

In the High Court of Punjab and Haryana at Chandigarh

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CM No.5491-C of 2014
and
R.S.A. No.2274 of 2014 (O&M)

.....

Date of decision:9.4.2015

Sulakhan Singh

.....Appellant

v.

Ajit Singh and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Avtar S. Khinda, Advocate for the appellant.

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Inderjit Singh, J.

CM No.5491-C of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 6 days in filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.2274 of 2014 (O&M):

This regular second appeal has been filed by the appellant-defendant aggrieved against the impugned judgment and decree dated 27.4.2011 passed by the learned Additional Civil Judge (Senior Division), Kapurthala, vide which the suit filed by Ajit Singh and M/s Gian Singh Surinder Singh, Commission Agents-plaintiffs against Sulakhan Singh-defendant for recovery of ₹2,98,500/- along with interest @9% per annum from the date when the said amount became due till that date with future

interest @6% per annum was decreed and against the impugned judgment and decree dated 4.12.2013 passed by learned Additional District Judge, Kapurthala in the appeal filed by Sulakhan Singh-appellant/defendant against Ajit Singh and M/s Gian Singh Surinder Singh, Commission Agents, vide which the relief was modified in the appeal and the suit was decreed for the recovery of ₹1,68,918.68 along with interest @9% per annum from the date when the said amount became due till the filing of present suit along with future interests @6% per annum.

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

Learned counsel for the appellant argued that the due amount whatever it was, it has already been paid back and there is violation of the provisions of Order 7 Rule 17 C.P.C. and substantial question of law arises in this appeal on that point.

After going through the record and hearing learned counsel for the appellant, I find that first of all both the Courts below have given concurrent findings and the suit of the plaintiff had been decreed for the amount of ₹2,98,500/-. The plaintiffs' case is that the defendant borrowed money many times from the plaintiffs since the year 2001-02 and there are entries in the account books maintained by the plaintiffs (respondents herein) and duly signed by the defendant/appellant and this amount is due in accordance with the account books maintained.

Learned Additional Civil Judge (Senior Division), Kapurthala decreed the suit for ₹2,98,500/- of the principal amount, but the first appellate Court modified the relief and granted the relief only regarding the

entries, which were signed by the defendant/appellant in the account books maintained by the plaintiffs/respondents.

Learned counsel for the appellant argued only regarding the violation of the provisions of Order 7 Rule 17 C.P.C. as the original 'BAHIS' have not been produced for the inspection of the Court at the time of filing of the suit. But the perusal of the impugned judgment and decree of the learned first appellate Court shows that the Court has relied upon the law laid down by this Court in Arjinder Singh v. M/s Virk Brothers & Another, 2012 (2) Civil Court Cases 304, in which it has been held that merely for non-compliance of the provisions of Order 7 Rule 17 CPC, the plaintiff cannot be non-suited. Learned counsel for the appellant has not shown or cited any law against this judgment.

Therefore, the arguments of the learned counsel for the appellant have no merit. The findings given by the first appellate Court modifying the relief are correct and as per law and do not require any interference from this Court and the same are upheld as no question of law, much less any substantial question of law arises in the present regular second appeal.

Finding no merit in the present regular second appeal, the same is dismissed.

April 9, 2015.

(Inderjit Singh)
Judge

hsp