IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No. 1210 of 2015 (O&M)
Date of Decision:- 21.04.2015

Baldev Singh

.....Appellant

Versus

Sukhdev Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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

Present: Mr. Amaninder Preet, Advocate for the appellant.

****

SHEKHER DHAWAN, J.

Present Regular Second Appeal against the judgment and decree dated 12.12.2014, passed by District Judge, Moga, whereby appeal against the judgment and decree dated 28.02.2013, passed by Addl. Civil Judge (Sr. Divn.), Moga was dismissed.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance.

3. The detailed facts of the case have already been given in the judgments of the Courts below and for ready reference the relevant facts

for the purpose of decision of present regular second appeal are that the plaintiffs had filed suit for recovery of ₹4,96,800/- on the ground that plaintiff No.1, who was running the business of commission agent and plaintiff No.2 is its sole proprietor. Defendant had business dealings with plaintiff Sukdhev Singh, as he used to sell crops through the agency of plaintiffs. Defendants had borrowed a sum of ₹3,00,000/- from the plaintiff on 31.05.2005 and executed the *bahi* writing in favour of the plaintiffs, which was duly signed. Subsequently, he borrowed a sum of ₹4,000/- on 03.10.2005 and another sum of ₹2000/- on 12.10.2005 and executed *bahi* writing in favour of the plaintiffs, which was duly signed by the defendant. There was oral agreement to pay interest @ 1.50% per month and that was the custom prevailing in the market in the same area. The advanced amount was duly entered in the account books and the account books were being maintained in the ordinary course of business and the balance struck off daily. The plaintiffs firm is income tax and sale tax assessee.

4. The defendant contested the suit thereby taking the plea that no amount was taken on loan, as alleged nor he has signed any *bahi* entry at any point of time. There was no agreement with regard to the payment of interest and prayed that suit be dismissed. On these facts the Court of first instance settled the following issues: -

1. Whether the plaintiffs are entitled for the recovery of ₹4,96,800 along with interest and costs? OPP
2. Whether the suit of the plaintiff is not maintainable? OPD

5. The Courts below after appreciation of oral as well as documentary evidence, recorded the findings that the plaintiffs have been able to prove that the defendant had taken loan amount, which was to be repaid but the same has not been repaid and as such plaintiffs entitled to recover a sum of ₹3,06,000/- along with interest @ 9% from the date of borrowing till the date of filing of the suit and interest @ 6% as future interest.

6. Mr. Amaninder Preet, Advocate, learned counsel for the appellant took the plea that both the Courts below have not appreciated the evidence correctly. The income tax record was not requisitioned and same was not produced. The signatures were on credit entry only and the same signatures were denied by the defendant. Onus was upon defendant for proving the signature by examining handwriting expert and that has not been done. Rajwinder Singh, while appearing as PW1 in his cross-examination deposed that there was contradiction in *bahi* entries but still the Courts below relied upon on *bahi* entries.

7. Learned counsel for the appellant placed reliance upon judgment of Co-ordinate Bench of this Court in case **M/s Ganesh Mal Nanak Chand** Vs. **Chhinder Kaur and others**, **2014 (3) PLR 476** that as per Section 34 of The Evidence Act, 1872, entries in account books regularly kept in course of business are by themselves not sufficient to charge any person with liability, unless it qualifies to be 'bond' or a 'negotiable instrument'. As such account book cannot form the sole basis of action of recovery without obtaining any corroboration. On the same

point reliance placed upon judgment from another co-ordinate Bench in cases **<u>Narsi Dass</u>** Vs. **<u>Surender</u>, 2015(1) R.C.R. (Civil) 108** and **<u>Ram Singh</u>** Vs. **<u>Rajiv Kumar and Company</u>** in **R.S.A. No. 4185 of 2011, decided on 30.05.2012**.

8. I have duly considered the facts of this case as well as grounds of appeal and the arguments addressed by learned counsel for the appellant and gone through the judgment from co-ordinate Benches of this Court. This Court is of the considered view that in the present case both the Courts below have duly appreciated oral as well as documentary evidence and rightly recorded the findings that account books entries in the account i.e. Ex.P1, Ex.P2 and Ex.P3 were duly signed by the defendant in the presence of Rajwinder Singh, Accountant as well as subscriber of the *bahi*. The said entries were duly reflected in the *khata* on record as Ex.P4. The defendant has denied the fact of loan or any liability on account of interest amount. The present case is not merely based on entries in the *bahi* but those entries were duly proved on record by Rajwinder Singh, who had scribed the entries and corroborated the version of plaintiff. So, there is sufficient corroboration to the entries in the account books. Another plea that plaintiffs have failed to prove the income tax returns to show the advancement of the amount to defendant. But the defendant had never raised such plea that record of income tax be got summoned and proved.

9. As such, the findings were correctly recorded by Court of first instance and duly affirmed by the Court of first appeal. The regular

second appeal is not maintainable, as the finding of facts have been recorded and duly appreciated by the Courts below. There is no substantial question of law involved in this appeal calling for interference by way of present regular second appeal. Resultantly, the present regular second appeal is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

April 21, 2015
naresh.k