IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4559 of 2015 (O&M)
Date of Decision: September 07, 2015

Gurmeet Singh

...Appellant

Versus

M/s Pallah Trading Company

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Angle Sharma, Advocate
for the appellant.

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AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.10948-C of 2015

Prayer in this application is for condonation of delay of 668 days in re-filing the appeal.

The grounds for the delay in re-filing are that after the appeal was filed within limitation, certain objections were raised by the Registry. After removal of the objections, the appeal was re-filed but thereafter, another set of objections was raised by the Registry and the case file was taken back for removal of the same. This time, the case file was misplaced in the office of the counsel and after great efforts, it was re-located on 01.09.2015 and the same was re-filed on 03.09.2015 after removing the objections, which resulted in the delay of 668 days in re-filing the appeal. The application is supported by an affidavit of the Clerk of the counsel.

For the reasons mentioned in the application, the same is allowed. Delay of 668 days in re-filing the appeal stands condoned.

RSA No.4559 of 2015

Challenge in this appeal is to the judgment and decree dated 09.04.2012 passed by the Additional Civil Judge (Senior Division), Khanna, by which the suit for recovery of ₹6,63,525.35/- (₹5,15,762.35/- as principal loan amount and ₹1,47,763/- as interest) and for permanent injunction restraining the appellant-defendant from alienating and creating any sort of charge over the property situated in the revenue estate of village Shahpur, Hadbast No.239, Tehsil Payal, District Ludhiana, and Payal, Hadbast No.235, Tehsil and District Ludhiana, has been decreed and the appeal preferred by the appellant-defendant stands dismissed by the Additional District Judge, Ludhiana on 15.04.2013.

It is the contention of the counsel for the appellant-defendant that the respondent-plaintiff has not been able to prove the entries in the Bahi on the basis of which recovery of the loan amount is alleged to have been sought. He contends that no loan was actually taken by the appellant-defendant and the entries were got signed by the appellant-defendant on the pretext that it would absolve the respondent-plaintiff of his income tax liabilities. Since he was a regular seller of food grains to the respondent-plaintiff, who is a Commission Agent, and had old dealings with him, proceeded to sign the said entries. It was under the *bona fide* belief and to help him that such entries were signed by the appellant-defendant and therefore, liability cannot be foisted on him. His further contention is that Ranjit Singh, (PW-2), who is Accountant of the respondent-plaintiff firm, in the cross-examination deposed that the account books are not being regularly maintained. This he said with reference to some other account holders who were having dealings with the respondent-plaintiff firm. He, thus, contends that the findings recorded by the Courts below that the account books of accounts were maintained in the regular course of business, deserve to be set aside. He, thus, contends that the present appeal deserves to be allowed by setting aside the judgments and decree passed by the Courts below.

I have considered the submissions made by the counsel for the appellant-defendant and have gone through the judgments passed by the Courts below with his able assistance.

The first contention which has been raised by the counsel for the appellant-defendant is that he had not taken any loan from the respondent-plaintiff. This contention of the counsel cannot be accepted in the light of the fact that the appellant-defendant is not an illiterate person who put his signatures in English. He has been the Sarpanch of the village and has been a member of Block Smiti and Marketing Society. It, therefore, cannot be believed that he was not aware of the contents of the entries which have been made in the Ledger Books (Bahi). Further, the ground taken for appending the signatures i.e. to help the respondent-plaintiff of the liability of income tax itself, is for an illegal purpose, which cannot be accepted as the Court cannot be a party to such transaction or support such acts of the parties.

As regards the fact that the books of account was not maintained regularly during the course of business, suffice it to say that a stray entry or two which have been admitted that they have not been made in the Bahi would not itself render the whole accounts ineffective or lead to a conclusion that it was not maintained in the regular course of business. The entries which have been made as regards the appellant-defendant has been entered by the Accountant in his own hand in the presence of the appellant-defendant and the respondent-plaintiff. Signatures of all the three persons who were present at the occasion are there in the Bahi. The findings which have been recorded by the Courts below cannot be faulted with.

Both the Courts below have returned concurrent findings after proper appreciation of evidence which do not call for interference as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

September 07, 2015
Harish