IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4639 of 2015 (O&M)
Date of Decision : 17.12.2015

Himmat Singh ....Appellant

Versus

M/s Hukam Chand and Company ....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Nandan Jindal, Advocate
for the appellant.

Surinder Gupta, J.

This is second appeal against the judgment passed by Additional Civil Judge (Senior Division), Malerkotla whereby suit filed by plaintiff-company was decreed for recovery of ₹ 1,45,000/- alongwith interest @ 6% per annum from the date of judgment till actual realization of the entire decretal amount. First appeal against that judgment was dismissed by the Additional District Judge, Sangrur.

2. In later part of the judgment parties will be referred as 'plaintiff' and 'defendant' as per civil suit.

3. The case of plaintiff, in brief, is that plaintiff-firm is running the business of commission agent and defendant-appellant is an agriculturist who used to sell his crop at the shop of plaintiff-firm. Plaintiff-firm maintains regular account books in due course of business and balance is struck every day. On 25.05.2007, defendant borrowed a sum of ₹ 1,45,000/- in cash from plaintiff-firm and the rate of interest was agreed @ 2% per month. The entry to this effect was made in the account books. The defendant committed default in repayment of loan amount

and interest resulting in filing the suit for recovery of ₹ 2,03,000/- i.e. ₹ 1,45,000/- towards principal and ₹ 58,000/- towards interest.

4. Defendant denied the claim of plaintiff *inter alia* pleading that on 10.05.2007 he had made all the payment regarding his account maintained with plaintiff-firm and thereafter, stopped selling his crop with plaintiff. The payments of plaintiff were cleared in the presence of Sikandar son of Harnek Singh and the endorsement regarding clearance was made by plaintiff (Hukam Chand) on backside of receipt dated 10.05.2007 in his own handwriting. When the defendant had started selling crop with plaintiff-firm he was made to sign some blank papers which might have been inserted by plaintiff in the alleged *rokar bahi.* The defendant demanded those blank papers at the time of making final payment on 10.05.2007 but the same were not given on the pretext that endorsement with regard to liability of defendant towards plaintiff as nil has been made on receipt dated 10.05.2007.

5. Learned Additional Civil Judge (Senior Division) on appraisal of evidence concluded that the defendant had taken loan of ₹ 1,45,000/- from plaintiff and signed the relevant entry (Ex. P-1) in the account book. This plea of defendant that the account with plaintiff was cleared vide receipt dated 10.05.2007 was discarded so far as liability of defendant regarding the suit amount of ₹ 1,45,000/- is concerned. It was observed that the defendant had paid the amount of ₹ 37,739/- to plaintiff regarding sale of wheat and on the backside of this receipt his

liability was mentioned as nil. This fact was also admitted by plaintiff. The loan was taken by the defendant on 25.05.2007 and he had failed to co-relate the above transaction with this loan. The above findings of learned Additional Civil Judge (Senior Division) were affirmed by learned Additional District Judge in appeal.

6. Learned counsel for the appellant raised three legal arguments in this appeal. Firstly, that suit was filed by the firm which was not maintainable; secondly, stamp duty was required on the entry in the *bahi* regarding the amount advanced; and thirdly, plaintiff was a money lender and was not possessing any money lending licence.

7. The suit has been filed by plaintiff-firm M/s Hukam Chand and Company through its sole proprietor and there is nothing to make out that suit has not been properly instituted, as such, this argument of learned counsel for the appellant that the suit filed by firm through its proprietor is not maintainable, has no basis. This argument of learned counsel for the appellant that plaintiff was a money lender and was not having any money lending licence as required under the Punjab Registration of Money-Lender's Act, 1938 (for short 'the Act of 1938'), is also without merit. The relationship of plaintiff and defendant was that of commission agent and agriculturist. The defendant had been selling his crop through plaintiff who had been advancing him loan from time to time. Learned counsel for the appellant could not point out any provision of the Act of 1938 which requires plaintiff to have money lending licence for advancing

money to his clients. Even otherwise it was not the case of defendant that plaintiff is a money lender and had been lending money to public at large. He has placed reliance on the observations in the case of ***Narsi Dass* vs. *Surender*, 2015 (1) RCR (Civil) 108**, wherein a coordinate Bench of this Court while dealing with the complaint under Section 138 of the Negotiable Instruments Act, 1881 (later referred to as 'the Act') had observed that the complainant who was a commission agent and was also advancing loan to the public could not maintain a complaint under Section 138 of the Act. The observations in the said case are not applicable to the facts and circumstances of instant case. To support his argument that the entry in *bahi* required to be stamped as per provisions of Indian Stamp Act, 1899, learned counsel for the appellant has referred to observations of a coordinate Bench of this Court in case of ***Dhup Singh* vs. *Pheru and others*, RSA No. 1892 of 1986 decided on 09.01.2014**, wherein this point was elaborately dealt and it was observed as follows:-

