IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.5054 of 2014 (O&M)
Date of Decision:- 07.07.2017

Dalip Singh ....Appellant

vs.

Ranjit Singh ....Respondent

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CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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Present:- Mr. S.D. Sharma, Sr. Advocate with
Mr. K.R. Sharma, Advocate,
for the appellant.

Ms. Supriya Garg, Advocate,
for the respondent.

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DAYA CHAUDHARY, J.

Appellant-defendant-Dalip Singh has filed the present regular second appeal to challenge the judgments and decrees passed by the trial Court as well as Lower Appellate Court.

Briefly, the facts of the case, as made out in the present appeal are that respondent-plaintiff-Ranjit Singh, who is sole proprietor of M/s Mutti Commission Agents, Danna Mandi, Sultanpur Lodhi, District Kapurthala, filed a suit for recovery of ₹ 14,30,270/- (₹ 4,25,000/-+ ₹ 4,00,000 as principal + ₹6,05,270/- as interest thereon) from the defendant. It was pleaded in the suit that defendant-Dalip Singh took a loan amount of ₹ 4,25,000/- on 8.1.2004 and ₹ 4,00,000/- on 10.2.2004 from plaintiff and got executed two writings dated 8.1.2004 and 10.2.2004 respectively admitting the receipt of said amount and promised to get said amount adjusted after selling wheat crop of the season 2004. However, the defendant failed to pay the amount to the plaintiff. In case of default in payment, he promised to pay interest @ 2% per month. Thereafter, a notice was served but still amount was not paid.

The suit was contested by the defendant by raising preliminary objections regarding maintainability, locus standi, cause of action, suppression of material facts and estoppel. An objection was also raised that the suit was hopelessly time barred. It was also mentioned in the written statement that the alleged writings/receipts dated 8.1.2004 and 10.2.2004 were false, fictitious, fraudulent and forged documents and the same were got prepared by plaintiff just to cause loss to the defendant and that the said receipts were never executed by defendant nor bears his signatures. The suit was also contested by defendant stating that he was an agriculturist and owning about 25 acres of land. His sons and other family members were well settled and there was no reason to take loan from the plaintiff.

Upon pleadings of the parties, the following issues were framed by the trial Court:-

> "1. Whether the plaintiff is entitled to recover the suit amount along with future interest @ 2% per month till recovery of amount? OPP
>
> 2. Whether the suit is not maintainable in the present form? OPD

3. Whether the plaintiff has the locus standi to file the present suit?

4. Whether the plaintiff is estopped from filing this suit by his act and conduct ?OPD

5. Whether the receipts dated 8.1.2004 and 10.2.2004 are inadmissible in evidence? OPD

6. Whether the suit is within limitation? OPP

7. Whether the plaintiff has not approached the court with clean hands? OPD

8. Relief."

Evidence was led by both the parties. Trial Court decreed the suit of the plaintiff and he was held entitled for recovery of Rs.8,25,000/- being the principal amount along with interest @ 6% per annum from the date of advancement of the loan till filing of the suit. The plaintiff was also held entitled for future interest @ 6% per annum on the decretal amount from the date of filing of the suit till realization vide judgment and decree dated 22.2.2012.

Said judgment and decree of the trial Court was challenged by defendant-Dalip Singh by way of filing an appeal before Additional District Judge, Kapurthala. Cross-objections were also filed against judgment and decree dated 22.2.2012. Said appeal as well as cross-objections were dismissed vide judgment and decree dated 2.5.2014. Hence, the present second appeal filed by defendant-Dalip Singh.

Learned counsel for the appellant-defendant submits that proper issues were not framed and because of that reason, a serious prejudice had been caused to the appellant. Learned counsel also submits that the evidence was led by the appellant to prove that the alleged receipts dated 8.1.2004 and 10.2.2004 were false and fraudulent and were forged by the respondent. Learned counsel also submits that original documents which were required to be produced under Order 7 Rule 14 read with Order 7 Rule 17 CPC were not produced and suit of the respondent-plaintiff ought to have been dismissed being not maintainable. Learned counsel also submits that both the Courts below have not taken into consideration the very material fact that lending of money by the Commission agent vide loose papers/sheets in the shape of alleged receipts is not permissible. The plaintiff himself has admitted that money was given by him not out of his personal pocket but through the commission agency of which the plaintiff-respondent was the sole proprietor. Learned counsel also submits that both the Courts below have wrongly given a finding that production of account books of the Firm was not necessary to show lending of the amount to the defendant and as such, non-production of account books in original goes against plaintiff-respondent. Mere production of receipts cannot create a liability but only on the basis of said writing, the suit filed by plaintiff has been decreed. At the end, learned counsel for the appellant submits that the alleged documents Exhibits P-1 and P-2 were not denied by any of the witness and it cannot be said that both the documents were genuine. Both the receipts were in the hands of plaintiff himself and it was not proved on record that any entry was reflected in the account books. Both the Courts below have not taken into consideration the report of Handwriting and Document Expert namely Kranti K. Sharma, who has clearly proved that alleged signatures over Annexures P-1 and P-2 are not the genuine signatures of defendant-appellant and the same are the result of forgery. Learned counsel for the appellant also relied upon the judgment of this Court passed in ***Rattan Chand vs. Mst. Yousaf Jahan Begum and others, 2011 (4) PLR 324*** in support of his contentions.

