IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 1774 of 2013 (O&M)
Date of decision:- 07.04.2015

Gurnam Singh ...Appellants

Versus

M/s Pyare Lal Paramjit Singh and anr. ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sham Lal Bhalla, Advocate
for the appellant

RITU BAHRI J.

This regular second appeal is directed against the judgment dated 13.12.2012 passed by learned Addl. District Judge, Fatehgarh Sahib, whereby the judgment and decree dated 23.09.2010 passed by learned PCS, Addl. Civil Judge (Sr. Divn.), Fategarh Sahib dismissing the suit of the plaintiff-appellant (for short 'the appellant'), was upheld and the appeal filed by the appellant was dismissed.

Brief facts of the case are that the appellant filed a suit seeking recovery of Rs.67,162/- along with interest. The appellant was an agriculturist and defendant-respondent No. 1 (for short 'respondent No. 1') is commission agent and respondent No. 2 is sole proprietor. The appellant used to sell his agriculture produces at shop of respondent and similarly has sold paddy on various dates i.e 49Q-3 on 07.10.2010 and 72Q-75 on 08.10.2010. The total amount of sold paddy comes to the tune of Rs.65,200.62 Paise. After purchase of paddy, respondents issued bills to the appellant as token of receipt of amount of paddy and appellant requested the respondents many times to make the payment. When the amount was not paid, a legal notice dated 22.11.2000 was served upon the respondents through his counsel but they failed to make the payment.

On notice, respondents appeared and filed written statement admitting the fact that appellant was an agriculturist and respondents were commission agents. It was admitted that the appellant used to sell agricultural produce at their shop from the last 10 to 12 years. Respondents pleaded that appellant used to take advances from the respondents, which were adjusted with the sale price of crop and interest was also charged @2% per month from the amount due, which are adjusted in the crop season. Respondents further pleaded the fact that on 19.05.1993, the amount of appellant became nil, as total amount was adjusted in the price of sold crop. Thereafter, appellant again started taking certain amount from respondents firm and bringing up his crop. As per account books, after adjusting Rs.65206/- yet a sum of Rs.62,800/- inclusive of interest up to 03.09.2001 is due and recoverable from the appellant along with future interest as per entries in the account books of respondents. The respondents admitted issuance of bills and brought counter claim on these grounds.

In the counter claim filed by the respondents, it has been stated that on 19.04.2001, Rs.3670 was due against the appellant on account of the amount taken by him for 'Hari' Crop and after sale of 'Hari' crop and after adjusting the price, the said amount remained due. It was stated that the respondents are entitled to recovery of Rs.62,800/- by way of counter claim.

The appellant filed replication to the written statement of the respondents wherein averments of the plaint were reiterated and the contents of the written statement were denied. It has further been denied that an amount of Rs.51,560/- along with interest of Rs.11,240/- is recoverable from him.

From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to recovery of Rs.65,206.62 paise on account of the sale of the paddy? OPP
2. If so, whether the plaintiff is entitled to interest if so at what rate? OPP
3. Whether a sum of Rs.3670/- was due towards plaintiff on 19.04.2000? OPP
4. Whether the plaintiff on 03.05.2000 took a sum of Rs.1 lac from the defendant ? OPD
5. Whether the plaintiff on 27.07.2000 took a sum of Rs.1500/- from the defendant ? OPD

6. Whether the plaintiff on 31.07.2000 took a sum of Rs.5500/- from the defendant ? OPD
7. Whether the plaintiff on 28.08.2000 took a sum of Rs.10,000/- from the defendant ? OPD
8. Whether the plaintiff on 05.09.2000 took a sum of Rs.2500/- from the defendant ? OPD
9. Whether the plaintiff on 05.10.2000 took a sum of Rs.1000/- from the defendant ? OPD
10. Whether the plaintiff on 15.10.2000 took a sum of Rs.10,000/- from the defendant ? OPD
11. Whether the plaintiff out of the above said amount repaid Rs.20,000/- on 26.06.2000 and Rs.2500/- on 13.10.2000? OPD
12. Whether sum of Rs.26,274.32 paise, Rs.38,930.30 paise which was the price of the crop sold by the plaintiff at the shop of the defendant on 07.10.2000 and 08.10.2000 was adjusted towards the amount recoverable from plaintiff?OPD
13. Whether the defendant is entitled to recover Rs.62,800/- as claimed in the counter claim from the plaintiff? OPD
14. Whether the defendant is entitled to interest if so at what rate? OPD
15. Relief."

The trial Court after going through the entire evidence led by the parties held that the appellant and respondents had financial dealings with each other since the last many years. Ex D1 of the year 1993 supports this fact when the account of the appellant was drawn to nil after adjustment. The appellant is taking advances from the respondent, as per Ex D3 to D9, which pertain to 3.05.2000 to 15.10.2000. The payment made by the appellant have also been shown by the respondents in their account books Ex D10 to D13. These entries were not signed by the appellant and respondents examined two of his customers i.e DW3 and Dw4, who stated that they did not sign when advances were taken by them from the respondents-firm. These witnesses have proved the entries in the account books regard their payment Ex D15/A, Ex D16 and D17.

The appellant had examined Karnail Singh and Darshan Singh. Karnail Singh in his cross examination had stated that he has been selling his crops at the shop of the respondent for the last 6-7 years. He had also been borrowing amounts from the respondents firm which used to be adjusted in the crops sold by him. He has stated that he used to sign the book, he did not have any such document to show that he had appended his signatures. He admitted the entries made by the respondents in their account books regarding the amount taken by him on 06.11.1999, 12.11.1999, 8.5.2000, 15.5.2000 and on 24.05.2000. Paramjit Singh used to maintain the account books of the respondent-firm and when he borrowed the money, Paramjit Singh used to make entry in the account books. However, no evidence was led by the appellant to rebut the documents Ex D-3 to D-14, which pertains to entry in the note books. These entries were corroborated by the income tax return for the said year Ex D19, which was proved by D.W.5 i.e official from the Income Tax Department, who identified the sale and stamp of the department. As per

Paramjit Verma DW6 return along with document was deposited by Vijay Kumar with the office of Income Tax Department. In the list of sundry debtors, the amount due from the appellant is reflected as Rs.51,560/- principal amount. The record also shows that in the balance sheet, amount of Rs.9,04,200/- is shown the total list of sundry debtors consisting of 61 persons. These figures also corroborated from the account books of the respondent firm shown in Ex D18.

The trial Court dismissed the suit of the appellant and the counter claim filed by the defendants was decreed with costs for recovery of Rs.62,800/- along with interest @8% pendente-lite interest from the filing of the suit till the date of the decree. Defendant was also entitled to recover 6% per annum future interest from the date of decree till actual realization.

On appeal, the learned lower Appellate Court has dismissed the appeal filed by the appellant and held that the amount of the appellant has already been adjusted, whereas amount of counter claimant is due, which has been reflected in the Income Tax Returns, which are per se admissible, as per Section 74 of the Evidence Act and Section 65(e) of the Income Tax Act. The income tax returns are public document and those can never be fabricated nor can be disbelieved.

The counter claimant proved their stand on the basis of oral and documentary evidence.

The judgment dated 13.12.2012 passed by learned Addl. District Judge, Fateh Garh Sahib and the judgment and decree dated 23.09.2010 passed by learned PCS, Addl. Civil Judge (Sr. Divn.), Fategarh Sahib does not suffer from any misreading of facts. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

07.04.2015 (RITU BAHRI)
G Arora JUDGE