> *"Coming to the second point, to determine the nature of entry as to whether it is merely a balance of account, bond, agreement, acknowledgment or a promissory note is another significant aspect involved in cases of recovery based on entry in 'bahi'. Once nature of entry is determined then it has to be seen whether it was required to be stamped or not. In case yes, then it has to be properly stamped as per the Stamp Act, 1899 or else it is rendered inadmissible in evidence. Primarily nature of the entry has to be decided on the basis of intention of the parties gathered from phraseology used and surrounding circumstances.*

It has been observed by Full Bench of Lahore High Court in ***Firm Shiv Ram Punnan Ram through Shiv Ram and Punnun Ram v. Faiz AIR 1942 Lah 50*** *that, the question whether the various entries with respect to balances struck by the defendant in plaintiff's 'bahi' from time to time are to be classed as acknowledgments, agreements or bonds for the purposes of duty chargeable under the Stamp Act has to be decided on the basis of the language used. As pointed out in the Full Bench ruling* ***Nanak Chand v. Fattu A.I.R. 1935 Lah. 567****, it is the phraseology used and not the legal implications following from it that determines the duty chargeable on such cases. In* ***Ganga Jal v. Lal Chand, 1970 PLR 28****, this High court came to conclusion that the entry in dispute was not required to be stamped as it was made only as an acknowledgment of the correctness of account and was not intended to supply an evidence of debt so as to fall within the mischief of Article 1, Schedule 1 of the Stamp Act. The court drew support from judgment of Andhra Pradesh High Court in* ***Dadi Musali Naidu v. Budda Veeru Naidu, AIR 1958 AP 88****, wherein it was held that a mere signature in a running account is not evidence of the debt of which there is already evidence in the account book and is in fact just an acknowledgment of the correctness of the account not required to be stamped.*

In ***Udey v. Ram Kishan 2000 (2) PLR 179****, the question before this High Court was whether the 'bahi' entry was a bond. Considering the material before it the court observed:*

> *The Bahi entry though is attested by two witnesses but there is no express obligation to pay the amount mentioned therein. The definition of bond in clause (b) of sub-section (5) to Section*

> *2 of the Act requires that a person should oblige himself to pay money to another. In other words, there must be an express obligation to pay. No instrument can be a bond within the meaning of Section 2(5)(b) of the Act unless it is one which itself creates an obligation to pay money. The document admitting receipt of money in absence of express promise to pay, may be held to be a receipt but not a bond. The writing in question does not show that the defendant had undertaken any obligation to pay. More so, no such obligation can be inferred from mere acknowledgment of the receipt of the amount.*
>
> *Thus, where an entry is merely a balance of account and signatures of defendant thereon are only intended to accept correctness of such balance then no stamp duty is required to be affixed. Such entry is relevant as per Section 34 of the Act. On the other hand if the entry is executed in nature of bond, acknowledgment of debt etc., it has to be stamped as per the Stamp Act, 1899."*

8. Plaintiff's plea in this case is that defendant was advanced loan of ₹ 1,45,000/- and the entry to this effect was also made in the account books, copies of which have been placed on record as Ex. P-1, Ex. P-2 and Ex. P-3. The entry in the account book was only to confirm the balance and was not sort of a bond or acknowledgment of debt etc., as such, was not required to be stamped. The perusal of entry (copy of which has been made available by learned counsel for the appellant) shows that the defendant had affirmed the balance of ₹ 2,47,470/- as due on 25.05.2007 and the above entry include the amount of ₹ 1,45,000/- advanced to him as per entry in the cash

book/*khata.*

9. In view of above, argument of learned counsel for the appellant that entry in the account books was required to be duly stamped is also without any weight and is discarded. No other argument has been advanced.

10. On perusal of judgments of Courts below, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

December 17, 2015 **(SURINDER GUPTA)**
jk **JUDGE**