Learned counsel for the respondent submits that the judgments and decrees passed by both the Courts below are well reasoned and have been passed on proper appreciation of evidence. Learned counsel also submits that suit of the plaintiff was filed on the basis of writings/receipts which were proved on record as Exhibits P-1 and P-2. A specific finding has been given by both the Courts below that the account books could have been a corroborative piece of evidence but due to non-production of account books, no adverse inference could be drawn against the plaintiff.

DW-1 Dalip Singh has admitted in his cross-examination that he had taken loan from banks i.e. from State Bank of Patiala in the year 2007 and from the Punjab Agricultural and Development bank. Even loan was taken from Central Cooperative Bank and from State Bank of Patiala for the purchase of tractor. Learned counsel for the respondent has relied upon the judgments passed in ***Bilas Kunwar vs. Desraj Ranjit Singh and others, The Indian Law Reports Vol. XXXVII page 557*** and ***Bhismat Pandey vs. Phoola and others, 2009(4) MPLJ 486*** in support of her contentions.

Heard arguments of learned counsel for the parties and have also perused both the judgments and decrees of the Courts below as well as other documents available on the file.

Facts relating to filing of suit, its decretal and thereafter filing of an appeal by defendant and dismissal thereof are not disputed.

As per case of the plaintiff-respondent Ranjit Singh, the defendant took a loan of ₹ 4,25,000/- on 8.1.2004 and ₹ 4,00,000/- on 10.2.2004 and two writings were executed on aforesaid dates with a promise to get said amount adjusted after selling wheat crop of the year 2004. Defendant failed to pay the promised amount in spite of serving a legal notice by the plaintiff.

The suit was decreed by the trial Court by holding that the plaintiff was entitled to recover the suit amount with interest which was proved on record by way of receipts/writings dated 8.1.2004 and 10.2.2004 being admissible in evidence. Similarly, the finding of lower appellate Court while dismissing the appeal of the present appellant are as under:-

> "35) No doubt, account books could have been a corroborative piece of evidence further endorse to the claim of plaintiff yet merely from the non-production of the account books, no adverse inference can be drawn against plaintiff. PW1 Ranjit Singh in his cross-examination has categorically explained that at the time of institution of suit, he has narrated the factum of incorporation of the receipts in account books and balance sheet. Even he brought the pass books during the course of his evidence to show the withdrawal of the amount. So in that eventuality, it was the counsel who was enjoined upon to prove the account books as a

> corroborative piece of evidence to that of impugned receipts. The rustic litigants are not known to the intricacies of law. Many a times the cross-examination of Ranjit Singh was deferred but the same was got deferred by counsel for defendant. Meaning thereby, the defendant has also got opportunity to shatter the testimony of PW1 Ranjit Singh regarding the account books but defendant did not got produce the account books for the best known reasons to him. Had there been no entries of the impugned receipts in account books, in that eventuality defendant must have got produced the account books from plaintiff to shatter the version of plaintiff. So in these circumstances, merely from the fact that account books have not been produced, there was no reason to non-suit the plaintiff. The citation relied upon by learned counsel for the appellant titled as ***"Rattan Chand vs. MST Yousaf Jahan Begum and others, 2011 (4) The Punjab Law Reporter 324"*** (supra) is distinguishable to the facts of present case."

The execution of pronote and receipts are not denied and same have been proved by the plaintiff but the respondent-plaintiff has not been able to rebut the presumption in favour of appellant-defendant that the pronote and receipts were executed for a consideration. It is a settled law that the plaintiff has to stand on his own legs and it was for the plaintiff to show that amount was actually advanced to the appellant-defendant. It was intentionally withheld from the account books whereas it has been admitted by the plaintiff-respondent that he used to maintain account books in due course of business and used to enter each and every transaction in the account books. It has also been admitted that he used to pay income tax and also used to show the amount advanced to the appellant-defendant. However, the income tax returns have also been withheld.

A similar issue had arisen in **Rattan Chand's case (supra)**. In that case also, execution of pronote and receipts were not denied and same were duly proved. It was also admitted by plaintiff that he used to maintain account books in due course of business and used to enter each and every transaction in the account books but the income tax returns were withheld. In that case also, plaintiff was not held entitled to recover more than twice of the amount advanced. Similarly, in **Ravinder Kumar vs. M/s Guru Trading Company and another, 2014(3) PLR 323,** the claim in the suit in that case was of recovery. The plaintiff was running business of commission agent. Defendant took loan from the plaintiff and entries were also made in the account books by the plaintiff. However, amount was not returned by the defendant despite repeated requests. Both the Courts below dismissed the suit of the plaintiff on the ground that he had failed to prove that money was paid as a loan. Even the regular second appeal was dismissed by holding that it was for the plaintiff to prove his case by leading cogent evidence and he could not take advantage of the weakness of the case of the defendant.

In the present case also, the plaintiff-respondent has failed to prove that money was paid as a loan. It is also not disputed that the plaintiff has been doing the business of commission agent. He is an income tax payee but those entries were not reflected in the income tax records.

As per case of the plaintiff, he has admitted in his statement that the alleged amount was given by him by way of two loose receipts which were reflected in the record of the Firm. It was for him to produce the same. Otherwise also, as per provisions of the Income Tax Act, an amount of more than ₹ 1,00,000/- is required to be given through cheque only, whereas, in the present case, the amount was given in cash.

In view of the facts and law position as discussed above, there being merit in the contention raised by learned counsel for the appellant, the judgments and decrees passed by both the Courts below are hereby set aside and the present appeal is allowed.

July 07, 2017 **(DAYA CHAUDHARY)**
poonam **JUDGE**

Whether speaking/reasoned **Yes**

Whether reportable **Yes**