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

**RSA No.2797 of 2011 (O&M)**
**Date of Decision: 14.10.2015.**

Surat Singh ........Appellant

VERSUS

M/S Kashmiri Lal Parvinder Kumar ....Respondent.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

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**Present:** Ms. Sandeepta, Advocate for the appellant.

Mr. A.S. Sullar, Advocate for the respondent.

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**SNEH PRASHAR, J.**

**1.** By way of this regular second appeal, appellant-Surat Singh assailed the judgment and decree dated 23.10.2009 passed by learned Civil Judge (Junior Division) Dabwali, which was affirmed vide judgment and decree dated 17.03.2011 by District Judge, Sirsa.

2. The facts that emerge from the record are as under:

Respondent-plaintiff firm (hereinafter referred to as plaintiff firm) claiming to be a proprietorship concern running a business of commission agency filed a suit against the appellant for recovery of an amount of Rs.2,12,040/- alongwith interest alleging that the appellant-defendant(hereinafter referred to as the defendant) had promised to sell his agricultural produce through the plaintiff firm and in lieu thereof, a running account was opened in his name. Defendant borrowed money and deposited the same on different dates as shown in Annexures A and B [copies of cash book (Rokar) account books (Khata Bahi)] maintained by the plaintiff firm in regular course of business. As per the account books, a sum of Rs.1,41, 550/- was due towards the defendant as a principal amount. He deposited different amounts on various dates between 2001 to January 2004. The last deposit of Rs. 10,000/- was made on 24.01.2004 and adjusting the said amount Rs.1,06,140/- remained due towards him as principal and he had agreed to pay interest @ 24% per annum on the amount due against him. Accordingly, the suit for recovery was filed.

3. The defendant contested the suit and in his written statement, he raised various factual and legal preliminary objections including that the suit of the plaintiff was hopelessly time barred as the entries in the account books pertained to the year 2001. Replying on merits, he admitted that he was having account with the plaintiff firm but alleged that the entries in the account books of the plaintiff firm were false and he had cleared the account on 03.12.2001. The entries of deposits shown by the plaintiff firm thereafter, had been made with a malafide intention to bring the suit within the limitation. He also deposed that he had never agreed to pay interest as claimed by the plaintiff firm.

4. The suit of the plaintiff firm was decreed by learned Civil Judge (Jr. Division) vide judgment and decree dated 23.10.2009. A decree for recovery of an amount of Rs.1, 06, 140/- with interest @ 9% per annum from the date of last entry i.e. 30.10.2001 till the date of filing of the suit and @ 6% per annum from the date of filing of the suit till its realization was passed against the defendant. The first appeal preferred by the defendant was dismissed by learned District Judge, Sirsa vide judgment and decree dated 17.03.2011.

5. Feeling aggrieved by the judgment and decree dated

17.03.2011 passed by learned District Judge, Sirsa, the defendant preferred the instant appeal.

6. Submissions made by Ms. Sandeepta, learned counsel representing the appellant and Mr. A.S. Sullar, learned counsel representing the respondent have been heard and the record has been perused.

**7.** At the very outset, learned counsel for the appellant argued that suit of the plaintiff firm was barred by limitation as according to the account book of the plaintiff firm Ex.P-31, the last amount was borrowed by the defendant on 03.10.2001 and the suit was filed on 25.02.2005 i.e. much after the expiry of the limitation period of three years provided for recovery an amount. Learned trial Court as well as learned appellate Court had wrongly concluded that the defendant was having a continuous open and running account with the plaintiff firm. For an account to be open mutual and current account between the parties, there had to be reciprocal obligations and it should not be a case of one way traffic i.e all claims being on one side and all obligations on the other as would be the case where one party is the lender and the other is borrower. In such a case, one is always a creditor and the other a debtor, the amount of indebtedness varying from time to time. Since the account between the parties was not mutual, open and current within the meaning of Article I of the Schedule to the Limitation Act, 1963 the limitation period would not start from the last payment made by the defendant. To support his argument learned counsel relied upon the Judgment dated 12.11.2010 passed in case titled ***Jawala Singh and others vs. M/s Kashmiri Lal Paryinder Kumar*** VOL.CLXII-(2011-2), The Punjab Law Reporter 224.

Learned counsel further urged that after 2001, the defendant had never visited the shop of the plaintiff firm. None of the entries of deposits shown in the account books in 2002, 2003 and 2004 bear the signatures of the defendant. The said entries have been falsely created to bring the suit within the period of limitation whereas the limitation period of three years as provided under Article I of the Schedule to the Limitation Act, 1963 commenced from the last date of advancement of loan i.e. 03.10.2001. In view of said facts the suit filed on 25.02.2005 is apparently barred by limitation.

