IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4383 of 2014(O&M)
Date of decision: 30.10.2015

M/s Jagdish Rai Suresh Kumar

... Appellant

Versus

Jhandu

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Amandeep Singh Talwar, Advocate
for the appellant.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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ARUN PALLI J. (Oral)

Suit filed by the plaintiff was dismissed by the trial court vide judgment and decree dated 22.02.2013. As even the appeal preferred against the said decree failed and was dismissed vide judgment dated 31.05.2014, plaintiff is before this court vide this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

Briefly, in a suit filed by the plaintiff, he prayed for a decree for recovery of ₹ 6,05,000/- along with interest. It was maintained that the plaintiff happened to be a registered firm and is a commission agent. Defendant had borrowed a sum of ₹ 5,00,000/- on 23.03.2007 and had executed a pronote and receipt in favour of the plaintiff-firm. The amount lent to the defendant was agreed to be repaid along with interest @ 1.5% per month. Despite notice, as the defendant failed to repay the loan amount, thus, the suit.

In defence, it was pleaded, inter alia, that in fact the defendant had been selling his agriculture produce through the plaintiff-firm till 2004. And, thereafter defendant never had any business relation with the plaintiff. The alleged pronote and receipt were purported to be the result of fraud, for the blank/signed papers by the defendant were misused. Defendant never borrowed any amount from the plaintiff and, thus, the suit required to be dismissed.

On a due and comprehensive consideration of the matter in issue, and the evidence on record, both the courts concurrently concluded that Jagdish Rai (PW1) conceded in his cross-examination that defendant was indeed a customer of the plaintiff-firm till 2004 and the accounts of the defendant were settled in the year 2004, as thereafter he stopped selling his produce through the plaintiff. But, defendant had again started dealing with the plaintiff in the year 2007, though no crop of the defendant was sold through the plaintiff either in the year 2007 or thereafter. He also conceded that the plaintiff-firm used to obtain thumb impressions of its customers in its account books to whom any amount was lent; sometimes, the pronotes were also got executed/filled in favour of the plaintiff-firm. Mange Ram, who happened to be one of the attesting witnesses of the pronote as also the receipt, was in close relative of Jagdish Rai (PW1) and his wife happened to be the partner of the plaintiff-firm. Likewise, Accountant of the plaintiff-firm i.e. Ajay Kumar (PW2) testified in his cross-examination that the defendant remained a customer of the plaintiff-firm till 2004, but never transacted any business thereafter in the year 2004-05. Mange Ram (PW3), another attesting witness, admitted in his cross-examination that he too has been working as a commission agent and Jagdish Rai (PW1) happened to be his cousin. He also conceded that signature/thumb impressions of the defendant were not obtained in the account books at the time when he was advanced a loan of ₹ 5,00,000/- on 23.03.2007. That being so, it was concluded that concededly the defendant remained customer of the plaintiff only upto 2004 and thereafter, he never sold his produce through the plaintiff-firm. And, therefore, there could hardly be any occasion for the plaintiff to still lent ₹ 5,00,000/- to the defendant by way of loan, after a gap of more than 3 years on 23.03.2007. Not just that, the thumb impressions or signatures of the defendant were never obtained in the account books of the plaintiff-firm as evident from the relevant entries i.e. Ex.P6/Ex.P6/T. Thus, the subsequent entries i.e. Ex.P7 to Ex.P9 or the entries reflected in the Income Tax Returns of the plaintiff-firm i.e.

Ex.PXA to Ex.PXH were hardly of any consequence. So much so, plaintiff was directed to produce the account books for the period 2003-04 onwards, but he intentionally did not produce the relevant records. Nothing was brought on record to justify as to why signatures/thumb impressions of the defendant were not obtained against the entry Ex.P6/Ex.P6/T in the account books to substantiate the claim against the defendant. Accordingly, it was concluded that blank/signed pronote/receipt had been misused by the plaintiff-firm in connivance with both the witnesses.

Needless to assert, for plaintiff to succeed, he was required to prove that a loan of ₹ 5,00,000/- was indeed obtained by the defendant on 23.03.2007 and in acknowledgment thereof, he had executed a pronote as also the receipt. Concededly, defendant never dealt with the plaintiff-firm post 2004. The case set out by the plaintiff itself was that all the accounts of the defendant were settled in the year 2004 itself. Nothing was brought on record, least any cogent or credible evidence, to show that there was even a single business transaction between the parties post 2004. That being so, it was wholly incredible to even assume that the plaintiff-firm still lent an amount of ₹ 5,00,000/- by way of loan to the defendant 3 years later in the year 2007. The entries recorded in the account books of the plaintiff-firm were not counter-signed by the defendant. Although, a loan of ₹

5,00,000/- was purportedly advanced @ 1.5% per month. The amount in question was allegedly lent on 23.03.2007 and the suit in question was filed on 03.01.2009. Nothing was brought on record to show that during this period, plaintiff ever demanded interest from the defendant on the amount that was lent or served any notice in this regard.

Learned counsel for the appellant could not point out as to how the conclusions that had concurrently been recorded by both the courts below were either contrary to the position on record or suffered from any material illegality. No other argument was advanced.

In the wake of the position as set above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

October 30, 2015
Rajan