

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

-:-

**R.S.A No. 2055 of 2014 (O&M)
Decided on : January 12, 2015**

Gurdev Singh & Ors.

... Appellants.

Versus

Vasdev & Anr.

... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. Jasbir Singh, Advocate, for the appellants.

Mr. Rakesh Chopra, Advocate, for the respondents.

Mahavir S. Chauhan, J. (Oral)

Civil Suit No.41 of 2006 was brought before the learned Additional Civil Judge (Senior Division), Fatehgarh Sahib, ('trial Court' – for short) by Vasdev and his proprietary concern, M/s Vasdev Jagdish Chand, Commission Agent, Anaj Mandi, Bassi Pathanan, for recovery of an amount of Rs.15,39,757/- including interest upto 27.01.2006 @ 2 % per mensem or say 24% per annum as also future interest at the same rate.

Case of the plaintiffs as noticed by the learned first appellate Court is as under:-

“2. Relevant facts for disposal of appeal are that plaintiffs instituted suit for recovery of Rs.15,39,757/- along with interest against the defendants alleging that plaintiff no.1 is proprietorship concern of plaintiff No.2.

Plaintiffs are commission agents dealing in sale/purchase of food grains, whereas defendants No. 2 and 3 are sons of defendant No.1, who owns agricultural land in village Dadiani, Tehsil Bassi Pathanan, District Fatehgarh Sahib. Defendants have a recurring account with the plaintiffs and bringing their crops to the shop of plaintiffs for sale since the year of 1990-91. Defendant No.1 has also been taking advances from the plaintiffs, which amounts were adjusted against the value of the crops sold by defendant No.1 at the shop of plaintiffs. Defendant Nos. 2 and 3 have been assisting their father for bringing the crops to the shop of the plaintiffs. Every sale of crops made by the defendant No.1 at the shop of plaintiffs was duly entered in the account books as well as in the voucher books regularly maintained by the plaintiffs in the regular course of their business. Vouchers for the sale of the crops have been duly signed by Gurdev Singh defendant No.1 and some times by defendants No. 2 & 3 at the instance of defendant No.1. Similarly the amounts, which were received by defendant No.1 as price of the crops as well as advanced amounts are duly entered in the account books maintained by the plaintiffs.

3. Plaintiffs further alleged that on 21.11.2001,

defendants settled accounts and all the amounts due against defendant No.1 were paid to the plaintiffs. Thereafter, defendant No.1 took from the plaintiffs Rs.5,00,000/- on 02.11.2001, Rs.3340/- on 02.11.2001, Rs.2000/- on 05.11.2001, Rs.9200 on 06.11.2001, Rs.2500/- on 11.11.2001, Rs.1000/- on 13.11.2001, Rs.1000/- on 17.11.2001, Rs.45,000/- on 26.11.2001, Rs.500/- on 01.12.2001, Rs.10,000/- on 04.12.2001, Rs.1000/- on 05.12.01, Rs.10,000/- on 11.12.2001, Rs.500/- on 21.12.2001, Rs.2500/- on 07.01.2002, Rs.10,000/- on 30.01.2002, Rs.2380/- on 05.03.2002, Rs.42,380/- on 29.03.2002, total Rs.6,43,300/-. All the above said payments were received by defendant No.1 by signing each and every entry made in the cash book as correct and due amount of Rs.6,43,300/- was carried forward in the account books of the plaintiffs on 01.04.2002. Plaintiffs further averred that in the financial year 2002-03, defendant No.1 paid the amounts by sale of wheat and paddy or by paying the same in cash Rs.29908.98 of sale of wheat on 21.04.2002, Rs.28367.28 of sale of wheat on 22.04.2002, 30525.66 of sale of wheat on 23.04.2002, Rs.14800.32 of sale of wheat on 25.04.2002, Rs.200/- cash on 08.06.2002, Rs.19628.34 of sale of paddy on 2.10.02, Rs.14964.18 of

sale of paddy on 3.10.02. Rs.15547.20 of sale of paddy on 5.10.02. Rs.7773.60 if sale of paddy on 6.10.02, Rs.14769.84 of sale of paddy on 7.10.02, Rs.4081.14 of sale of paddy on 30.10.02, in total Rs.180566.54. Defendant No.1 also took some amounts through cash or cheque, himself or through defendants no.2 & 3 and plaintiffs sought recovery 15,47,757 along with interest @ 24% per annum.”

Case of the plaintiffs was contested by the defendants by filing a written statement wherein, besides pleading preliminary objections regarding maintainability of the suit, locus standi of the plaintiffs and bar of limitation, defendants, while admitting sale of crops by them at the shop of the plaintiffs, denied all other allegations of the plaintiffs, including the one regarding entitlement of the plaintiffs to recover the suit amount from them.

From the pleadings of the parties, learned trial Court formulated following issues:-

1. Whether the plaintiffs are entitled to recover of Rs.15,39,757/- alongwith interest from the defendants?OPP
2. Whether the suit is not maintainable in the present form?OPD
3. Whether the plaintiffs have no cause of action and locus-standi to file the present suit?OPD
4. Relief.

