IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4619 of 2016 (O&M)
Date of decision: 26.04.2017

Raj Kumar and another

... Appellants

Vs.

Ram Dutt and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rajinder Goyal, Advocate
for the appellants.

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RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful plaintiffs are in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for recovery filed by the plaintiffs-appellants was dismissed by the learned trial Court, vide its impugned judgment and decree dated 25.04.2014 and first appeal of the plaintiffs was also dismissed by the learned District Judge, vide impugned judgment and decree dated 10.12.2015.

Brief facts of the case, as noticed by learned first appellate Court in para 3 of its impugned judgment, are that the plaintiffs brought the suit for recovery of Rs.9,07,800/- against the defendants, with the averments that plaintiff No.2 was sole proprietorship concern, of which plaintiff No.1 was the sole proprietor; that plaintiff No.1 firm carried on business of sale and purchase of foodgrains in his commission agency shop, at New Anaj Mandi, Pundri; that in the course of its business, plaintiff advanced money to its customers/farmers who sold their agriculture produce through commission agency of the plaintiff, as an incentive with the understanding that they would sell their agriculture produce through commission agency of the plaintiff and advanced amount along with interest at the rate of 18% per annum shall be deducted out of the sale proceeds. The plaintiffs further pleaded that defendant No.1 had been customer of their firm and had an account with the plaintiffs firm and he had been taking advances from his account from plaintiff's firm from time to time and defendant No.2, in his capacity, as son of the defendant No.1, had been taking advances from the plaintiff in account of defendant No.1 on oral authority of defendant No.1. The plaintiffs next pleaded that defendants being father and son, were joint in mess and had joint cultivation; that on 24.05.2006, on aforesaid understanding, defendant No.1 took an advance of Rs.5,74,000/- in cash from the plaintiff through defendant No.2, who duly signed entry to this effect in rokar bahi of plaintiff firm; that defendant No.1 sold his wheat crop for the year, 2006 through commission agency of the plaintiff and sale proceeds were taken by the defendant, however under the policy of Haryana Govt, the plaintiff received an amount of bonus declared by the Haryana Govt. on sale of wheat crop, for Rs.21,490/- on 27.05.2006, which was credited to the account of the defendants and after adjustment of bonus amount, balance amount of Rs.5,52,510/- was left to be paid by the defendant to the plaintiff; that thereafter, neither the defendant sold his crops through the plaintiff's firm nor returned any amount either towards principal or towards interest, accrued thereon; that entries regarding aforesaid transactions had been duly and regularly entered in account books maintained by the plaintiff in regular course of its business; that when aforesaid advances were made, it was orally settled by the parties that the defendants shall pay an interest at the rate of 18% per annum, even otherwise also, the plaintiff was entitled to charge interest at the rate as per the trade, usage and custom prevalent in the Anaj Mandi, Pundri. It was further pleaded that if it was pleaded and proved by defendant No.1 that defendant No.2 was not authorized by him to take advance from his account from the plaintiff, in that event, defendant No.2 was liable to pay said advanced amount along with interest; that the plaintiff was entitled to recover Rs.9,07,800/- (including principal amount after adjustment of bonus amount and interest of Rs.3,55,290/- calculated at the rate of 18% per annum); that despite repeated requests, the defendants did not pay the above amount, rather refused to pay the same on 22.05.2009, which necessitated the cause for filing of the present suit seeking a decree for recovery of Rs.9,07,800/- along with future and pendente-lite interest at the rate of 18% per annum from the date of filing of the suit till actual realization, in his favour and against the defendants.

Upon service, defendants appeared and filed written statement, raising more than one preliminary objections. A counter-claim was also filed by defendant No.1, stating that he used to sell agriculture produce through the commission agency of the plaintiffs. It was alleged by defendant No.1 that the plaintiffs, misusing the relationship between the customers and commission agent and taking undue advantage of their dominating position, brought the suit against him without their being any basis for the same. Replication was filed by the plaintiffs. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the plaintiff is entitled for recovery of Rs.9,07,800/- along with future and pendente-lite interest at the rate of 18% per annum? OPP
2. Whether the defendant is entitled to a decree for rendition of account as account has not been settled since 2005-06? OPD
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether the suit is time barred? OPD
5. Relief.

