

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-195-2014 (O&M)
Date of Decision: June 29, 2015

Harjinder Singh

...Appellant

Versus

M/s Ram Sarup Devinder Nath Commission Agents, Rahon

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. R.L. Sharma, Advocate,
for the appellant.

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

NARESH KUMAR SANGHI, J.

CM-449-C-2014:

Prayer in this application, filed under Section 151, CPC, is for condonation of delay of 126 days in re-filing the appeal.

After hearing learned counsel for the applicant/appellant and going through the contents of the application, which

is duly supported by an affidavit, delay of 126 days in re-filing the appeal is condoned.

Civil Miscellaneous application stands disposed of.

RSA-192-2014:

Present regular second appeal has been filed by the appellant, Harjinder Singh, son of Avtar Singh, challenging the judgment and decree dated 18.3.2013, passed by learned Additional District Judge, Shaheed Bhagat Singh Nagar, whereby the appeal filed by Harjinder Singh challenging the judgment and decree dated 7.8.2012, passed by learned Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar, arising out of Civil Suit No. 81 of 2007, was dismissed.

Brief facts of the case are that the respondent/plaintiff was a registered firm and dealing in food grains as commission agent at Dana Mandi, Rahon, Tehsil Nawanshahr, District Shaheed Bhagat Singh Nagar, through its partners, namely, Devinder Nath and Ranjit Singh. Defendant No. 1, Avtar Singh, was dealing with the plaintiff firm for last several years. Defendant No.1 used to take loan from the plaintiff firm from time to time by putting his thumb mark on the daily *roznamcha* (day-to-day account book) duly maintained by the plaintiff firm. Defendant No.1 was selling his agricultural produce with the plaintiff firm. Defendant No. 2

(appellant) was also taking loan from the plaintiff firm on behalf of his father, i.e. defendant No. 1, after putting his signatures on the daily *roznamcha*. The defendants had agreed to pay interest @ 1% per month to the plaintiff firm on the amount borrowed by them. 'J' forms were being issued by the plaintiff firm to the defendants. The defendants had promised to sell their entire agricultural produce with the plaintiff firm and to clear the borrowed amount along with interest. As per the calculations by the plaintiff firm, a sum of Rs. 2,22,105.42 paise (Rupees two lacs twenty-two thousand one hundred five and forty-two paise) was due against defendant No. 1, besides future interest. Defendant No.1 with mala fide intention started selling his agricultural produce to other commission agents and failed to clear dues against him (defendant No. 1), in spite of repeated demands by the plaintiff firm through its partners. When the defendants failed to pay the amount, then the plaintiff had no other remedy except to file the suit before learned Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar.

On notice, the defendants appeared through their counsel and filed written statement taking preliminary objections that the plaintiff had no *locus standi* to file the suit; the suit was not maintainable; the plaintiff had not come to the Court with clean hands; it was denied that the defendants had borrowed the money

from the plaintiff firm or ever signed or thumb marked on the daily *roznamcha* or any *bahis* in token of receipt of the loan amount; the defendants were selling the agricultural produce to the plaintiff firm and it was paying the amount to the defendants as per its convenience; the plaintiff firm never issued 'J' forms in favour of the defendants; and that only *kaccha parchies* were issued by the plaintiff firm to the defendants.

The plaintiff had not filed any replication to the reply filed by the defendants.

From the pleadings of the parties, the following issues were framed:-

- “1. *Whether the plaintiff is entitled to recover ₹2,22,105.42 paise along with interest as prayed?*
OPP
2. *Whether the suit is not maintainable in the present form? OPD*
3. *Relief.”*

In order to prove its case, plaintiff firm examined its partner, Devinder Nath as PW-1, who tendered his affidavit, to be read in evidence, and proved on record the documents (Exs. P-1 to P-50) and thereafter the evidence of the plaintiff was closed.

The appellant, Harjinder Singh, appeared as DW-1 and deposed as per the reply filed by the defendants and thereafter the

evidence on behalf of the defendants was closed by order of the Court.

Learned Trial Court while believing the deposition of Devinder Nath (PW-1) and relying upon the documents (Exs. P-1 to P-50), decided Issue Nos. 1 and 2 in favour of the plaintiff firm holding that on 1.11.2006 the defendants were liable to pay Rs. 2,22,105.42 paise (Rupees two lacs twenty-two thousand one hundred five and forty-two paise) to the plaintiff firm. Learned Trial Court granted simple interest @ 9% on the said amount w.e.f. 1.11.2006 till the date of decree and thereafter simple interest @ 6% per annum till realization.

