IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA 3286 of 2013 (O&M)
Date of decision: 27.01.2016

Balkar Singh ....*Appellant*

Versus

Raman Kumar ....*Respondent*

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. L S Sidhu, Advocate
for the appellant

Mr. Ashwani Verma, Advocate
for the respondent

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

Rekha Mittal, J.

The present appeal has been directed against the judgment and decree dated 05.02.2013 passed by the Additional District Judge, Fatehabad whereby an appeal preferred by Balkar Singh - appellant against the judgment and decree dated 06.11.2009 passed by the Additional Civil Judge (Senior Division) Fatehabad has been dismissed and the findings recorded by the trial Court in favour of the respondent/plaintiff, have been affirmed.

Facts, in brief, are that Raman Kumar-respondent claiming himself to be the sole proprietor of firm M/s Raman Kumar and Company filed a suit for recovery on the premise that the appellant/defendant had taken a loan of Rs.4,50,000.00, detailed in para 3 of the plaint and he failed to return the amount along with interest @ 1.5% per month.

The appellant filed the written statement and, in turn, denied his liability to pay any amount to the respondent. It is averred that he never opened any account with the respondent-firm. The brother of the appellant, namely Darshan Singh had an account with firm M/s Nand Lal Avinash Chand. Nand Lal is the father and Avinash Chand is the brother of Raman Kumar. In the year 2004, account of Darshan Singh was settled and thereafter, there remained no dealings between Darshan Singh and the said firm. It is highly improbable that a commission agent will pay such a huge amount without getting any agriculture produce. The appellant never promised to pay interest @1.5% per month.

Darshan Singh had his account with M/s Nand Lal Avinash Chand from 1996 to 2004. The firm used to give statements of account to Darshan Singh through its Accountant, Satpal. The account statement slips are in possession of Darshan Singh and would be produced through Darshan Singh at the time of evidence. The amount claimed by the respondent firm is not mentioned in the account slips given to Darshan Singh. Account books maintained by the respondent firm are forged and fabricated documents. Had any signatures been shown in the account books of the respondent firm, the same are based on fraud and forgery, as the appellant knows only Punjabi. He has challenged maintainability of the suit; locus standi of the respondent to file the suit and the suit being false and frivolous.

The controversy between the parties led to framing of following issues:-

1. *Whether the plaintiff is entitled to the recovery of Rs.7,10,950.00 along with interest as alleged?OPP*
2. *Whether the suit of the plaintiff is not maintainable in the present form?OPD*
3. *Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD*
4. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD*
5. *Relief*

The parties were permitted to adduce evidence in support of their respective claims.

The appellant examined himself as DW1, Darshan Singh, his brother (DW2) and Shamsher Singh Malik, Finger Print and Hand Writing Expert (DW3).

After bestowing its thoughtful consideration to the rival submissions made by counsel for the parties in the light of pleadings and materials on record, the learned trial Court determined issue No. 1 in favour of the respondent/plaintiff and remaining issues were answered against the defendant/appellant and as a consequence, the suit of the respondent was decreed for recovery of Rs.7,10,950.00 *i.e.* Rs.4,50,000.00 as principal amount and Rs.2,60,950.00 as interest calculated @1.5% per month from the date of loan till filing of the suit and *pendente lite* simple interest @ 6% per annum on the principal amount from the date of filing of the suit till realization.

Feeling aggrieved by the judgment and decree passed by the trial court, the appellant preferred an appeal which came to be dismissed by the Additional District Judge, Fatehabad.

Still feeling dissatisfied, the present regular second appeal has been preferred by the appellant.

Counsel for the appellant has assailed the findings of the Courts below primarily on two counts. The first submission made by counsel is that Darshan Singh, brother of the appellant had dealings with firm M/s Nand Lal Avinash Chand and account books of said firm have been used by the respondent for filing a false suit against the appellant to recover a huge amount along with interest at an exorbitant rate. In addition, it is submitted that Raman Kumar-respondent during his cross-examination has admitted that the appellant never brought his crop for sale at firm M/s Raman Kumar and Company, therefore, it is difficult to accept to reason that the respondent would advance loan to the appellant on four occasions between 18th April 2004 to 14th September 2004, detailed in the plaint.

Counsel for the appellant would urge that rate of interest (18% per annum) allowed by the Courts below, in absence of any contract between the parties qua interest cannot be upheld, thus liable to be reduced.

Counsel for the appellant has made a vain attempt to argue that as the account books relied upon are not maintained in the ordinary course of business in view of the facts elicited during cross examination of the respondent and his Accountant, the entries therein cannot form the basis for decreeing claim of the respondent, in view of provisions of Section 34 of the Indian Evidence Act.

Counsel for the respondent has supported the judgments passed by the Courts below with the submissions that the entries in the account books maintained by the respondent firm in the ordinary course of business are duly singed by the appellant who has failed to allege and prove as to how these entries are the result of fraud and forgery. It is further argued that account books being maintained by firm M/s Nand Lal Avinash Chand has nothing to do with the business dealings and accounts of firm M/s Raman Kumar and Company, a proprietorship concern of the respondent. According to counsel, rate of interest has been allowed by the Court as per usual practice in Anaz Mandi, Fatehabad.

I have heard counsel for the parties and perused the records.

The substantial questions of law that calls for determination are *(i) whether entries in the account books relied upon by the respondent are the result of fraud and forgery?; and (ii) whether interest @ 18% per annum, awarded by the Courts till filing of the suit is justified?*

Counsel for the appellant has not disputed that entries in the 'bahi' relied upon by the respondent bears signatures of the appellant in regard to taking of loan on four occasions in a short duration of less than five months between April 2004 to September 2004. The plea of the appellant that account books maintained by the firm M/s Nand Lal Avinash Chand, in respect of account maintained by the appellant's brother (Darshan Singh) for the period 1996-2004, have been used for filing of the present suit is misconceived and merits rejection. It is not plea of the appellant that he ever had any dealings with firm M/s Nand Lal Avinash Chand much less that he ever received any money from said firm on behalf Darshan Singh or signed any entry in the account books maintained by firm M/s Nand Lal Avinash Chand. In absence of any such plea in the written statement, no such contention of the appellant can be accepted that the respondent misused the entries made in the account books maintained by firm M/s Nand Lal Avinash Chand.

Another submission made by the appellant that there was no occasion for the respondent to advance loan of Rs.4,50,000.00 on four occasions between April 2004 to September 2004 without any agriculture produce having been brought to the Commission Agency of the respondent, the same gets falsified and belied in view of the entries in the account books duly signed by the appellant. The matter would have been different, had there been entries in the account books without signatures of the appellant and, in that eventuality, those entries in absence of any other material, may not be sufficient to fasten liability of the suit amount upon the appellant.

The plea of the appellant that account books are not admissible in evidence as the same are not maintained in the ordinary course of business, is of no consequence in the circumstances that the loan entries pertaining to the appellant are duly signed by him. The appellant, therefore, cannot wriggle out of those entries by pointing out any discrepancies to contend that the account books were not being maintained correctly in the ordinary course of business. Even otherwise, the appellant has not pointed out any discrepancy in the account books as would substantiate his plea that the same were not maintained in the ordinary course of business.

The second issue is in regard to the rate of interest awarded by the Courts. Indisputably, there is no agreement between the parties in regard to rate at which interest would be chargeable. The respondent has claimed interest @ 18% per annum (1.5% per month) by alleging that the same is as per the prevalent rate.

The respondent has not examined any witness to substantiate his plea in this regard. Under these circumstances, it appears that ends of justice demand that interest awarded by the Courts below requires modification in favour of the appellant. Counsel for the respondents has not raised serious issue if interest allowed by the Courts is reduced. In this view of the matter, the appellant shall be liable to pay interest @12% per annum from the date of payment (receipt of money by the appellant) till filing of the suit.

As a result, question No. 1 is determined against the appellant and question No. 2 is answered in favour of the appellant in the aforesaid terms.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

27.01.2016
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