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

**RSA-5289-2012 (O&M)
Date of decision : 04.11.2016**

Gurinder Singh @ Gurbinder Singh

... Appellant

Versus

M/s Mann Goyal and Co. Commission Agent

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Harkesh Manuja, Advocate
for the appellant.

Mr. H.S. Gill, Senior Advocate with
Mr. K.B.S. Mann, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby the suit seeking recovery of ₹ 18,36,465/- including interest, on the basis of entries of account books, has been decreed by both the Courts below.

Mr. Harkesh Manuja, learned counsel appearing on behalf of the appellant-defendant submits, that though there is a specific denial viz-a-viz the signatures on the books of account produced on behalf of the respondent-plaintiff and they also carry a presumption of truth as per the provisions of Section 34 of the Indian Evidence Act, but the fact remains that there is a close relationship between the mother-in-law of the appellant-defendant and the mother of one of the partners of the respondent-plaintiff-Firm. The entries prior to 2000 have not been seen the light of day. The

settlement alleged to have been arrived at on 14.06.2001 could not be a foundation for the purpose of the recovery of the amount. Even a counter-claim seeking rendition of accounts from the financial year 1995-96 to 2002-03 was also filed, but the same has erroneously been dismissed. The Courts below have embarked upon a path of conjectures and surmises without noticing the fact that the respondent-plaintiff has miserably failed to prove the alleged due amount. There is a categoric admission of PW-3, while appearing as a witness, who in cross-examination, specifically admitted the fiduciary relationship between Malkit Singh and the appellant-defendant, thus, there is a gross illegality and perversity and prays for setting aside the findings under challenge.

Mr. H.S. Gill, learned Senior Counsel assisted by Mr. K.B.S. Mann, learned counsel appearing on behalf of the respondent-plaintiff-Firm submits, that the concurrent findings of fact cannot be interfered until and unless there is a gross illegality and perversity. No evidence has been led by the appellant-defendant to belie his signatures on the books of account. In view of such situation, plea taken is nothing, but an attempt to throw the liability, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no merit and substance in the submissions of Mr. Harkesh Manuja, for, had the blank papers been used as an outstanding due by the respondent-plaintiff, the appellant-defendant would not have sit idle rather would have raised hue and cry by running from pillar to post in seeking vindication of his grievance either through criminal process or otherwise, particularly, when apprised of the aforementioned fact, upon receipt of the notice of the suit. The assistance of

Hand-writing Expert has not been taken to belie his signatures. All these facts establish that there was a outstanding due which he failed to pay, therefore, the respondent-plaintiff was compelled to institute a suit by paying the payment of Courts fee too. The loan transaction is always done particularly in the villages amongst the known persons. It is not the case where the loan was extended by the registered Financier.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration and accordingly, the appeal is dismissed.

04.11.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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