Dis-satisfied with the judgment and decree passed by learned Trial Court, defendant No. 2, Harjinder Singh, filed the appeal before learned Additional District Judge, Shaheed Bhagat Singh Nagar, and the same was dismissed and, hence, the present regular second appeal.

Learned counsel for the appellant submitted that both the Courts below have failed to appraise correctly the facts and material available on record. The defendants were selling their agricultural produce to the plaintiff firm, but it (plaintiff) was not paying adequate sale proceeds to the defendants. A suit for rendition of accounts was filed by the defendants against the

plaintiff firm since the accounts were not being maintained properly. The plaintiff/respondent has failed to produce the record at the time of filing of the suit before learned Trial Court. The plaintiff had failed to produce the person who was maintaining the account books of the plaintiff firm and, as such, adverse inference should have been drawn against the plaintiff respondent.

I have heard learned counsel for the appellant and gone through the material available on record.

In para No. 11 of the judgment passed by learned Additional District Judge, Shaheed Bhagat Singh Nagar, it has specifically been mentioned that accounts books were produced before the Court at the time of presentation of the suit. The defendants had failed to take the objection in their reply with regard to non-production of the account books.

Plaintiff/respondent, M/s Ram Sarup Devinder Nath Commission Agents, had filed the suit through its partner Devinder Nath against the appellant and his father Avtar Singh (defendant No. 1). During pendency of the suit, defendant No. 1, Avtar Singh, had died but his legal representatives did not come forward to defend the suit. Even the appeal has not been filed by all the legal representatives of Avtar Singh, defendant No. 1. There is no doubt that appellant, Harjinder Singh, is the son of Avtar Singh, but the

fact remains that other legal representatives of Avtar Singh have not defended the suit and, as such, the findings recorded by learned Trial Court had become final against Avtar Singh, who had died during pendency of the litigation.

In order to prove its case, the plaintiff firm produced its partner, Devinder Nath as PW-1. He tendered his affidavit (Ex.PA) on the file, to be read in evidence. During cross-examination, he disclosed that at the time of filing of the suit, the *bahis* of the plaintiff firm were produced before the Court, but his statement in that regard was not recorded on that day. Even it was deposed that the officer of the Court had inspected the *bahis*. It was further disclosed that Avtar Singh (defendant No. 1) was dealing with the plaintiff firm for the last 8-10 years and used to take advance amount before harvesting of the crop and the same was to be adjusted at the time of sale of the agricultural produce.

To rebut the case of the plaintiff, the appellant, Harjinder Singh, appeared as DW-1 and tendered his affidavit (Ex. DA). During cross-examination, he fairly admitted that he was Bachelor of Arts and used to sign in English. He further admitted that the amount was being received by him in cash or by way of cheque. He further admitted that Avtar Singh was putting his thumb impression. He further fairly admitted that the documents (Exs. P-5

to P-25 and P-31 to P-46) were bearing his signatures and he had signed all those documents after receiving money in cash or by cheque. He further admitted that he had signed 'J' form, dated 6.10.2004 and 13.4.2005. It was also admitted that the plaintiff firm was paying the money to them as per their need after selling of crops. He also admitted that the plaintiff-firm was maintaining accounts books and obtaining signatures or thumb impressions from the persons who used to take money from it.

The submission of learned counsel for the appellant that the findings of both the Courts below are against the material available on record, does not appear to be correct. Both the Courts below have accorded sound reasons after evaluating the oral as well as documentary evidence led by the parties to the lis. There was no occasion for the Courts below to discard the deposition of Devinder Nath (PW-1), which was duly supported by documentary evidence coupled with the admission on behalf of the appellant/defendant No. 2 with regard to taking of the amount from the plaintiff firm on different dates after putting thumb impression by defendant No. 1, Avtar Singh, and signatures by defendant No. 2.

The findings of facts recorded by both the Courts below are well based and this Court has no valid reason to set aside the same. No substantial question of law has been raised in the

present regular second appeal and, as such, the same is hereby
dismissed.

(NARESH KUMAR SANGHI)
JUDGE

June 29, 2015
P Kapoor