In order to prove their respective pleaded cases, both the parties brought on record their documentary as well as oral evidence. After going through the evidence brought on record and hearing learned counsel for the parties, learned trial Court came to the conclusion that the plaintiffs failed to prove their case for want of sufficient and cogent evidence. Accordingly, suit for recovery filed by the plaintiffs as well as the counter-claim filed by defendant No.1 were dismissed vide impugned judgment and decree dated 25.04.2014. Feeling aggrieved, plaintiffs filed their first appeal, which also came to be dismissed by the learned first appellate Court vide impugned judgment and decree dated 10.12.2015. Hence this regular second appeal at the hands of the plaintiffs.

Heard learned counsel for the appellants.

A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below would make it crystal clear that the suit filed by the plaintiffs for recovery was based on their bahi entry only, which was not even signed by defendant No.1, who was the customer of the plaintiffs-appellants. It has gone undisputed before this Court that defendant-respondent No.1 used to sell his agriculture produce through the commission agency of the plaintiffs. It was the own pleaded and argued case on behalf of the plaintiffs-appellants that the alleged loan was advanced to defendant No.2 and not to defendant No.1. It was also stated by the plaintiff that he does not maintain the accounts book regularly. It was also admitted by PW1 that he was unable to read the books of account, it having been written in *Ladi* language. Although it was stated by the plaintiff that defendants No.1 and 2 both were present when the alleged loan was advanced, yet they failed to prove and justify as to why signatures of defendant No.1 were not taken on the alleged bahi entry. In fact, plaintiffs miserably failed to prove their case, by leading cogent and convincing evidence. Having said that, this Court feels no hesitation to conclude that the learned Courts below were well within their jurisdiction to pass the impugned judgments and decrees and the same deserve to be upheld.

It is the settled proposition of law that mere entries in the accounts book will not be sufficient to prove the case of the plaintiff, until and unless such entries are duly proved in accordance with law. Bahi entries/account books are not the instrument of advancing the loan like pronote, bonds or bill of exchange etc. Bahi entries will not be per-se admissible in evidence unless it is duly proved on record as per law. It seems that taking undue benefit of their dominating position, plaintiffs recorded the bahi entry, got the signatures of defendant No.2, who happens to be the son of defendant No.1 and then filed the suit for recovery.

It was specifically deposed by defendant No.1 that he never authorized his son to take any loan from the plaintiffs on behalf of defendant No.1 nor defendant No.2 was competent to do so. In fact, the evidence given by PW1 and PW2 in the Court was itself sufficient to non-suit the plaintiffs, because whatever evidence was brought on record by the plaintiffs, was rightly not found worth reliance by the learned Courts below. In this view of the matter, it can be safely concluded that the learned Courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court: -

1. ***Chandradhar Goswami and others Vs. Gauhati Bank Ltd., 1967 AIR (SC) 1058 (SC).***
2. ***Narsi Dass Vs. Surender, 2015 (1) RCR (Civil) 108 (P&H).***
3. ***Balbir Singh Vs. Raj Krishan, 2015 (3) RCR (Civil) 33 (P&H).***

Before arriving at its judicious conclusion, learned first appellate Court rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. The cogent and convincing findings recorded by the learned District Judge in paras 30 to 32 of her impugned judgment, which deserve to be noticed here, read as under: -

> *"Further, the plaintiffs did not prove the disputed signature as that of defendant No.2, by calling evidence in said regard. So much so, same were not put to DW1 for its admission or denial. The*

plaintiffs failed to establish their case against defendant No.2. In authority Balbir Singh (supra), it was pleaded by the plaintiffs that as commission agents, they advance loan to agriculturists who sell or promise to sell their produce. It was held that by said pleadings, it mean that the plaintiffs were dealing with money lending business to public at large. It was held that under the Panjab Money Lenders Act 1938, a person who is not registered under the Act, contravenes the same when lends money and is liable for prosecution. So was held in Narsi Dass,(supra). As noted above in the pleadings and evidence, the plaintiffs admit of advancing loan to several customers. However, they nowhere pleaded that they have licence to advance money.

