

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**C.M. NO.9601 C OF 2014 &**

**R.S.A. NO.4134 OF 2014**

**DATE OF DECISION: JANUARY 19, 2016**

**Harbhagwan**

**.....Appellant**

**VERSUS**

**Mona Ram**

**....Respondent**

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASI**

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

**Present: Mr. P. K. Ganga, Advocate,  
for the appellant.**

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**AUGUSTINE GEORGE MASI, J. (ORAL)**

Challenge in this appeal is to the judgement and decree dated 01.07.2012 passed by Additional Civil Judge (Senior Division), Ellenabad, by which suit for recovery for an amount of ₹11,57,789/-, which includes the principal amount of ₹9,14,118/- alongwith interest of ₹2,43,667/-, stands decreed with 6% interest, appeal against which preferred by the appellant-defendant stands dismissed by the District Judge, Sirsa, on 07.05.2014.

It is the contention of learned counsel for the appellant that the suit of the respondent-plaintiff is barred by limitation as the claim, which has been made in the present suit with regard to alleged loan given to the appellant-defendant, is for the period from 01.04.2003 to 11.09.2003. He, thus, contends that the suit having been filed on 19.09.2006 would be barred

by limitation and, thus, the suit should have been dismissed on this score alone. That apart, he contends that the minor son of the appellant-defendant, namely, Rajiv, has been handed over the money without any authority given to him by appellant-defendant nor has he been impleaded as a party respondent. He accordingly contends that the amount, which has been allegedly received by Rajiv, cannot be said to be the liability of the appellant-defendant. He further states that neither the *bahi khatas* have been proved nor the signatures of appellant-defendant thereon, rather these entries are forged and fabricated as the signatures of the appellant-defendant were obtained on the account books when the same were blank and the additions with regard to the loan amount having been made would, thus, be of no use to the claim, as put-forth by the respondent-plaintiff, and the same cannot be sustained. Prayer has, thus, been made for setting-aside the impugned judgements and for dismissing the suit of the respondent-plaintiff.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgements.

The first plea of learned counsel for the appellant is that the suit is barred by limitation. This plea cannot be accepted in the light of specific averments made in Para 11 of the plaint, wherein it has been stated that the amount, which has been borrowed by the appellant-defendant, comes to ₹12,30,076/- for the period from 20.09.2003 to 13.05.2005 and after deducting the amount of sale proceeds of his produce i.e. ₹3,15,958/-, the principal amount of loan comes to ₹9,14,118/-. The period, during which the loan amount has been given to the appellant-defendant, is from

20.09.2003 to 13.05.2005 and admittedly the suit has been filed on 19.09.2006, therefore, the suit cannot be said to be barred by limitation.

The next contention of learned counsel for the appellant is that the respondent-plaintiff has not proved the entries in the *bahi khatas*, which is the basis for claiming recovery of the loan amount alongwith interest. This plea also cannot be accepted in the light of the fact that PW2 Krishan Kumar, according the appellant-defendant, is the brother-in-law of the respondent-plaintiff and was also Clerk of the respondent-plaintiff and manipulated the entries. However, he has appeared in the Court and proved the entries with regard to the amount having been disbursed to the appellant-defendant and nothing has come out in his cross-examination. That apart, the respondent-plaintiff had appeared in the Court and proved the entries in the account books and in the light of the observations of this Court in Mohinder Singh Vs. M/s Kaka Ram Om Parkash Commission Agents, 2010 (3) RCR (Civil) 709, that in case a Commission Agent himself proves his accounts, then examination of the Clerk is not necessary. The entries, which admittedly are in the account books as maintained in routine by the respondent-plaintiff, are admissible in evidence and have rightly been relied upon. It has been asserted that Krishan Kumar, who is stated to be the Clerk, but was not the scribe of the said entries, would not make any difference in the light of the above referred judgement.

So far as the contention of counsel for the appellant that the entries made in the account books are forged and fabricated, the appellant-defendant had to prove this assertion by leading evidence to that effect, which he has failed and, thus, the authenticity of the account books, which are maintained by the respondent-plaintiff, cannot be doubted. Since the

appellant-defendant failed to discharge the onus to prove this contention, the said plea cannot be accepted. It may be added here that initially the signatures on the *bahi khatas* were disputed by the appellant-defendant and, therefore, the respondent-plaintiff had produced PW3 Anil Kumar Gupta, Handwriting and Finger Print Expert, who, on the basis of the admitted signatures on the written statement, affidavit and Vakalatnama, which have been treated to be as the standard signatures, while comparing with signatures on the entries, which were disputed by the appellant-defendant, proved/opined the same to be that of the appellant-defendant. Even in the lengthy cross-examination, nothing has come out, which would effect the veracity of the report given by said witness.

The assertion of counsel for the appellant that the amount which has been received by his minor son, Rajiv, cannot be said to be his liability as there was no authority given to him to collect the same, again cannot be accepted in the light of the fact that it has been proved that the appellant-defendant had put his signatures on the *bahi* entries at various places, where these entries did exist with his signatures thereon and, thus, the liability has been admitted by him, which means that his son, Rajiv, had taken the amount from the respondent-plaintiff at the behest of appellant-defendant and now he cannot shirk from his liability by taking such a technical plea.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal.

Therefore, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No. 9601 C of 2014 for staying the operation and execution of the impugned judgements and decree is also dismissed.

**January 19, 2016  
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**( AUGUSTINE GEORGE MASIH )  
JUDGE**