Nos.6134 of 2015 and 130 of 2016. Both the second appeals were allowed by the High Court by a Judgment and decree dated 20.03.2018 resulting in the dismissal of the 2 money suits filed by the appellant. Not stopping with the mere allowing of the appeals, the High Court went a step further by F directing the appellant to refund the amount of Rs.55,00,000/- paid by the respondents, by virtue of the order passed in the anticipatory bail application, together with interest @ 7% per annum. It is against the said common judgment that the plaintiff-appellant has come up with the above appeals.

G 13. The Contention of the Shri Rajiv Bhalla, learned counsel for the appellant is that the trial Court as well as the High Court went completely on a wrong track by accepting the plea of full and final settlement set up by the respondents and that the High Court went overboard in passing an order for refund of money paid in the proceedings for grant of anticipatory bail.

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14. *Per contra,* it is contended by Mr. Nidhesh Gupta, learned senior counsel for the respondent that the failure of the appellant to implead her son as a co-plaintiff or atleast to examine him as a witness, coupled with her own admissions as PW-2, falsified her case. Once it was found that the payments to the respondents were authorized and once it was established through third party mediators that there was a settlement, the appellant-plaintiff was bound to fail and that therefore, the judgment of the High Court does not warrant any interference.

15. We have carefully considered the rival contentions and have also gone through the pleadings, evidence and the Judgments of all the three Courts.

16. As we have seen earlier, the first suit was for recovery of a sum of Rs.5,50,000/-, which remained unrefunded, out of the amount of Rs.10,50,000/- allegedly paid by way of loan. The receipt of Rs.10,50,000/- by way of cheque No.459745 dated 18.11.2003 was admitted by the respondents. Similarly the re-payment of Rs.5,00,000/- by the respondents to the plaintiff-appellant on 7.08.2006 is admitted by the appellant. The only defence set up by the respondents was that the payment of Rs.5,00,000/- made by them on 7.08.2006 was by way of full and final settlement. To show that there was a full and final settlement, the respondents examined two third party mediators. But no receipt was taken by the respondents from the appellant that the payment of Rs.5,00,000/- on 7.08.2006 was in full and final settlement. There was also no written memorandum of compromise/settlement. When payment of a certain amount of money and the repayment of only a portion of the same are admitted, the party pleading that such a part repayment was in full and final settlement, has a huge burden cast upon him to show that there was a settlement. Oral evidence of the so called third party mediators, is not sufficient to establish full and final settlement, in cases of this nature, where all transactions have happened only through banking channels and the defendants claimed that there were business transactions. It is unbelievable that the respondents, who reached such a settlement, failed to have the same recorded in black and white, either in the form of a memo or in the form of a receipt.

17. Interestingly, Exhibit D-3 filed by the respondents is an affidavit purportedly signed and verified by the appellant's son on 8.03.2006, both on his behalf and on behalf of his mother (the appellant), agreeing to treat a sum of Rs.30,00,000/- paid by the appellant, as a payment made

A out of love and affection. If, on 8.03.2006, the appellant and her son were gracious enough to treat a huge amount of Rs.30,00,000/- as one made out of love and affection, there could have been no occasion for a dispute requiring mediation at the intervention of third parties, on 7.8.2006, resulting in the payment of Rs.5,00,000/- by the respondents to the B appellant in full and final settlement. Unfortunately, all the three Courts failed to juxtapose these two events which happened in an interval of five months, to see through the game.

18. In simple terms, the case of the appellant-plaintiff in the first suit was one of lending and non-payment. The defence set up by the respondents was one of payment of a lesser amount (than the original C amount), in full and final settlement. A party who admits receipt of certain amount of money on a particular date and pleads discharge by way of a full and final settlement at a latter date, is the one on whom the onus lies. This onus was not discharged by the respondents in the first suit and, hence, the plaintiff was entitled to succeed in the first suit. The High D Court completely overlooked this aspect.

19. Coming to the second suit, the case of the appellant-plaintiff was that various amounts of money were either withdrawn from or transferred out of their accounts, by the defendants unauthorisedly and that the amounts so taken away totaled to Rs.54,50,000/-. The defence E of the respondents was that the amounts represented authorized payments for the purchase and sale of properties in a real estate business and that out of those amounts, a sum of Rs.30,00,000/- was treated as a payment made out of love and affection.

20. Let us assume for a moment that the amount of Rs.54,50,000/ F - either withdrawn or transferred from out of the account of the appellant by the respondents represented authorized payments, made by the appellant towards investment in real estate business. In such a case, the respondents are obliged to produce the accounts of the real estate business and show how those amounts were accounted for. The respondents could not produce any books of account. Therefore, the respondents G thought it convenient to claim that all those amounts were investments in a real estate business and that a portion of it was agreed to be treated as a gratuitous payment. Investments in business dealings and gratuitous payments do not normally go together. As in the first case, the flow of money from the account of the appellant-plaintiff into the respondents' H account is admitted. While the appellant-plaintiff termed such a flow of

money as unauthorized withdrawal /transfer, the respondents claimed the same to be part of investment in real estate business. In the light of such a defence, the onus, even in the second suit, was on the defence to show that there were business dealings and that the amount stood completely accounted for. No books of accounts were produced by the defence to show that the amounts that flowed out of the plaintiff's bank account were absorbed and accounted for within business.

21. Exhibit D-3 affidavit is a very curious document whose admissibility itself is questionable. It starts with a solemn affirmation reading *"We Anita Rani,.... and Sulabh Singla... do hereby solemnly affirm and declare as under*". But it is signed only by Singla. According to this affidavit, sworn on 8.03.2006, the appellant-plaintiff and her son had given Rs.30,00,000/- to the respondents out of love and affection. The affidavit goes further to say that there was no transaction between the deponents and the respondents. This affirmation allegedly made on 8.03.2006 that there was no transaction between them, stands in contrast to the claim of full and final settlement made on 7.08.2006.

22. In a suit for recovery of money, a defendant admitting the receipt of money but pleading that the same was a gratuitous payment, is obliged to prove that it was a gratuitous payment. As a matter of fact Exhibit D-3 affidavit dated 8.03.2006 does not use the expression *"gratuitous payment*", but uses the expression *"love and affection"*. But this affidavit also states that there was no transaction between the deponents and the respondents. Thus while placing reliance upon this affidavit, the defendants actually pleaded a mutually contradictory case, as reflected in paragraph 8 of the written statement which reads as follows:

> *"It is added that from the aforesaid amount, a sum of Rs. 30.00 lacs was given by the plaintiff to the defendants out of love and affection being near relations and there was no transaction between plaintiff and defendants to that effect. Suit for recovery of the amount against the defendant by the plaintiffs is not maintainable as the defendants are under no legal obligation to pay back the amount to the plaintiff. The defendants never borrowed the amount nor are under any obligation to pay back the amount to the plaintiff. Copy of the affidavit is attached herewith. Subsequently, the defendants had settled their accounts pertaining to sale purchase of*

*properties jointly as well as other properties purchased in order to run property dealer business and a sum of Rs. 5.00 lacs was paid to the plaintiff on 7.8.2006 in full and final settlement of her claim through cheque dated 7.8.2006 and the said cheque has been encashed by the plaintiff. The said compromise was got arrived at by the intervention of Shri Satish Kumar, S/o Shri Om Parkash, Prem Raj Aggarwal S/o Shri Dev Raj Aggarwal and Shri O.P. Gupta S/o Shri Raghu Nath Gupta. The plaintiff accepted the said cheque of a sum of Rs. 5.00 lacs in adjustment/settlement of all the accounts with regard to the amounts taken in satisfaction of her claim fully and finally.*

23. If as per the above pleadings and Ex. D-3, there was no transaction, but a huge amount of Rs.30,00,000/- was treated on 8.03.2006 as a gratuitous payment, there was no occasion for the settlement of any accounts on 7.08.2006 resulting in a full and final settlement of the claim.

24. If the parties have had business dealings from the year 2001-2002, it is hard to believe that a part of the amounts that flowed out of the account of the plaintiff, was out of love and affection. The only piece of evidence on the basis of which the gratuitous nature of payment is sought to be proved is Exhibit D-3, but it does not contain the signature of the appellant. Therefore, the plea of gratuitous payment is unbelievable and was not established by the respondents.

25. Once the plea of gratuitous payment falls to the ground, Section 70 of the Indian Contract Act, 1872 will come into play. Section 70 reads as follows:-

*"70. **Obligation of person enjoying benefit of non-gratuitous act.**- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."*

26. As held by this Court in the **State of *West Bengal*** *vs.* ***B.K. Mondal & Sons***[1], Section 70 is based on the premise that something was done by one party for another and that the work so done voluntarily,

[1] AIR 1962 SC 779

was accepted by the other. Therefore, as a corollary, the plea that there was a subsisting contract in the nature of business transactions, is antithetic to the very essence of section 70. This is why section 70 forms part of Chapter V of the Indian Contract Act, which is titled as "Of certain relations resembling those created by contract". A

27. As pointed out earlier, the respondents have admitted that the moneys as claimed by the appellant-plaintiff were either paid by the plaintiff or flown out of the plaintiff's account into their own account. Therefore, the onus was actually on the respondents to prove either a discharge by way of settlement of accounts or the gratuitous nature of the payment. The respondents miserably failed to discharge the onus of proof so cast upon them. Hence, the plaintiff-appellant is entitled to a decree despite a few discrepancies in her evidence, especially when the discrepancies have no bearing upon the payment/flow of monies from the plaintiff to the defendants. B C

28. In view of the above, the appeals are allowed. The Judgment and decrees of the High Court are set aside and the Judgment and decrees of the First Appellate Court are restored. In other words, there will be a decree in both the suits, as per the Judgment of the District Court, Chandigarh dated 18.03.2015 in Civil Appeal Nos.903 and 1056 of 2013. The appellant will be entitled to costs in these appeals which we quantify at Rs.50,000/-. The amount deposited by the appellant pursuant to the Order passed by this Court on 18.05.2018 and deposited in an interest bearing fixed deposit pursuant to the Order passed by this Court on 14.12.2018 shall be released by the Registry to the appellant together with the accrued interest. D E

Devika Gujral Appeals allowed.