Now coming on the liability qua defendant No.1. He specifically deposed that he never authorized defendant No.2 to take loan/advance. Admittedly, entry in question does not contain signatures of defendant No.1. It cannot be used against him. PW2 admitted that he does not maintain the books regularly. PW1, very frankly admitted that he cannot read books of account (as relied upon by him) being in Ladi language. His statement that Ex.P1 contains entry against defendant No.1 is of no use. PW2 in cross examination admitted that as and when any customer takes advance, they obtain his signatures. However, he admitted except the signature on entry in question, there are no signatures of any any customer. This makes their version qua maintaining account in *regular course of business, doubtful, despite assertion to said respect. PW2 in cross examination admitted that in page No.3 of Rokar Bahi of 2006-07 except disputed entry, there are no other signatures. He, very strangely, but frankly stated that because other entries are false. He further tried to explain that amount in question being heavy, therefore, signatures of defendant no 2 were taken. This statement is again, in contradiction to his other admission that after advancement of money, they obtain the signatures of customer(s). The above discrepancies made the claim of plaintiffs against defendant No.1 doubtful. As discussed above, the plaintiffs failed to establish that they advanced the loan to defendant No.1, as alleged. The plaintiffs also failed to prove that defendant No.1 through defendant No.2 agreed to pay interest at the rate of 18% per annum. The entry itself does not speak of interest. This again belies version of the plaintiffs of advancing money and charging of interest.*

Per discussion, it is held that plaintiffs failed to substantiate their version. Contrary, the defendant has been able to probablise his version on the basis of evidence and probabilities. Thus, per discussion the findings of the learned lower court in the impugned judgment, are well merited and warrant no interference. Accordingly, the findings of learned lower court are hereby maintained and upheld."

It is the settled proposition of law that the plaintiff has to stand on his own legs. Pleadings alone would not be sufficient to decree the suit of the plaintiff. Similarly, suit of the plaintiff cannot be decreed on the basis of alleged weakness of the case of the defendants. Since the plaintiff is coming to the Court, onus would always be on the plaintiff to prove his case by leading cogent and convincing evidence. So far as the peculiar facts and circumstances of the case in hand are concerned, plaintiffs-appellants have miserably failed to prove their pleaded case.

It was also admitted by PW2 in his cross-examination that as and when any customer used to take any advance, he used to obtain the signatures of such a customer. He further admitted that except the signatures on the bahi entry in question, there were no signatures of any other customer. Thus, it was a self-contradictory stand taken on behalf of the plaintiffs. PW2, in his cross-examination, has gone to the extent, admitting that other bahi entries were false. How such an untrustworthy evidence could be made the basis to decree the suit filed by the plaintiffs and the learned Courts below were well justified in recording the concurrent findings of facts, dismissing the suit for recovery filed by the plaintiffs-appellants, therefore, the impugned judgments and decrees deserve to be upheld, for this reason as well.

During the course of hearing, learned counsel for the appellants could not point out any patent illegality or perversity in either of the impugned judgments and decrees passed by the learned Courts below. He also could not raise any question of law, much less substantial question of law, which is sine qua non for entertaining any regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of

Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality has been found in either of the impugned judgments and decrees passed by both the learned Courts below, the same deserve to be upheld. The regular second appeal, having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, present regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

26.04.2017
vishnu

Whether speaking/reasoned Yes/No
Whether reportable Yes/No