In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1085 of 2015(O&M)
Date of Decision:21.1.2016

Gurcharan Singh

---Appellant

vs.

State Bank of Patiala and another

---Respondents

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

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Present: Mr. Aminder Singh, Advocate
for the appellant

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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?

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Rekha Mittal,J.

CM No. 3177-C of 2015

Prayer in this application is for condonation of delay of 406 days in refiling the appeal.

In view of averments in the application and arguments advanced by counsel for the appellant, the application is allowed and delay of 406 days in refiling the appeal is condoned.

RSA No. 1085 of 2015

The present regular second appeal has been preferred against the concurrent findings recorded by the courts below whereby the suit filed by the respondents for recovery of Rs. 4,33,041.35/- alongwith interest has been decreed by the learned trial court and the findings recorded by the learned trial court have been affirmed in appeal.

The respondent-bank filed a suit for recovery on the plea that on 12.10.1999, Gurcharan Singh appellant and Dalbara Singh proforma respondent approached the bank for a loan of Rs. 2,14,000/- for purchasing a tractor for agricultural purpose. The application for obtaining loan was processed and after due verification, a loan of Rs. 2,14,000/- was sanctioned. Mortgage deed was executed in favour of the bank by way of security for repayment of the loan amount, on 13.10.1999. The appellant and respondent No. 2(guarantor) agreed to repay the loan amount with interest at the rate of 15.30% per annum with half yearly rests subject to change as per bank rules. The loanee and the guarantor executed hypothecated agreement and various loan documents. The documents were duly explained to them and after admitting the same as correct, they signed the documents.

The appellant filed the written statement, contesting claim of the bank. He challenged competency of the bank Manager to file the suit or to engage a counsel. He has denied taking of any loan, execution of documents as well as his liability to pay the suit amount. It has been averred that he was present in Tehsil complex, Sangrur for his personal matter where officials of the bank asked him to become a witness by saying that Darbara Singh son of Mohinder Singh intends to take crop loan. He came to know later that crop loan to Darbara Singh was not given. The officials of the bank played a fraud upon him. It was not brought to his knowledge that signatures are being taken for mortgaging the land. The alleged outstanding amount is wrong, excessive and against the rules and instructions of the Reserve Bank of India.

The learned trial court, on appreciation of pleadings of the parties, issues framed for adjudication, evidence adduced on record and rival submission made by counsel for the parties held the appellant and defendant No. 2 liable to pay the suit amount alongwith interest at the rate of 15.30% per annum with half yearly rests.

The challenge to the judgment and decree passed by the trial court did not find favour with the court in appeal and as a consequence, judgment and decree passed by the trial court were affirmed.

Still feeling dissatisfied, the present 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 the bank has not produced any voucher/receipt in regard to payment of Rs. 2,14,000/- on the basis whereof the account of the appellant was debited. Another submission made by counsel is that the statement of account which is the foundation of the claim is not admissible in evidence as the same was signed by one officer and the certificate under the Banker's Books Evidence Act, 1891 bears the initials of some one else.

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

The appellant was given loan of Rs. 2,14,000/- for the purpose of purchase of tractor. It is none of the plea of the appellant that the said tractor was never purchased by him or the payment to the agency concerned dealing with the sale of tractor was not made by the bank. Under these circumstances, the non-production of any voucher/receipt in regard to payment of Rs. 2,14,000/- in the name of the appellant loses its relevance and significance.

Counsel for the appellant has not disputed that the statement of account bears the certificate as per the requirements of Banker's Books Evidence Act. The statement of account is per se admissible in evidence on the basis of certificate appended thereto. If the appellant wanted to point out any discrepancy or contradiction in the statement of account, he was at liberty to call for the record from the bank. As the appellant did not adduce any evidence to challenge correctness and authenticity of the statement of account, it is not open for the appellant to challenge the statement of account on mere technicalities that the statement of account has been signed by one officer and the certificate is initialed by some other officer of the bank.

To be fair to the appellant, he has raised a plea that the bank officials played fraud upon him by getting his signatures on a false pretext.

The appellant failed to adduce satisfactory much less cogent and convincing evidence to substantiate his plea in this regard. Darbara Singh, the co-defendant and guarantor did not appear in the witness box to corroborate version of his principal loanee. That being so, the courts have rightly rejected the defence plea of the appellant.

No other point has been raised.

For the foregoing reasons, neither any substantial question of law arises for adjudication nor there is any error or infirmity in the consistent findings recorded by the courts below. As a result, the appeal is dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

21.1.2016
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