In the High Court of Punjab and Haryana at Chandigarh

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R.S.A. No.6336 of 2014 (O&M)

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Date of decision:15.7.2015

M/s Modi Traders Commission Agents, Nabha

.....Appellant

v.

Sewa Singh

.....Respondent

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Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Munish Gupta, Advocate for the appellant.

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Inderjit Singh, J.

This regular second appeal has been filed by M/s Modi Traders Commission Agents, Nabha-appellant/plaintiff against Sewa Singh -respondent/defendant challenging the impugned judgment and decree dated 24.9.2014 passed by the learned Additional District Judge, Patiala, vide which the appeal filed by the appellant-plaintiff against the impugned judgment and decree dated 2.6.2012 passed by Civil Judge (Junior Division), Nabha, dismissing the suit of the plaintiff, has been dismissed.

The brief facts of the case are that M/s Modi Traders Commission Agents, Nabha-plaintiff filed a suit against Sewa Singh-defendant for recovery of ₹5,39,500/-. As per the case of the plaintiff, the plaintiff-firm is Commission Agent at New Grain Market, Nabha and the defendant is an agriculturist and used to sell his agricultural crop through the commission agency of the plaintiff. The defendant sold his crop worth ₹1,43,178.10 on various dates, through the Commission Agency of the plaintiff. The J-forms for the sale were handed over to the defendant. At the time of `Sauni' 2003, the defendant again sold his crop worth ₹1,72,211.72. The J-forms for the sales were handed over to the defendant by the plaintiff. It is also the case of the plaintiff that in the year 2003-04, the defendant took loan of ₹3 Lacs, ₹4 Lacs and ₹2.5 Lacs from the plaintiff vide cheque Nos.89948, 216111 and 216508 dated 3.6.2003, 4.12.2003 and 13.1.2004 respectively drawn on Oriental Bank of Commerce, Nabha. These cheques were got encashed. The rate of interest agreed between the parties was 15% per annum. It is also the case of the plaintiff that the defendant had promised to repay the loan and the interest by selling his agricultural produce in the coming years. After adjusting the said crop sold by the defendant, a sum of ₹6,34,610.18 was recoverable from the defendant by the plaintiff at the end of 31.3.2004. In the year 2004-05, at the time of `Hari' 2004, the defendant sold his crop worth ₹1,02,422.94 on different dates. The J-forms for the sale were handed over to the defendant. At the time of `Sauni' 2004, the defendant again sold his crop worth ₹1,28,499 00. The J-forms for the sale were handed over to the defendant by the plaintiff. ₹1,10,000/- was paid to the defendant by the plaintiff vide cheque No.913829 dated 12.5.2004, drawn on Oriental Bank of Commerce, Nabha and it was encashed by the defendant. It is stated that now ₹5,13,688.24 is payable by the defendant along with interest of ₹25,811.66.

In the written statement filed by the defendant, it was denied that the plaintiff is sole proprietor. It is stated that the defendant for himself and on behalf of his uncle Saudagar Singh sold crops worth more than ₹Ten Lacs during said period, but the plaintiff had wrongly and falsely shown less amount of the crops sold and even refused to give the J-forms to the defendant and retained the same himself with mala fide intention and ulterior motive. The plaintiff did not make the payment of the crops sold by the defendant and his uncle and put off the matter on one pretext or the other that the accounts will be settled later on. It is also stated that the plaintiff had manipulated and prepared false accounts in connivance with his brother and Munim Som Singh of the sale/purchase of crops of the defendant and Saudagar Singh. It is denied that the defendant took any alleged loans of ₹3 Lacs, ₹4 Lacs or ₹2.5 Lacs from the plaintiff vide alleged cheques and said cheques were got encashed by the defendant. It is further denied that any rate of interest was ever agreed between the parties and the defendant promised to repay the alleged loan amount and interest by selling his crops in coming years. It is further denied that after adjusting the said crops sold by the defendant, a sum of ₹6,34,610.18 was recoverable from the defendant by the plaintiff at the end of 31.3.2004. It is further stated that modus operandi of the plaintiff in cheating the defendant, his uncle and other agriculturists was that he used to take them to the Bank and obtain their thumb impressions saying that the accounts and payment of the sale of their crops is to be settled. The plaintiff, his Munim Som Singh and his brother Anil accompanied the defendant to the Bank on various dates and obtained his thumb impressions in the Bank and they never made any payment to the defendant of the alleged cheques and the plaintiff himself used to receive the payments in the name of the defendant. It is further stated that the defendant never required alleged huge amounts for any purpose whatsoever. The plaintiff, his brother and Munim took the defendant to the bank saying that the payment of crops sold will be made in the Bank and on this pretext the plaintiff himself filled in the form of the bank and withdraw the money, but never made any payment to the defendant.

After framing of issues and the parties led evidence, the learned Civil Judge (Junior Division), Nabha, after appreciating the evidence dismissed the suit of the plaintiff. Aggrieved from this judgment and decree of learned Civil Judge (Junior Division), Nabha, an appeal had been filed. The learned Additional District Judge, Patiala, dismissed the appeal. Aggrieved against the judgments and decrees passed by the Courts below, the present regular second appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that the Courts below have not appreciated the evidence in right perspective and the findings are perverse.

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

From the record, I find that firstly as admitted there is no written document on the record to show that the defendant borrowed the loan from the plaintiff. There is also no written document on the record to show that the defendant agreed to pay interest at any rate. The whole case of the plaintiff is based on three cheques of the amount of ₹4 Lacs, ₹3 Lacs and ₹2.5 Lacs, which he states that were encashed by the defendant. As the plaintiff has come to the Court, therefore, he has to prove his case by leading cogent evidence. He cannot rely on the weakness of the defendant's case. Admittedly, the plaintiff has not produced copies of the original record ledgers, cash-books etc. There is nothing on the record that any entry has been thumb marked by the defendant in the account books of the plaintiff. No reason or ground has been given as to why the plaintiff has not produced and proved the copies of the record.

At the time of arguments, learned counsel for the appellant argued that Som Singh PW-2 witness of the plaintiff has brought the original record, but it was in some other language used by the Commission Agent known as `Lande' language. It is admitted by the appellant that no translation has been filed before the Courts below. It is also admitted that no person, who knows this language has translated this record. Even the photo copies of the original record are not placed on the record which means that the plaintiff has not produced the account books before the Court nor got exhibited the documents as per law. Secondly, the plaintiff is relying upon the cheques, but the cheques are also not produced before the Courts below in the evidence. The plaintiff is relying upon only statement of accounts. Statement of account still not proves the case of the plaintiff. Even no bank officials has been produced by the plaintiff to prove that these cheques have been got encashed by the defendant himself. Learned counsel for the appellant argued that there is admission by the defendant in the written statement that he has received the amount.

I have seen the written statement, there is no such admission. Rather, the case of the defendant is that the plaintiff, his brother and Munim used to accompany them and used to get obtained his thumb impression on the document there and used to take money away and the defendant is an illiterate person.

Keeping in view the above discussion, I find that the findings given by the Courts below are correct, as per evidence and law. Both the Courts below have given concurrent findings of fact as per evidence. Nothing has been pointed out as to which evidence has been misread by the Courts below and which evidence has not been discussed in right perspective. The findings cannot be held as perverse. Both the judgments and decrees passed by the Courts below are correct, as per evidence and law which do not require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the regular second appeal, the same is dismissed.

July 15, 2015. **(Inderjit Singh)**
Judge

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