IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.3058 of 2012 (O&M)
Date of Decision: August 17, 2015

M/s Satnam Agro Industries, Mandi Guruhar Sahai, District Ferozepur

...Appellant

Versus

M/s Jammu Commission Agents, Mandi Guruhar Sahai, District Ferozepur

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.P.P.S.Duggall, Advocate,
for the appellant.

Mr.R.S.Sekhon, Advocate,
for the respondent.

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AMIT RAWAL, J. (Oral)

The challenge in the present Regular Second Appeal is to the judgments and decrees of both the Courts below, whereby the suit for recovery of ₹2,16,817/- along with interest at the rate of 12% per annum from 29.10.2003 till realisation of entire decretal amount has been decreed.

Mr.P.P.S.Duggall, learned counsel appearing on behalf of the appellant-defendant submits that the plaintiff, for claiming the recovery of the amount, has to stand on his own legs and prove the documents and in support, relied upon the provisions of Section 34 of the Indian Evidence Act to contend that though the books of account maintained in regular course of business are inadmissible in evidence, but they have to be proved. Further submits that both the Courts below have not taken into consideration the entries with regard to the payments made by way of cash and, therefore, there is misreading of evidence and, thus, the present appeal involves the substantial questions of law, to be determined by this Court.

Mr.R.S.Sekhon, learned counsel appearing on behalf of the plaintiff-respondent submits that the appellant-defendant had been making the payments qua the purchase of the paddy through cheques and even the payment made by cheque on 16.10.2006 had been admitted in the replication. The cash transactions, on which the appellant-defendant is relying upon, are only of a particular period, whereas the payments were also made through cheques. The appellant-defendant has failed to prove the payment of the aforementioned amount by way of cheques and, therefore, the concurrent finding of fact rendered by both the Courts below cannot be interfered with as per Section 100 of the Code of Civil Procedure as no substantial question of law arises to be determined by this Court.

I have heard the learned counsel for the parties and appraised the paper book.

It is well settled that the Commission Agents, who make the payments, always obtain the receipts. Section 34 of the Indian Evidence Act leaves no manner of doubt that the books of accounts are maintained in the course of regular business. The plaintiff-respondent, however, has proved on record the Bahi Khatas. The factum of closure of the business in 2003 has been admitted by the appellant-defendant. It is because of closing of the business, the appellant-defendant has taken the advantage and coined the story of making payment of the outstanding amount by way of cash. However, there is no proof of the same as no receipt of making payment has been proved on record. Even the account statement produced by the appellant-defendant has nullified the defence as it does not bear the signature of any authorised person, much less of the plaintiff. The alleged payment of amount had been through cheques and even the last payment was also through cheque. The story of payments by cash during the interregnum has not been believed by the Courts below as no documentary evidence in that regard has been placed on record and, thus, the stand taken by the appellant-defendant in the written statement has been duly proved. Both the Courts below have rendered a finding of fact, which is based on appreciation of oral and documentary evidence and,thus, the appeal does not involve any substantial question of law. There is no illegality and perversity in the findings rendered by both the Courts below.

The appeal is accordingly dismissed.

August 17, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**