Both the sides adduced evidence and were heard by the learned trial Court to reach the conclusion that the plaintiffs were able to prove their case as pleaded in the plaint, and, accordingly vide judgment/decreed dated 25.07.2013 plaintiffs' suit for recovery of Rs.10,84,696/- with interest @ 9% per annum on the principal amount from 1.4.2004 till the date of decree and future interest @6% per annum from the date of decree till realization of the suit amount was decreed with no order as to costs. Judgment/decreed dated 25.07.2013 was taken in appeal by the present appellants i.e. Civil Appeal No. 110 of 2013. However, the appeal (Appeal No.110 of 2013) of the appellants has also been dismissed by the learned Additional District Judge, Fatehgarh Sahib ('first appellate Court' – for short), vide judgment/decreed dated 17.02.2014.

To challenge judgment and decree dated 17.02.2014 of the learned first appellate Court, defendants have brought this regular second appeal.

I have heard learned counsel for the parties.

It is very vehemently argued by learned counsel for the appellants that all the entries relied upon by the plaintiffs are in Lande script, which is neither known to defendants-appellants nor to plaintiffs and nor to the Courts below and even otherwise the author of these entries, namely Munim of the plaintiffs' firm has not been examined and still further *Bahi* entries as held by this Court in **Narsi Ram Vs. Surinder Kumar & Ors, 2015(1) RCR (Civil) 111**, cannot be relied upon in proof of advancement of loan by a party.

Contentions, however, have been resisted by learned counsel appearing for the respondents-plaintiffs by submitting that entries relied upon by the plaintiffs are not entries of loan rather these are entries of continuous transactions between the two sides. He also asserts that all the entries have been signed by the plaintiffs or by first defendant or by defendants No. 2 and 3 on his instance and even the first defendant by executing voucher dated 31.03.2004 (Exhibit PW1/X) has acknowledged the outstanding sum of Rs.1084696.20 against him.

Nothing more has been urged on either side.

A perusal of the record would reveal that the defendants-appellants do not dispute that they had dealings with the plaintiffs with regard to sale of crops and other financial dealings. It has also remained undisputed that voucher dated 31.03.2004, Exhibit PW-1/X bears signatures of defendant-appellant No.1. This voucher, in fact, is an acknowledgment of the fact that the first defendant owed to the plaintiffs Rs.1084696.20 as on 31.03.2004. However, if this document is read in conjunction with Exhibits P/1 to P/17 and P/18 to P/55 and income tax returns Exhibit P/62 to P/64 nothing remains to doubt that the suit amount was borrowed by the first defendant from the plaintiffs on various occasions. Learned counsel for the defendants-appellants has not been able to dispute the fact that all the entries bear signatures of either defendant No.1 or defendants No. 2 and 3. Though, it is contended on behalf of the defendants-appellants that the entries being in Lande script were not known to either of the defendants or to the plaintiffs or even to the courts below, but it comes out from the record

that translated copies of the entries were made part of the record. Plaintiff Vasdev has very categorically stated that he had learnt Lande script from Charan Dass and it has nowhere been stated that the defendants-appellants during the course of the trial they did not know contents of the entries while putting signatures thereon. Even otherwise, having appended their signatures on various entries as also voucher Exhibit PW-1/X, the defendants are presumed to have read/understood the contents of the entries and the voucher before appending their signatures as aforesaid.

In view of the above, judgment relied upon by learned counsel for the appellants is of no help to the plea put forth on their behalf.

Further, the findings recorded by the courts below are pure findings of fact and no substantial question of law is shown to be involved in the appeal.

Before parting with this judgment, it needs to be stated that defendants- appellants have moved an application i.e. C.M No.15137 – C of 2014 for bringing on record judgment/order dated 22.10.2012 passed by the learned Chief Judicial Magistrate, Fatehgarh Sahib, convicting plaintiff – Vasdev, under Section 138 of the Negotiable Instruments Act, 1881 for dishonor of cheque stated to have been issued by him in discharge of his loan amounting to Rs.4 lacs. Vide application No.223-C of 2015, reply to the application for additional evidence has been filed which is taken on record.

It has been sought to be projected by way of this application that in view of plaintiff- Vasdev having been convicted for dishonor of

cheque amounting to Rs.4 lacs, it could not be believed that he could advance a loan amounting to more than Rs.10 lacs and this falsifies the case of the plaintiffs herein. A close perusal of the contents of the application as also the judgment/order referred to above would reveal that cheque in question was issued on 25.12.2005, whereas transactions which are the subject matter of the instant proceedings are much prior thereto. That being so, the judgment/order of learned Chief Judicial Magistrate, Fatehgarh Sahib, is of no relevance to the controversy involved in the present proceedings. Then, the application does not satisfy ingredients of Rule 27 Order 41 of the Code of Civil Procedure, 1908.

In the consequence, the appeal as also the application for additional evidence are found to lack merit and are, therefore, dismissed with costs.

January 12, 2015
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[Mahavir S. Chauhan]
Judge