In the High Court of Punjab and Haryana at Chandigarh

RSA No. 852 of 2016(O&M)
Date of Decision: 23.2.2016

Vir Kaur and others

---Appellants

versus

M/s Badri Parshad Gian Chand Commission Agents

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.S.Bajwa, Advocate
for the appellants

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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.

The present regular second appeal has been directed against the judgment and decree dated 27.11.2015 passed by the Additional District Judge, Patiala, dismissing the appeal preferred against the judgment and decree dated 4.6.2012 passed by the Additional Civil Judge (Senior Division), Samana, whereby the suit filed by the respondent/plaintiff for recovery, has been decreed.

The sole submission made by counsel for the appellants is that the judgments and decrees passed by the courts below are liable to be set aside as the respondent/plaintiff did not possess a money lenders licence, envisaged under the Punjab Registration of Money Lender's Act, 1938 (for short "the Act"). In support of his contention, he has referred to the judgments of the this Court **Narsi Dass vs. Surender 2015(1) RCR(Civil) 108, Mangi Singh vs. Mahinder Singh 1977 PLJ 411, Harbans Lal vs. Gurjit Kaur and another** RSA No. 4840 of 2015 decided on 7.1.2016 and **Balbir Singh vs. Raj Kishan 2015(3) RCR (Civil) 33.**

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

To answer the aforesaid issue, a brief reference to the facts of the case is pertinent.

The respondent filed a suit for recovery of Rs.11,47,408.45 paisa alongwith interest on the premise that Vir Kaur, appellant/defendant No. 1 is maintaining an account with the plaintiff firm as the appellants used to take advance from the respondent firm and make payments by selling crops and all the entries are made in the running account/khata of appellant No. 1. A detailed account in respect of various payments made to the appellant and her family members and receipts made by them by selling their crop at the commission agency business of the respondent have been incorporated in the plaint starting from the year 2001-02 onwards, showing an outstanding liability qua the suit amount. The appellants admitted sale of agriculture produce through agency of the respondent but denied their liability to pay the suit amount. They also raised a counter claim on behalf of appellant No. 1.

A plain reading of the pleadings of the parties and evidence adduced on record would make it evident that case of the respondent is that the defendants/appellants were given money from time to time being customers of the respondent and had been selling their agriculture produce at the shop of the respondent firm. Counsel is not in a position to point out any materials on record that the respondent firm is running the business of money lending, to invoke the provisions of the Act envisaging money lending licence for running the money lending business.

Section 2(9) of the Act defines money lender and reads as follows:-

> "Money-lender" means a person, or a firm carrying on the business of advancing loans as defined in this Act, and shall include the legal representatives and the successors-in-interest whether by inheritance, assignment or otherwise, of such person or firm; provided that nothing in this definition shall apply to-
>
> (a) a person who is the legal representative or is by inheritance the successor-in-interest of the estate of a deceased money-lender together with all his rights and liabilities; provided that such person only-
>
> (i) winds up the estate of such money-lender;
>
> (ii) realizes outstanding loans;
>
> (iii) does not renew any existing loan, nor advance any fresh loan;
>
> (b)a bona fide assignment by a money-lender of a single loan to any one other than the wife or husband of such assignor; as the case may be, or any person, who is descended from a common grandfather of the assignor."

As the respondent firm is carrying on business of commission agency and is advancing loan to persons who bring grains for selling through agency of the respondent firm, I find no merit in the contention of the appellants that advancing loan to various customers will either make a firm a money lending firm or the provisions of the Act would be attracted in the circumstances of the present case. In this context, reference can be made to judgment of this Court **Firm Chint Ram Sohan Lal vs. Amar Singh 1985 PLJ 378.**

The judgments referred to by counsel have got no bearing on the facts of the case in hand, therefore, the appellants cannot derive any advantage to their contention from the referred authorities. In **Narsi Dass's case (supra),** it was brought on record that the plaintiff was lending money to public at large and did not possess money lending licence and in those circumstances, the Court held that the plaintiff was legally debarred to recover the alleged loan. The other judgments were passed in view of peculiar facts and circumstances of the case wherein it has been proved that the claimant had been dealing in money lending business and thus could not maintain suit for recovery for his failure to possess money lending licence.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine.

(Rekha Mittal)
Judge

23.2.2016
PARAMJIT