IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No. 2582 of 2010 (O&M)

DATE OF DECISION : February 06, 2015

Bohar Singh

.......APPELLANT(S)

VERSUS

M/s Manjit Singh and Company

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. RK Kakkar, Advocate, for the appellant.

...

1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO
2. To be referred to the Reporter or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

...

ARUN PALLI, J. (Oral)

Suit filed by the plaintiff was decreed by the trial Court vide judgment and decree dated 17.11.2006. Appeal preferred against the said decree failed and was, accordingly, dismissed by the Ist Appellate Court, on 01.06.2009. This is how, defendant is before this Court in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, plaintiff prayed for a decree for recovery of ₹1,85,000/- i.e. ₹1,35,000/- towards principal amount and ₹50,000/- by way of interest, on the basis of Bahi entries. It was averred that plaintiff-firm i.e. M/s Manjit Singh and Company, was a sole proprietorship concern and Manjit Singh son of Ajaib Singh happened to be its sole proprietor. Plaintiff-firm was engaged in a business of a Commission Agent at Makhu, Tehsil Zira. Plaintiff maintained its account books, signature book, Rokar Bahi and Khata Bahi in the regular course of business. Plaintiff-firm was assessable to Income Tax and Sales Tax. Defendant, who happened to be an agriculturist, was a customer of the plaintiff-firm. He would sell his agricultural produce through the plaintiff-firm and would also obtain advance from the firm, that would be adjusted against the sale proceeds of his produce. Defendant borrowed ₹20,000/- on 24.01.1997, ₹20,000/- on 28.01.1997, ₹20,000/- on 31.01.1997, ₹20,000/- on 05.02.1997, ₹20,000/- on 08.02.1997, ₹15,000/- on 13.02.1997 and ₹20,000/- on 18.02.1997 from the plaintiff-firm. All the entries in this regard were duly entered in the signature book of the firm and the defendant had signed against each of those entries, when he received the amount. In all, plaintiff had advanced a sum of ₹1,35,000/- to the defendant on the assurance that he would get this amount adjusted against the sale proceeds of his agricultural produce in Rabi 1997. As defendant did not sell his produce through the plaintiff-firm in Rabi 1997 and never even returned thereafter to repay the amount he had obtained, thus, the suit.

In defence, it was pleaded, inter alia, that plaintiff maintained a double set of Bahi accounts. Defendant admitted that he used to sell his agricultural produce through the plaintiff-firm and at the time of payment of sale price of the produce sold, plaintiff would obtain his signatures in his books as acknowledgment or receipt. Thus, it might be possible that the plaintiff forged the entries in his account books and entered a huge amount against the name of the defendant. It was denied that the defendant ever took any advance from the plaintiff. Therefore, the entries in this regard were forged and fabricated.

On an analysis of the matter in issue and the evidence on record, the courts below found that the witnesses examined by the plaintiff i.e. PW-1 Manjit Singh and PW-2 Vipin Kumar, duly proved the entries in the account books i.e. Exhibits P1 to P18. The original books of accounts were produced by the said two witnesses and the relevant entries were proved as required in law. From the testimony of the said witnesses, it was duly proved that the plaintiff-firm had, indeed, maintained its books of account in due and ordinary course of business. Against each of those entries, signatures of the defendant were duly obtained. On the contrary, the credibility of the defendant was completely impaired as he even denied his signatures that were obtained on the order sheet of the Court on 05.04.2000 in the present case. Though, in the written statement, defendant admitted his signatures in the account books maintained by the plaintiff, but had set up a plea that plaintiff would obtain his signatures in acknowledgment of receipt of payment of sale proceeds of his agricultural produce and, in the process, there was a possibility that he might have forged his account books. However, by relying upon the report of the expert (DW1), it was sought to be proved that his signatures in the account books were a result of traced forgery. Though, defendant (DW2), while appearing as a witness, again, deposed in line with his stand in the written statement. Defendant failed to prove that he, indeed, never borrowed any amount from the plaintiff and the entries in the books of accounts were forged and fabricated. And, once he admitted his signatures in the account book, report of the expert lost any significance. Resultantly, both the courts below concurrently arrived at a conclusion that preponderance of probabilities lies in favour of the plaintiff. And, on the contrary, credibility and reliability of the defendant was materially shaken.

Resultantly, the suit filed by the plaintiff was decreed and thereafter, even an appeal preferred against the said decree failed.

I have heard the learned counsel for the appellant and perused the R.S.A. paper book.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument has been advanced.

Ex-facie, plaintiff (PW1) and Vipin Kumar (PW2), Accountant/Munim of the plaintiff-firm, duly proved the entries in the account books (Exhibits P1 to P18). Vipin Kumar (PW2) proved the copies of khata bahi of the account of the defendant Exhibit P1 to Exhibit P11. He also proved the copies of rokar bahi Exhibit P12 to Exhibit P18. Though, he admitted that there was no entry in signature book on 06.02.1997, but there was entry of ₹1,000/- in rokar bahi dated 06.02.1997. He further deposed that from 24.01.1997 to 18.02.1997, there were eleven entries vide which the amount was advanced to customers, out of which seven entries belonged to the defendant. Books of account, in original, were produced and, on an analysis thereof, it was concurrently concluded by the courts below that they were being maintained in due and regular course of business. Against each of those entries, signatures of the defendant were obtained. As observed by the courts below, though the defendant admitted his signatures in the account books, but sought to plead that those were obtained in acknowledgment of receipt of payment of sale proceeds of his agricultural produce and, thus, those entries were forged and fabricated. That being so, onus lay upon the defendant to make good his defence, but no evidence in this regard was brought on record. So much so, defendant even denied his signatures that were obtained on the order sheet on 05.04.2000 in the present proceedings, and were taken as standard signature i.e. S-12, by the expert. That being so, it was rightly concluded by both the courts below that credibility and reliability of the defendant was completely impaired.

Learned counsel for the appellant could not point out or show as to how the findings recorded by both the Courts below were perverse or contrary to the position on record. That being so, no ground, least plausible in law, exists to interfere with the decrees being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is, accordingly, dismissed.

FEBRUARY 06, 2015 (ARUN PALLI)
Kang JUDGE