

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1313 of 2014 (O&M)

Date of Decision: 30.03.2016

Nirmaljeet Singh and Another

... Appellant(s)

Versus

Kahna Mal Mangat Ram and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. P.S.Takhtupura, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal against concurrent findings of facts having been recorded by both the Courts below in a suit for recovery, filed by the plaintiffs, on the basis of entries in the books of accounts.

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

Relevant facts for the purpose of decision of the present appeal that plaintiffs had filed a suit for recovery of ₹ 8,25,000/- on the ground that plaintiff No.1 firm is carrying on the business of commission

agent at Faridkot. The defendants used to sell their agricultural crop through the commission agency shop of the plaintiffs and were having running account with them. Defendant No.1 authorized defendants No.2 & 3 to deal with the plaintiffs on his behalf and directed the plaintiffs to allow defendants No.2 & 3 to enter into transaction and to borrow the amount on his behalf. Defendants borrowed various amounts from the plaintiffs on different dates as detailed in para No.6 of the plaint w.e.f. 24.5.2000 to 29.9.2000. Defendants agreed to repay the amount along with interest at the rate of 2% per month on the borrowed amount. But they failed to pay the same despite demand through notice and as such suit for recovery before the Court of first instance.

Defendants contested the suit *inter alia* taking the plea that suit of plaintiffs is based on forged and fabricated entries made in the books of accounts. Infact, defendants used to sell their crop through the commission agency of the plaintiffs. But the plaintiff firm fraudulently and with malafide intentions, forged and fabricated the record with a view to show the entries of the outstanding amount. No amount is due from the defendants, rather plaintiffs are liable to pay the amount to them after settlement of the accounts and prayed that suit be dismissed.

The Court of first instance settled the issues and parties were asked to lead their respective evidence. The Court of first instance, after appreciating the oral and documentary evidence, returned the finding that the plaintiff firm has been able to prove that it is entitled to recovery a sum of ₹ 7,10,788/- (₹ 5,96,576/- as principal

and ₹ 1,14,212/- as interest calculated at the rate of 12 % per annum) with costs. Plaintiffs were also entitled to recover interest at the rate of 6% per annum from the date of filing of the suit till realization of the decretal amount. Defendants preferred an appeal before the first Appellate Court but remained unsuccessful and as such present regular second appeal before this Court.

Learned counsel for the appellants mainly submitted that the Courts below have not appreciated the oral and documentary evidence pleaded on the file, which resulted into erroneous findings on different issue and the same are liable to be set aside.

Learned counsel for the appellants also submitted that the plaintiff/respondents have been carrying on business of money lending without getting any license under the Punjab Registration of Money-Lender's Act 1938 (hereinafter referred to as "the Act") and as such the appeal be accepted and judgments & decrees, passed by both the Courts below, be set aside.

While arguing further, learned counsel for the appellants submitted that both the Courts below placed reliance upon the books of accounts and the same have not been admitted to be correct by the appellants and such entries shall alone be not sufficient to charge any person with liability. On this point, reliance was placed upon the judgment rendered by Hon'ble the Apex Court in ***Chandradhar Goswami v. Gauhati Bank Ltd. AIR 1967 Supreme Court 1058.***

Having considered the submissions made by learned counsel for the appellants; having gone through the record of the case

and judgment rendered by Hon'ble the Apex Court in ***Chandradhar Goswami's case*** (*supra*), this Court is of the considered view that both the Courts below have already appreciated the entire evidence and returned the findings that plaintiffs have been able to prove that books of accounts were being maintained regularly by the plaintiff firm. The said account books were signed by the defendants in token of receipt of amount. DW.1 Nirmal Singh admitted in his cross-examination that his father used to sell agricultural crop at the shop of the plaintiffs and they were having money dealings with the plaintiffs. His father was maintaining "khata" with plaintiff firm. The Courts below observed that even DW.2 Suba Singh was not in a position to rebut the evidence adduced by the plaintiffs. Plaintiffs examined expert witness PW.4 Anil Kumar and as per report of expert Ex.PW.4/1, disputed signatures and thumb impressions of defendants Mohan Singh, Nirmal Singh and Daljit Singh were on the account books of the plaintiffs. Defendants failed to prove their version regarding the allegation of forgery of documents/signatures. To the contrary PW.4 Anil Kumar, Handwriting & Finger Prints Expert, on the basis of his report, proved that disputed signatures were tallied with the admitted one.

As regard to contention having been raised by learned counsel for the appellants that plaintiff firm was carrying on money lending business without obtaining license under the Act, there is absolutely no proof on the file that plaintiff firm was carrying on money lending business for which license under the Act was required.

Otherwise also, both the Courts below have already

recorded concurrent findings of the facts and the same do not call for any interference by way of present regular second appeal. More so, regular second appeal against concurrent findings having been recorded by both the Courts below is not maintainable.

As per view taken by Hon'ble the Supreme Court in ***Deity Pattabhiramaswami v. S. Hanyamaya 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 finding of fact. As per view taken by Hon'ble the Apex Court in ***Commissioner, Hindu Religious & Charitable Endowment v. P. Shanmugama & Others JT 2005(1) SC 201*** and ***Biswanath Ghosh (Dead) by LRs and Others v. Gobinda Ghosh alias Gobindha Chandra Ghosh & Others AIR 2014 SC 1582***, second appeal cannot be entertained if there is no substantial question of law involved therein.

Hence, in view of the above, the present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stands dismissed.

**(Shekher Dhawan)
Judge**

March 30, 2016

"DK"