

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

RSA No. 1841 of 2014 (O&M)

Date of decision: August 18, 2015

M/s Ganesh Dass Des Raj Commission Agent and another

...Appellants

Versus

Balraj Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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. Nakul Sharma, Advocate,
for the appellants.

K. KANNAN, J. (Oral)

1. The plaintiff succeeded in the suit for recovery for value of stock given to the defendant, who was a commission agent succeeded in establishing the value as admitted by the defendant as having been entrusted as RS. 2,70,129.87 paise. The Appellate Court dismissed the appeal filed by the defendant who is appellant before this court.

2. The suit had been originally filed by the plaintiff for recovery of Rs. 1,52,000/- and when the defendant took a plea that the value of the stock entrusted was Rs.2,87,429/-, the plaintiff amended the claim and stated that he had received Rs. 17,000/-, gave credit for such a receipt and the sued for the balance amount with interest. The amount which he had admitted were borne on the records produced by the defendant himself containing the signatures of the plaintiff as having been received by him.

The defendant pleaded for further payments on various dates which he

stated as maintained in the regular course of business and exhibited them as D.1 to D.7. The entries which contained the signatures of the plaintiff for receipt of Rs. 17,000/- in aggregate were exhibited as D8 to D.10. The trial court and the Appellate Court observed that only the entries which contained the signatures of the plaintiff could be true and all other entries are mere fabrications. The learned counsel appearing on behalf of the defendants/appellant is aggrieved that the courts have not taken the appropriate inference possible under Section 34 of the Evidence Act, which makes entries made by a party in the ordinary course of business. I asked the counsel for the copies produced before the court and I had the benefit of inspecting them. Each one of the entries which the defendant was referring to as having recorded the fact of payment to the plaintiff is on a separate sheet of paper. They are not maintained seriatim in any single bound book. Separate sheets that contained no signatures and entered by the defendant as an amount paid on a particular date cannot even qualify as an entry in “books of accounts” in “regular course of business”. A credibility that could be attached to a document of accounts ought to be maintained in such a way that it evokes the confidence of the court that it is duly maintained in the regular course. If the amounts paid on various dates contained the reference to the whole liability and the balance stipulated on each date when the payment is made, then it could be stated that it was kept in regular course of business. A credit which the defendant was trying to give himself was against a liability that admittedly existed and shown in the 1st page of the account as debit against his name and a credit against the plaintiff's name. If any amount was paid, it must have been credited to the defendant and the balance payable on that date ought to have been arrived at, if it was in the

course of business. Mere entries of payments in various sheets of papers cannot be taken to be an account kept in the regular course to obtain relevance the manner contemplated under Section 34 of the Evidence Act. Even if the balance was not struck on each day of payment, at least on the day when the plaintiff's signatures were taken against entries of payments, the balance must have been struck giving the benefit of credits to the defendant, his contentions were true. I find no error in the judgments rendered by the two courts below and decline to make any interference.

3. The second appeal is dismissed.

August 18, 2015
prem

(K.KANNAN)
JUDGE