8. Indeed, the only substantial question of law that requires determination in this appeal is :

1. Whether the suit is barred by limitation and the Courts below were in error of law in decreeing the suit?

The facts in hand are distinguishable from the facts of **Jawala Singh's case (supra)**. It is not a case where the defendant denied having opened an account with the plaintiff firm and also denied having borrowed or deposited any amount as alleged by the plaintiff firm. In his written statement the defendant admitted that the plaintiff firm is engaged in doing commission agency business at Mandi Dabwali and that he was having an account with the plaintiff firm. Though he alleged that the *Rokar* and *Khata* produced by the plaintiff firm alongwith the suit are false and fabricated but at the same time he pleaded that he had cleared the account with the plaintiff firm on 03.12.2001 and thereafter, he never borrowed or deposited any amount with the plaintiff firm. No ocular or documentary evidence was produced by the defendant to prove that he had cleared the account as stated by him.

From the admission of the defendant himself, it is clear that he was having an open and running account with the plaintiff firm. When he stepped into the witness box, he admitted in his cross-examination that he used to come to the plaintiff firm for *Aadat* (i.e for sale of crops). He admitted his signatures on the entries in the account books Ex. P-35, Ex. P-39 and Ex. P-43 which indicated that he had taken money from the plaintiff firm. The entry Ex. P-39 also indicates that he had purchased seeds on credit. The signatures of the defendant on all the entries Ex. P-35 to Ex. P-71 on which the plaintiff firm relied upon for proving his claim which include Ex P-35, Ex. P-39 and Ex P-43, were proved by PW2-Anil Kumar Gupta, Hand Writing and Finger Print Expert. Some of the other entries e.g. Ex P-36, Ex. P-38, Ex. P-40 and Ex. P-44 etc. prove that money was taken for purchase of oil, seeds, manure, urea(Khad), spray etc. In such circumstances although the sale of crops through the plaintiff firm and advancement of money/financing were independent transactions but the two liabilities were mutual. Therefore it was rightly held by learned trial Court as well as learned first appellate Court that the defendant was having a running mutual account with the plaintiff firm.

9. In that regard the findings of the First appellate Court are as under:

> *The learned counsel for the defendant laid much stress that account between the parties was not open, mutual and continuous and therefore, the suit was barred by Limitation. To support this plea, the learned counsel relied upon observations made in* ***Puttu Lal's and Mansa Ram's cases (Supra)****. Legal position as enunciated in these judicial reports is not in dispute but the same does not advance the defence of the defendant any further. Accounts between the plaintiff and the defendant were mutual and*

*documents referred to above leave no doubt in this matter. Ex. P-32 to Ex. P-43 are extracts from cash book maintained by the plaintiff firm and signatures of defendant Surat Singh are available on different entries. As per entry Ex. P-32 of account book of the plaintiff for the year 2002-03, a sucm of Rs.1,31,140/- was shown outstanding against the defendant. As per entry Ex.P-33 of the said account book for the year 2003-04, a sum of Rs.116140/- was shown outstanding against the defendant and as per entry Ex.P-34 for the year 2003-04 of the account book of the plaintiff, a sum of Rs.106140/- was shown outstanding against the defendant. Vide entry Ex. P-35 of the cash book of the plaintiff, a sum of Rs.96500/- was shown outstanding against the defendant. Vide entry Ex.P-36, Ex.P-37, Ex.P-38, Ex.P-39, Ex.P-40, Ex.P-41, Ex.P-42 and Ex.-43, the defendant borrowed Rs.350/-, Rs.500/-, Rs. 1940, Rs.1700/-, Rs. 4700/-, Rs.1000/-, Rs.2000/- and Rs. 2100/- respectively on the dates mentioned therein. As stated above also, the defendant has admitted his signatures on entries on Ex.P-35, Ex. P-39 and Ex. P-43. Such being the position, I have no hesitation in holding that there was running mutual account between the parties and the account was never settled and closed as claimed by the defendant.*

10. It was held by this Court in ***State Bank of India V. M/s Kashmir Arts Printing Press, AIR 1981 Punjab 188*** that for cash/credit account as per Article I of the Limitation Act, the limitation is three years which starts from the close of the year, in which the last item admitted or proved is entered in account. Meaning thereby, the year in which the last entry is made is excluded from computing the limitation, and thereafter, i.e. from following January the limitation of three years would start.

11. In the present case, the last entry proved by the plaintiff firm is

dated 24.01.2004 i.e, the date on which the defendant deposited Rs.10,000/- towards the outstanding amount. As such the suit filed on 25.02.2005 i.e. in the following year is clearly within the limitation period. Otherwise also, even if the plea of the defendant that he did not deposit Rs.10,000/- with the plaintiff on 24.01.2004 is admitted, the suit was still within limitation period because last amount was borrowed by the defendant on 30.10.2001 and according to the Article I of the limitation Act, cause of action is deemed to be have arisen on the close of the year in which last item admitted or proved is entered in the account books. Therefore, cause of action in the present suit would be deemed to have accrued on 31.03.2002. The suit having been filed on 25.02.2005 was thus well within limitation and in this context, reference can be made to proposition of law laid down in ***Lehri Singh Vs. M/s Sawan Traders(India) 2009(4) R.C.R.(Civil)379***.

Thus, the substantial question of law is answered accordingly and the appeal being devoid of merit is hereby dismissed.

**(SNEH PRASHAR)**
**JUDGE**

**14.10.2015**
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