

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

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CM No.9152-C of 2015 and
Regular Second Appeal No.3733 of 2015

Date of Decision: August 10, 2015

Malkit Singh son of Gian Chand resident of village Akbarpur, Tehsil
Bholath, District Kapurthala

...Appellant

Versus

Surjit Singh son of Kaka Singh resident of village Jalalpur, Tehsil Dasuya,
District Hoshiarpur

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sandeep K. Sharma, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J.

This appeal has been preferred challenging the judgment and decree dated 08.11.2011 passed by the Additional Civil Judge (Senior Division), Dasuya, whereby the suit for recovery of ₹3,20,000/- along with interest at the rate of 6% per annum from the date of filing of the suit till the final realisation, has been decreed, which has been affirmed by the Additional District Judge, Hoshiarpur, in Civil Appeal No.71 of 07.12.2011 vide decision dated 25.02.2015.

2. Briefly the facts of the case are that the respondent-plaintiff filed a suit for recovery of ₹3,20,000/- on the basis of the entries in bahi dated 19.10.2001 for ₹2,20,000/- and 13.05.2002 for ₹1,00,000/- along with interest at the rate of 12% per annum. Respondent-plaintiff is a commission agent at Grain Market and the appellant-defendant is his customer-

agriculturist. The appellant had been obtaining money in advance from the respondent-plaintiff in the course of business and accordingly obtained an amount of ₹3,20,000/- as loan, for which entries were made in his bahi khata. The appellant-defendant had put his signatures on the bahi as acknowledgment of having received the amount from the respondent-plaintiff. When the said amount was not paid, the suit has been filed for recovery.

3. The stand of the appellant-defendant was that he used to sell crops to the respondent-plaintiff till October, 2002 and thereafter stopped selling the produce to him. He did not need the money as his son was settled abroad and, therefore, no question of taking any loan arises. The bahi entries dated 19.10.2001 and 13.05.2002 were forged, fabricated and manipulated and he denied the signatures on the bahi entries. An objection was also raised with regard to the maintainability of the suit as the respondent-plaintiff was not having a licence for money lending business.

4. The Courts below relying upon the bahi entries Exhibits P-1 and P-2, which were duly proved on the basis of the evidence and the expert evidence having been led by the plaintiff to prove the signatures of the appellant on the bahi entries, have decreed the suit.

5. The point, which has been pressed into service at the time of argument by the counsel for the appellant, is that the bahi entries on which reliance has been placed upon by the Courts below, cannot be accepted to be a proof of having loaned the amount to the appellant. No independent transaction regarding advancement of loan has been proved by the respondent-plaintiff. Even the source of money has not been proved on record. It is asserted that the entries in the bahi are not book of account

regularly kept in course of business and in the absence of any independent witness to prove the genuineness and authenticity of the said entries, which are recorded in the hand of the respondent-plaintiff, would not fulfil the requirement of Section 34 of Indian Evidence Act, 1872, and, therefore, cannot be made the sole basis for fastening liability of the alleged loan amount upon the appellant. He contends that the suit is not maintainable as the respondent-plaintiff did not hold the money lending licence in terms of the provisions of Sections 3 and 4 under the Punjab Registration of Money Lender's Act and, therefore, the respondent-plaintiff was legally debarred to recover the alleged loan amount. In support of this contention, he has placed reliance upon the judgment of this Court passed in case titled as *Balbir Singh Versus Raj Krishan 2015(3) R.C.R. (Civil) 33* as also the judgment of this Court passed in *R.S.A. No.1892 of 1986* titled as *Dhup Singh Versus Pheru and others*, decided on 09.01.2014. He, on this basis, contends that the judgments and decree impugned cannot sustain and deserve to be set aside.

6. I have considered the submissions made by the counsel for the appellant and have gone through the records of the case.

7. The first contention, as has been raised by the counsel for the appellant, is that the entry in the bahis, cannot by itself be treated as proof of having advanced an amount of loan to the appellant. This assertion of the counsel for the appellant cannot be disputed with, however, as per the requirement of Section 34 of the Indian Evidence Act, 1872, where entries in the books of account regularly kept in the course of business are produced and they are supported by corroborative and sufficient evidence, which prove the liability of the person, the same can be taken to be not only

relevant but proved.

