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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1920-2015 [O&M]

Date of Decision : March 29th, 2016

Jarnail Singh

.... Appellant

Versus

Sham Lal

.. Respondent

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. H.P.S.Sandhu, Advocate for
Mr. Gurinder S. Sandhu, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

For the reasons mentioned in CM No.5109-C of 2015, which is supported by an affidavit, delay of 154 days in filing the present appeal is condoned.

CM stands disposed of.

Main Appeal

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby, the suit filed by plaintiff for recovery of Rs.12,31,933/- on account of Rs.9,10,184/- being the principal and Rs.3,21,749/- being interest upto 20.04.2007 was decreed by the Court of first instance vide judgment and decree dated 14.11.2011.

2. The appeal filed by appellant-defendant was dismissed by learned Additional District Judge, Patiala vide judgment and decree dated 22.07.2014.

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

4. Relevant facts of the case for the purpose of decision of this appeal; that plaintiff filed suit for recovery of Rs.12,31,933/- on account of Rs.9,10,184/- being the principal and Rs.3,21,749/- being interest upto 20.04.2007 on the ground that he was running business of commission agent at Patran under the name and style of M/s Mahavir Trading Company as its sole proprietor. Defendant used to sell his crops through the above said proprietorship concern and also to take advances from the plaintiff and used to settle the amount at the time of selling of each crop. Plaintiff had been maintaining account books i.e. cash book, ledger, *Nakal bahi* regularly in the ordinary course of his business. Plaintiff is an income tax payee. Defendant had taken advance/loan from plaintiff during the years 2004-05 to 2005-06 and the said amount was repayable along with interest @ 18% per annum to the plaintiff. Defendant put in his signature in the *rokar bahi*. Defendant failed to make the said payment despite requests, hence, the suit for recovery was filed.

5. Defendant contested the suit *inter alia* taking plea that he has not taken any loan from the plaintiff. The account books are result of manipulation. There was no liability on account of payment of interest also and the present suit deserved to be dismissed.

6. On these pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, decreed the suit of plaintiff for recovery of Rs.8,00,000/- along with interest @ 12% per annum from the date of

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payment till the date of decree and future interest @ 6% per annum till realization.

7. Defendant preferred an appeal filed before the Court of first Appeal and first Appellate Court dismissed the appeal. As such, the present Regular Second Appeal.

8. Learned counsel for the appellant submitted that the Courts below have not considered the fact that the account books being maintained by the plaintiff were not being maintained properly and as such the same have no evidentiary value under Section 34 of the Evidence Act. On this point reliance is placed upon judgment of co-ordinate Bench of this Court in case **Karnail Singh Vs. M/s Kalra Brothers, Sirsa 2009(2) RCR (Civil) 380**. Learned counsel for appellant also submitted that plaintiff was a money lender without obtaining any licence to carry on the money lending business and as such the suit filed by plaintiff is not maintainable. On this point reliance has been placed upon judgment of this Court in case **Magni Singh Vs. Mahinder Singh 1977 PLJ 411**.

9. Having considered the submissions made by learned counsel for the appellant, this Court is of the considered view that both the Courts below have already appreciated the entire oral and documentary evidence and placed reliance upon account books. The said account books have been duly produced and proved on the file by examining Kapil Kumar (PW-1), plaintiff himself as PW-2 and Navdeep Gupta (PW-3) and Mithu Singh (PW-4). On the basis of said evidence, the Courts below returned the findings that the account books were being maintained regularly in the course of business and as such the same has got evidentiary value under Section 34 of the Evidence Act. As such, the view taken by the co-ordinate

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Bench of this Court in case **Karnail Singh Vs. M/s Kalra Brothers, Sirsa (Supra)** is distinguishable on facts.

10. As regards to the contention raised by learned counsel for appellant that plaintiff has not obtained the licence as required under Punjab Registration of Money-lenders Act, 1938, the defendant was required to establish that plaintiff was carrying on the business of money lending but there is no such material and evidence available on the file on the basis of which the Courts below could return the findings that in fact, the plaintiff was carrying on the business of money lending. Single transaction of loan by commission agent to the farmer is not covered under the provisions of Money-lenders Act, 1938 and as such the plea taken by learned counsel for appellant is not of any help to the present appellant and the facts of the case in hand are distinguishable from the facts of case of **Magni Singh Vs. Mahinder Singh (Supra)**.

11. As per view taken by Hon'ble Supreme Court in Deity **Pattabhiramaswamy Vs. S. Hanymayya and others, AIR 1959 SC 57**, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact. As per view taken by Hon'ble Supreme Court in **Commissioner Hindu Religious & Charitable Endowment Vs. P. Shanmugama & Ors., JT 2005(1) SC 201** and **Biswanath Ghosh [Dead] by LRs and Ors. Vs. Gobinda Ghosh alias Gobindha Chandra Ghosh & Ors. AIR 2014 SC 1582**, second appeal cannot be entertained if there is no substantial question of law involved therein.

12. In the present appeal, there is no substantial question of law involved, rather both the Courts below have already appreciated the entire

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evidence. Hence, the present appeal is not maintainable as per provisions of Section 100 of the Code of Civil Procedure, 1908.

13. In view of the above, the present Regular Second Appeal stands dismissed being without any merit and on the ground of maintainability.

(SHEKHER DHAWAN)
JUDGE

March 29th, 2016
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