IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4182 of 2013 (O&M)

Date of decision : 12.5.2015

Roshan Khan @ Roshan Singh ... Appellant

vs

Bhagwant Singh ... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Nand Lal Sammi, Advocate, for the appellant.
Ms. Anju Arora and Ms. Sonia Sharma, Advocates, for the respondent.

Rajesh Bindal, J.

Plaintiff is before this Court impugning the judgment and decree of the learned Lower Appellate Court whereby that of the trial Court was reversed resulting in dismissal of the suit for recovery filed by him.

Learned counsel for the appellant submitted that the appellant/ plaintiff filed a suit for recovery of ₹ 2,66,546/-, claiming that the respondent/defendant had raised a loan from him for running business of his sons as well as for domestic purpose for which pronote was executed. The trial court decreed the suit. However, the learned Lower Appellate Court wrongly set aside the judgment and decree of the trial court holding that the appellant not having licence under Section 3 of the Punjab Registration of Money Lenders Act, 1938 (for short, 'the Act'), could not advance loan and he was not entitled to recover the same. The submission is that this is not the pleaded case of the respondent/ defendant and in the absence thereof, such a plea could not be considered by the Court.

On the other hand, learned counsel for the respondent/ defendant submitted that once there is a legal requirement to obtain a licence under the Act, in the absence thereof, the appellant could not file a suit for recovery of loan allegedly advanced by him. Ample evidence was produced on record to show that it was not an isolated transaction of advancement of loan to the defendant, rather the appellant was in this business and had been advancing loans to various parties. The parties herein had contested the case fully knowing the issues being raised, the evidence being already on record, the learned Lower Appellate Court had not committed any error in accepting the appeal filed by the respondent/ defendant and dismissing the suit filed by the appellant/plaintiff, once he had failed to produce the money lenders licence under the Act.

After hearing learned counsel for the parties, I do not find any reason to interfere with the judgment and decree of the learned Lower Appellate Court while accepting the appeal and dismissing the suit filed by the appellant/plaintiff.

The learned Lower Appellate Court on the basis of evidence on record in the form of witnesses produced by the appellant/ plaintiff himself held that the appellant was a money lender and he had failed to produce the licence under the Act and in the absence thereof, the suit was found not to be maintainable. Even though a contention is sought to be raised that this plea not was raised in the written statement, however, the fact remains that the learned Lower Appellate Court found this as a fact on the basis of evidence produced on record. Even before this Court, the appellant has not produced on record any licence issued to him under the Act. In the absence thereof, the appellant did not have any right to file a suit. The fact that the appellant is a money lender was duly established on record even from the evidence led by the appellant.

In view of my aforesaid discussion, I do not find that any error has been committed by the learned Lower Appellate Court in accepting the appeal filed by the respondent/ defendant and dismissing the suit filed by the appellant/ plaintiff. No question of law much less a substantial arises in the appeal. Accordingly, the appeal is dismissed.

12.5.2015 (Rajesh Bindal)
vs Judge