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

RSA-219-2011 (O&M)

Date of decision : 05.09.2016

M/s Baldev Singh Sandhu, Commission Agents, District Faridkot and
another

... Appellants

Versus

Sarmukh Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Punchhi, Advocate
for the appellants.

Mr. S.K. Chawla, Advocate
for the respondent.

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?

AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the judgment and decree of the lower Appellate Court, whereby the judgment and decree of the trial Court partly decreeing the suit for recovery of ₹ 34,441/- along with interest @ 12% per annum from 02.11.2003 and future interest @ 6% per annum has been set aside and the decree of ₹ 1,54,441/- maintaining the same interest rate has been ordered.

Mr. Sandeep Punchi, learned counsel appearing on behalf of the appellants-defendants submits that the respondent-plaintiff had been supplying the accounts' goods to the appellants-defendant being a

commission agent and in lieu thereof, Form-J has been issued and the entries of the outstanding amount were being reflected in the *bahi khata*/accounts book which are *per se* admissible in evidence as per Section 34 of the Indian Evidence Act. The suit of the respondent-plaintiff was for recovery of ₹ 2,22,000/- i.e. ₹ 1,50,000/- as principal amount and ₹ 72,000/- as interest @ 2% per month from 01.05.2004 till date. The trial Court examined the entry of ₹ 1,47,880/- as outstanding towards the defendants by the plaintiff and after adjustment the aforementioned amount, passed the decree of ₹ 34,441/-, but the lower Appellate Court has taken into consideration a solitary document (Ex.PX) i.e. undertaking purportedly given by defendants of ₹ 1,20,000/- without referring to the *bahi khata*, in essence, the aforementioned entry has been looked into in isolation, thus, there is a illegality and perversity.

No doubt, this Court on earlier occasions had been framing substantial questions of law while deciding the appeal, but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi (dead) through LRs and others Vs. Chandrika and others” AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97 (1) CPC, whether the provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure. The Constitution Bench of Hon'ble Supreme Court held that the decision in **“Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others” 2001 (4) SCC 262** applicability of Section 97 (1) of CPC was not correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back and therefore, I do not intend to

frame the substantial questions of law while deciding the appeal aforementioned.

Mr. S.K. Chawla, learned counsel appearing on behalf of the respondent-plaintiff submits that there is no fault in the judgment and decree of the lower Appellate Court, in fact, the lower Appellate Court by taking into consideration the document (Ex.PX) vide which the appellants-defendants had undertaken to pay a sum of ₹ 1,20,000/- and after adjustment of the aforementioned amount had ordered for a decree of ₹ 1,54,441/-, thus, there is no illegality and perversity in the findings under challenge and urges this Court for affirming the same.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the findings rendered by the trial Court is perfect, legal and justified, whereas the lower Appellate Court has read the undertaking (Ex.PX) in isolation, but not in conjunction with *bahi khata* (Ex.D-4) which as on 01.11.2003 showed the outstanding amount by the plaintiff towards the defendants i.e. ₹ 1,47,880/- and after adjustment the aforementioned amount, rightly so, the trial Court has ordered for a decree of ₹ 34,441/- as noticed above, thus, there is a illegality and perversity, much less, abdication. The lower Appellate Court being the last Court of fact and law is required to look into the entire evidence, not only the document (Ex.PX) in isolation. *Bahi khata* (Ex.D-4) is signed by the plaintiff, therefore, the *bahi khata*/accounts book carries a presumption of truth as per the provisions of Section 34 of the Indian Evidence Act.

For the foregoing reasons, the judgment and decree of the lower Appellate Court is not sustainable and accordingly, the same is hereby set aside and that of trial Court is restored.

Record of the Courts below be sent back.

With the aforesaid observations, the appeal stands allowed.

05.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No