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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6474 of 2014 (O&M)
Date of Decision: 20.11.2015

Avtar Singh **......Appellant**
vs
State Bank of Patiala **.....Respondent**

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: None.

****

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?

RAJ MOHAN SINGH, J.

CM No.15431-C of 2014

Prayer in this application is for condonation of delay of 155 days in filing the appeal.

Since the appeal is being decided on merits, this Court feels like to condone the delay, in view of averments made in para No.4 of the application.

Consequently, delay of 155 days in filing the appeal is condoned.

Application stands disposed of.

Main case

[1]. Defendant-Avtar Singh is in second appeal in a suit for recovery filed by the plaintiff-State Bank of Patiala.

[2]. Plaintiff alleged that in the month of August 2006, defendant approached the plaintiff-Bank at its branch office Mukerian, for a loan of Rs.3,00,000/- for KCC/crop loan and other loan application for an amount of Rs.5,00,000/- on 28.08.2006. For the total loan amounting to Rs.8,00,000/- defendant agreed to mortgage his land situated in village Bareowal in favour of plaintiff-Bank as collateral security. Plaintiff-Bank agreed to advance loan under Kisan Gold Card Scheme and agreed to sanction the said loan on the terms and conditions subsequently reduced into writing and settled between the parties in the loan documents. Subsequently on 31.08.2006 defendant No.1, mortgaged the land as collateral security measuring 33 Kanals 19 Marlas for a total loan of Rs.8,00,000/- which was registered on 31.08.2006.

[3]. On 04.09.2006, defendant executed number of loan documents in favour of plaintiff-Bank towards PBKC/agricultural cash credit limit of Rs.3,00,000/- i.e. letter of arrangement, hypothecation agreement in favour of plaintiff-Bank. The loan was advanced to the defendant on 04.09.2006 and the same was to be repaid to the plaintiff-Bank with interest @12% per annum with half yearly rest on the next crop i.e. after one year. The aforesaid terms and conditions were accepted by the defendant.

[4]. Defendant had already opened bank account on 02.09.2006 with all necessary particulars like photographs and other documents. Account opening form was duly affixed with a photograph. Subsequently, on 02.09.2006 various loan documents were executed by defendant in favour of plaintiff-Bank under Kisan Gold Card Scheme i.e. loan of Rs.5,00,000/- for agricultural implements and executed documents namely letter of undertaking, hypothecation agreement, letter of arrangement and documents dated 22.09.2006 etc. in favour of the plaintiff-Bank. The loan of Rs.5.00,000/- under Kisan Gold Card Scheme was advanced to the defendant along with interest with minimum rate of 11.25% per annum with half yearly rest and first half yearly installment was to be started from March 2007.

[5]. Defendant did not repay the amount of agricultural cash credit limit on next due harvesting season i.e. after six months along with interest. Therefore, charges became lawfully due and defendant became wilful defaulter. Defendant had already availed loan of Rs.3,00,000/- of PBKC/Agricultural limit on 04.09.2006 from the plaintiff-Bank and has not repaid the same and, therefore, he became wilful defaulter as per loan documents executed by him. With this background, the suit came to be filed on account of breach of terms and conditions

committed by the defendant in not repaying the amount of loan despite various requests being made by the Bank.

[6]. The suit was contested by the defendant by taking numerous pleas in the preliminary objection as well as on merits. Defendant took the stand that loan of Rs.80,000/- was only availed by him and the plaintiff-Bank manipulated wrong and forged entries in the record by converting loan of Rs.80,000/- into loan of Rs.8,00,000/-. Defendant alleged that this fact was brought to the notice of this Court in CRM-M-No.3612 of 2008 filed by his wife in which it was alleged that the defendant and his wife each had taken loan of Rs.80,000/- and they were willing to repay the same. Defendant even deposited amount of Rs.2 lacs with the plaintiff-Bank at Mukerian.

[7]. Parties were put to following issues:-

> *"1. Whether the plaintiff is entitled to recovery of Rs.8,16,135.70/- along with interest from the defendant? OPP.*
>
> *2. Whether suit of the plaintiff is not maintainable? OPD.*
>
> *3. Relief."*

[8]. Both the parties led their respective evidence to prove their case on the aforesaid issues.

[9]. Plaintiff examined Krishan Jeewan Verma, Manager, State Bank of Patiala as PW-1, who has proved permission

letter dated 29.11.2008, statement of account of PBKC, copy of statement of account of Kisan Gold Card, copy of complaint filed before the SSP, Hoshiarpur, report of Patwari Ex.PW-1/B to Ex.PW-1/G and Mark 'A' respectively. He stood firm in his cross-examination.