8. The Courts below have dealt with this aspect in detail and on the basis of the evidence led by the parties, have come to the conclusion that there was a relationship of commission agent and farmer *inter se* in the appellant and the respondent-plaintiff. This is not in dispute as in the written statement the appellant had accepted this aspect. The entries of the account books and the signatures of the appellant at the relevant place have been proved by the respondent-plaintiff as Exhibits P-1 and P-2.

9. It is not a mere case of account books, which was tendered without any other evidence. The respondent-plaintiff has himself appeared into the witness box and deposed that the entries were made in his hand and that he had paid the money to the appellant. The entries in the documents Exhibits P-1 and P-2 clearly prove that it did not pertain to the entries of the appellant only but there were number of other persons against the names of whom the amounts have been mentioned, which proved that the account book being maintained by the respondent-plaintiff, was in the course of his business.

10. Although the appellant had disputed the signatures appearing upon the account books but on the basis of the opinion of the expert, which report has been placed on record, was produced on record and proved the signatures appearing upon the account books, stood proved and there was no rebuttal of the same. As a matter of fact, the appellant moved an application to examine his expert, which was allowed by the Court on 18.10.2011 but the appellant chose not to examine his expert, which led to an adverse inference being drawn by the Courts below against the appellant.

For coming to that conclusion, reliance has been placed upon the judgment

of this Court passed in case titled as *Harnam Singh Versus Dogar Singh 2002 (2) R.C.R. (Civil) 202*, where it was held that where permission was sought to compare the signatures but no efforts have been made to do so by the party, the presumption goes against the party, who obtains the permission as no expert was examined.

11. The judgment relied upon by the counsel for the appellant i.e. **Balbir Singh's case** (supra) is a case under the Negotiable Instruments Act, 1881, where a complaint under Section 138 was filed against the farmer by a commission agent, where a cheque was presented, which had bounced and the Court found that as a matter of fact that the farmer was an illiterate person and had put his thumb impression on the bahis. Para 18 of the said judgment makes the position very clear. It has been recorded that no cogent evidence has been produced on record relating to the previous entry as agricultural produce sold by the farmer and on which date the loan was advanced by means of account books. The commission agent admitted that the entries did not bear the signatures of the farmer. The version of the commission agent was that the amount was paid to one Bhupinder Singh on behalf of the agriculturist upon his telephonic request. However, at a later stage, below the last entry, the same was attested by the farmer, which did not have any consequence, the Court proceeded to conclude that the farmer was an illiterate person and had put his thumb impression and had not even signed the vakalatnama. Further in the complaint, there was no averment even remotely referring as to how and when, on what date and how much amount was advanced as loan by means of account books/bahi.

12. Present is the case where firstly the appellant, who had taken the money, is not an illiterate person, he puts his signatures everywhere. The

relationship of the commission agent and the agriculturist is not denied nor is it denied that prior to 2000 parties had business relations. The details have been mentioned in the civil suit, which gives the date and the amount, which was advanced as loan by means of account books/bahi and, therefore, the judgment in **Balbir Singh's** case, would not apply to the case in hand.

13. In **Dhup Singh's case** (supra) on which reliance has been placed upon by the appellant, the Court has taken into consideration the requirements of Section 34 of the Indian Evidence Act, 1872, and has come to the conclusion that an entry to be admissible in evidence under Section 34 of the Indian Evidence Act, 1872, must be shown to be in a book, which should be regularly kept in the course of business. Mere entries in the account book would not be enough and the law insists upon corroborative evidence of the same in order to charge a person with liability. The requirement of the statute having been fulfilled in the present case, as has been referred to above, in the light of the evidence, which has been led by the respondent-plaintiff, the said judgment would not be applicable to the case in hand.

14. As regards the contention of the counsel for the appellant that the respondent-plaintiff did not hold the money lending licence in terms of the provisions of Sections 3 and 4 of the Punjab Registration of Money Lender's Act and, therefore, the suit would not be maintainable, cannot hold the field as the said Act would not be attracted in the present case.

15. No substantial question of law, therefore, arises, which calls for interference of this Court in exercise of its appellate powers. The judgments and decree passed by the Courts below do not call for any interference by this Court.

16. The appeal, therefore, stands dismissed.

17. In the light of the dismissal of the appeal, the application for stay i.e. CM No.9152-C of 2015, also stands dismissed.

August 10, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE