IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3390-2013 [O&M]
Date of Decision : May 4th, 2016

Mewa Singh .... Appellant

Versus

Vipin Kumar and another .. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Munish Kumar Garg, Advocate,
for the appellant.

Mr. N.P.Gupta, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Present Regular Second Appeal by the defendant is directed against the concurrent findings of both the Courts below in a suit for recovery of Rs.5,28,000/- [Principal sum- Rs.4,00,000/- and interest Rs.1,28,000/-] filed by plaintiffs [respondents herein]. The Court of first Instance vide judgment and decree dated 23.07.2012 decreed the suit and the appeal filed by Mewa Singh, defendant was dismissed by learned District Judge, Jind vide judgment and decree dated 06.03.2013.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

3. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiffs had filed a suit for recovery of Rs.5,28,000/-

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[Principal sum- Rs.4,00,000/- and interest Rs.1,28,000/-] on the basis of pronote, receipt and accounts book. As per the plaintiffs, the defendant had taken a loan of Rs.4,00,000/- to be repaid alongwith interest @ 2% per month from the plaintiffs on 14.05.2008 and had executed a pronote and receipt and affixed his signatures/thumb impressions on the revenue stamps after accepting its correctness. The entry in this regard was recorded in the account books of the plaintiff-firm. The defendant was requested for re-payment on different dates and a legal notice was served, but repayment was made and as such, necessity of the suit.

4. The defendant contested the suit on the ground that the plaintiffs had been carrying on the business of Commission agent and used to give loans to the people without having any money lending license. Plaintiff firm is maintaining forged books of accounts. The defendant never took any loan of Rs.4,00,000/- from the plaintiff on 14.5.2008 nor he executed any such document i.e. Pronote or receipt in favour of the plaintiffs and the same are forged documents. In fact, the defendant is an agriculturist and used to sell his crops at the shop of the plaintiff and the plaintiff used to obtain his signatures/thumb impressions in his bahi and blank papers. However, in the year 2000, the defendant stopped selling his cross on the plaintiff firm and because of that, the plaintiffs started forging the transactions. Taking undue advantage of the blank signed documents, the plaintiff got prepared pronote and receipt and the same are not binding upon the defendant and prayed that the suit be dismissed.

5. On the pleadings of the parties, the Court of first instance settled the following issues:-

1. Whether plaintiffs are entitled for recovery of principal sum

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of Rs.5,28,000/- with pendentilite and future interest? OPP

2. Whether plaintiffs are money lender without licence? OPD
3. Whether plaintiffs have no locus standi to file the suit? OPD
4. Whether suit is not maintainable in the present form? OPD
5. Whether plaintiffs have suppressed material and true facts? OPD
6. Relief."

6. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance decreed the suit of the plaintiffs. The appeal filed by the defendant before the Court of first Appeal was dismissed. As such, the present Regular Second Appeal.

7. Learned counsel for the appellant mainly submitted that it is case of the defendant, right from the beginning that the plaintiff-firm was carrying on the business of money lending without having any licence under the Punjab Registration of Money Lender's Act, 1938 [for short, "the Act"] and as such, the present suit for recovery is legally not maintainable. Even issue No.2 was framed on this point and the Court of first instance simply mentioned that Issue Nos. 2, 3, 4 and 5 were not pressed at the time of arguments, though this plea was raised before the Court of first instance. Even the first appellate Court has not recorded any finding on this issue point which resulted into erroneous findings.

8. Learned counsel for the appellant further submitted that it had come in the statement [Annexure A/1] of Vipin Kumar, who appeared as PW-1 before the Court of first Instance that his firm is having 20-30 accounts and they had advanced money to all these 20-30 account holders. He used to charge interest from all these 20-30 account holders

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as per practice of the Market and the firm is not having license of money lending as it is not required. Despite such an evidence available on the file, the Courts below completely ignored ignored this fact and material evidence which goes to the root of the case and the specific findings were required to be given on issue No.2 by the Courts below, which has not been done and as such, the present appeal deserves to be allowed.

9. Learned counsel for the respondent-plaintiffs submitted that the Courts below have already recorded concurrent findings of fact. There is no material or evidence available on the file that the plaintiff firm as money lender was required to obtain license under the Act. The business of plaintiffs is of commission agent and not a business of money lending. More so, the appellant had taken the plea of fraud. He was required to plead and prove the fraud by leading positive evidence beyond reasonable doubt but that has not been done. The concurrent findings having been recorded by the Courts below are liable to be upheld by this Court and the present Regular Second Appeal is not maintainable as there is no substantial question of law involved therein.

10. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the following substantial questions of law arise for determination in the present appeal:-

i). Whether the plaintiff-firm was required to obtain the license under the Punjab Registration of Money Lender's Act, 1938 Act?

ii). Whether the plaintiff firm was in fact, carrying on money lending business without the required license?

iii). Whether both the Courts below mis-appreciated the evidence which resulted into erroneous findings?

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11. It had come in the statement of PW-1, Vipin Kumar that Satya Traders is not a registered firm, rather he is the sole proprietor. The following material has come in his cross-examination:-

> ".... My firm is having 20-30 accounts. I have advanced money to all these 20-30 account holders. I used to charge interest from all these 20-30 account holders as per practice of Market. My firm is not having license of money lending as it is not required. I am also not possessing any license of money lending..."

12. The above detailed facts duly admitted by the plaintiff establishes beyond doubt that in fact, the plaintiff firm was carrying on money lending business and that too, without obtaining the license as required under the Act. Admission is always to be considered as best evidence and the above admission of respondent No.1 establishes the version of the appellant because the defendant-appellant had taken this plea right from the very beginning and even issue No. 2 was also framed on this point. As per provisions of Section 3 of the Act, suits filed by money-lenders is barred. The relevant provision of Section 3 of the Act reads as under:-

> **"Suits and applications by money-lenders barred, unless money-lender is registered and licensed.**
>
> 3. Notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan, or an application by a money-lender for the execution of a decree relating to a loan, shall after the commencement of this act, be dismissed, unless the money-lender-
>
> (a) at the time of the institution of the suit or presentation of the application for execution; or
>
> (b) at the time of decreeing the suit or deciding the application for execution-
>
> (i) is registered; and

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...

(ii) holds a valid licence, in such form and manner as may be prescribed; or

(iii) holds a certificate from a Commissioner granted under section 11, specifying the loan in respect of which the suit is instituted, or the decree in respect of which the application for execution is presented; or

(iv) if he is not a registered and licensed money-lender, satisfies the Court that he has applied to the Collector to be registered and licensed and that such application is pending; provided that in such a case, the suit or application shall not be finally disposed of until the application of the money-lender for registration and grant of license pending before the Collector is finally disposed of."

13 Further, Sections 4 and 5 of the Act deals with registration of Money-lenders and requirement of license by Money-lenders.

14. Undisputedly, the plaintiffs are doing the business of Commission Agent under the name and style of 'M/s Satya Traders' and used to advance loan to such agriculturists who used to sell or promise to sell their agriculture produce through it and they used to charge interest thereon. It is common practice that farmers used to put signatures/thumb impression on blank papers and cheques at the asking of Commission agents.

15. As per provisions of Sections 3 and 4 of the Act, no money lender shall carry on business of advancing loan unless he gets himself registered under the Act. Such a view was taken by a Co-ordinate Bench of this Court in **Balbir Singh Vs. Raj Krishan, 2015(2) RCR [Criminal] 812** and while referring to Sections 3 and 4 of the Act, this Court observed as under:-

> "22. The said sections provide that no money lender shall carry on the business of advancing loans unless he gets himself registered under sub-section (i). Any money lender, who contravenes these provisions, shall be liable on conviction to a fine not exceeding one

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> thousand rupees for the first offence and two thousand rupees for every subsequent offence in this direction. As per the above referred provisions, a person is only competent to advance agricultural loan if he holds the valid licence/registration certificate under the provisions of the Punjab Money Lender's Licence Act, 1938. In the present case, the complainant is not having any such licence. Without having the aforesaid licence, the advancement of loan by the complainant to the petitioner-accused is not only illegal, but at at the same time, he can also be prosecuted..."

16. In the present case, the plaintiffs are not having any such license and without having the aforesaid license, the advancement of loan by them to the defendant is illegal. Both the Courts below have completely misread and mis-appreciated the evidence and completely ignored the legal and factual position which resulted into erroneous findings. Accordingly, the substantial questions of law posed in para No.10 of this judgment are answered in favour of the appellant and against the respondents.

17. In view of the above, the present Regular Second Appeal stands allowed and the impugned judgments and decrees passed by the Courts below are set-aside.

(SHEKHER DHAWAN)
JUDGE

May 4th, 2016
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