[10]. PW-2 Ravi Mahajan proved his affidavit Ex.PW-2/AA and also proved original debit voucher dated 04.09.2006 Ex.PW-2/A, debit voucher dated 22.09.2006 Ex.PW-2/B, credit voucher dated 04.09.2006 Ex.PW-2/C, credit voucher of amount of Rs.5,00,000/- Ex.PW-2/D, withdrawal voucher dated 04.09.2006 Ex.PW-2/E, withdrawal voucher dated 22.09.2006 Ex.PW-2/F, statement of account Ex.PW-2/G, credit voucher dated 19.04.2008 Ex.PW-2/H, credit voucher of amount of Rs.32,000/- Ex.PW-2/I, debit voucher of amount of Rs.80,000/- as Ex.PW-2/J, credit voucher of amount of Rs.80,000/- Ex.PW-2/K, credit voucher dated 02.07.2008 Ex.PW-2/L, loan application dated 28.08.2006 Ex.PW-2/M, letter of arrangement Ex.PW-2/N, the letter of undertaking Ex.PW-2/O, hypothecation agreement Ex.PW-2/P, loan application dated 28.08.2006 PW-2/Q, letter of arrangement dated 22.09.2006 Ex.PW-2/R, letter of undertaking Ex.PW-2/S, hypothecation agreement PW-2/T, letter of undertaking dated 02.09.2006 PW-2/U and mortgage deed dated 31.08.2006 Ex.PW-2/V. This witness also stood the

test of cross-examination and has also stated that the transaction related to the period of Manager Sh. M.L. Vidyarthi, who is still alive, but has retired from service.

[11]. PW-3 Ram Sarup, Registration Clerk of the Sub-Registrar, Mukerian, also stepped into witness box and proved certified copy of regitered mortgage deed dated 31.08.2006 Ex.PW-2/L. He also stood the test of cross-examination.

[12]. Varinder Kumar, Patwari PW-4 also appeared in the witness box and placed on record *rapat roznamcha* mark 'A', copy of *jamabandi* mark 'B' and *khasra girdawari* mark 'C'. He has deposed that *jamabandis* and *khasra girdawaris* were forged. The report dated 31.08.2006 was also claimed to be forged and he admitted that no official from Bank inquired about the ownership of property in dispute. He was also cross-examined and stood firm on his version given in his examination-in-chief.

[13]. Defendant appeared as DW-1 and in his cross-examination he admitted factum of mortgage deed having been executed in favour of Bank and identified his photographs mark 'A' as well as his computerised photograph mark 'B'. He also admitted the documents executed at the time of loan transaction. There was no cutting or overwriting on the documents. He also admitted that he did not make any

complaint about the fact before any higher official of the Bank. He admitted that he took loan of Rs.5,00,000/- and Rs.3,00,000/- from the Bank and had returned amount of Rs.1,00,000/- to the Bank. He tendered copy of order dated 04.07.2008 Ex.D-1.

[14]. In the written statement defendant denied the fact that he ever took loan of Rs.8,00,000/- from the plaintiff-Bank, on the other hand he took the stand that he had taken loan of Rs.80,000/- only and Bank officials forged the writing and converted the same into the loan of Rs.8,00,000/-. The cross-examination of the defendant proved that he actually took loan of Rs.5,00,000/- and Rs.3,00,000/-. He had admitted loan documents which have been proved by the plaintiff's evidence on record.

[15]. The onus was on the defendant to prove that he infact had availed the loan of Rs.80,000/- only and the officials of the Bank had committed forgery thereby converting the loan of Rs.80,000/- into the loan of Rs.8,00,000/-. Except bald statement of the defendant in his testimony, nothing came on record to prove the alleged fact of advancing loan of Rs.80,000/. The cross-examination conducted on the witnesses of the plaintiff yielded nothing in favour of defendant in the context of availing loan of Rs.80,000/- only from the plaintiff-Bank.

[16]. Trial Court as well as lower Appellate Court have recorded firm findings of fact under issue No.1. Issue No.2 was dependent upon issue No.1 and in view of findings recorded under issue No.1, the issue No.2 was also answered against the the defendant. Resultantly, the suit of the plaintiff was decreed.

[17]. Since no representation has been made in this case, therefore, this Court proceeded to decide the appeal on the basis of available material on record.

[18]. Appellant has formulated following substantial questions of law in para 6 of the grounds of appeal:-

> *"a. Whether the impugned judgments and decree passed by both the Courts below suffer from material illegality?*
>
> *b. Whether the respondent bank is entitled for recovery of the amount."*

[19]. Both the questions as formulated in the aforesaid para are pure question of fact. The judgments and decrees passed by the Courts below are based on documentary evidence produced by the plaintiff with reference to witnesses whose testimonies remained unshattered and the execution of documents executed by the defendant with the plaintiff-Bank has been duly proved on record. Except the bald statement, the defendant could not prove the factum of alleged fraud or fabrication. Plea of fraud has to be proved like a criminal trial

and onus is always on the person who asserts in affirmative.

[20]. Defendant has taken the plea of fraud, but could not prove it with reference to material on record. Defendant never sought an issue to be framed on the plea of fraud, nor any evidence was led except the bald and solitary statement made by him.

[21]. In the absence of any evidence by the defendant, no such conclusion can be drawn that the impugned judgments and decrees are materially discrepant and plaintiff-Bank is not entitled to recover the amount. The aforesaid questions as framed by the appellant do not arise at all because there is no material on record to substantiate these pleas.

[22]. Having considered the issues on the basis of material on record, this Court does not feel that any question of law, worth consideration is involved in this case. The evidence based on documentary evidence, the veracity and genuineness of the same could not be shattered by the defendant by any evidence.

[23]. In view of aforesaid, the impugned judgments and decrees are found to be validly passed by the Courts below. Accordingly, no interference is called for in this appeal, consequently the same is dismissed.

November 20, 2015 **(RAJ MOHAN SINGH)**
Atik **JUDGE**