

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

RSA No. 5020 of 2017 (O&M)

Date of Decision: 27.11.2017

Manjit Singh

.....Appellant

Versus

Yashpal, Sole Proprietor of M/s Yash Pal Ravinder Nath
Commission Agent, Kurukshetra.

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr. O.P.S. Tanwar, Advocate
for the appellant.**

AVNEESH JHINGAN, J.

The present regular second appeal is at behest of the defendant being aggrieved of the concurrent judgments and decrees passed by the Learned Courts below decreeing the suit filed by the plaintiff for recovery of Rs.2,03,300/- plus interest.

The parties for the sake of convenience are being referred to as per their status in the original suit.

The facts giving rise to the present litigation are that the plaintiff is the Sole Proprietor of M/s Yash Pal Ravinder Nath, Commission Agent, Shop No. 60, Anaj Mandi, Kurukshetra. The defendant was a customer of the plaintiff and there was a farmer and commission agent relationship between them. The defendant being a customer of the plaintiff used to take advance money from the plaintiff. The defendant had three acres of agricultural land and used to cultivate the land on lease also. It was averred that on 8.12.2005, defendant took an advance of Rs.1,19,000/- and acknowledged this amount by signing in English on the said entry in

rojanamcha of the plaintiff. The defendant also wrote the said amount in words in Hindi in his own handwriting. On 29.4.2008 another amount of Rs.1000/- was borrowed by the defendant. The plaintiff stated that it was agreed that he would pay interest at the rate of 24% per annum. On request of the plaintiff when the defendant refused to make payment, the suit for recovery was filed claiming recovery of Rs. 2,03,300/- (Rs.1,20,000 (principal amount) and Rs.83,300/- (interest) plus pendente-lite interest, till realization of the amount.

On notice the defendant filed the written statement basically raising the issue that the claim is based on fraud and forgery and no amount is payable by the defendant, rather the plaintiff owes money to the defendant. Replication was filed.

The trial Court framed the following issues:

- (1) Whether plaintiff is entitled to recover an amount of Rs.2,03,300/- from the defendant along with interest and cost as prayed for on the grounds as mentioned in the plaint?OPP
- (2) Whether the suit is not maintainable?OPD
- (3) Whether plaintiff is estopped by his own act and conduct from filing the present suit?OPD
- (4) Whether the plaintiff has not come to the Court with clean hands and suppressed the true and material facts from the Court?OPD
- (5) Whether plaintiff is not having money lending licence?OPD
- (5A) Whether the plaintiff prepared the alleged accounts in due course of business as per law and whether the alleged accounts of the plaintiff are admissible in law and evidence or not?OPD
- (6) Relief.

In order to support the suit, the plaintiff produced his muneem PW1 Satbir. The plaintiff himself appeared as PW2. Handwriting expert was produced as PW3. Various documents were exhibited as Ex.P1 to Ex.P13.

In order to rebut the claim, the defendant himself appeared as DW1. The trial Court, after appreciating the facts and considering the witnesses and evidence produced before it, decided issue No.1 and 5(A) in favour of the plaintiff. Issue No.2 to 4 were decided against the defendant. Regarding issue No.5, neither the same was pressed nor any evidence was led and hence this issue was decided against the defendant. The net result was that the suit was decreed vide judgment and decree dated 31.5.2014 and the plaintiff was held entitled to recover a sum of Rs. 2,03,300/- along with interest at the rate of 9% per annum with pendente-lite and future interest.

Aggrieved of the said judgment and decree, an appeal was filed. Learned Addl. District Judge, Kurukshetra, dismissed the appeal vide judgment and decree dated 25.1.2016 affirming the judgment and decree of trial Court. Hence, the present regular second appeal.

Learned counsel for the defendant contended that the lower Courts have erred in decreeing the suit as the defendant had not borrowed any money. The entries in the accounts book were result of forgery and fraud. He further contended that the suit for recovery was not maintainable as the plaintiff was not registered as a money lender under the Punjab Registration of Money Lenders Act, 1938 which applies in the present case. He further contended that the trial Court has wrongly recorded that issue No.5 was not pressed. He further contended that in any case, the trial Court was duty bound to decide all the issues. He also contended that even the

First Appellate Court has wrongly recorded that the record was produced whereas no record was produced.

Learned counsel for the appellant-defendant in the present appeal has framed three questions of law :

(1) Whether the suit for recovery of Rs.2,03,300/- (the principal amount Rs.1,19,000/- plus Rs.1,000/- and interest i.e. Rs.83,300/- upto the date of suit @ 24% per annum) based on Roznamcha and Bahi Entries-Ex.P2 to Ex.P7 (proved to be false/fabricated on record) and for violation of Order 7 Rule 1,11,14 and 17 and Order 14 Rule 2, Order 20 Rule 2 of the Code of Civil Procedure and also for violation of the provisions of Section 2(7) (9), Section 3 (i) (a), (b), Section 4(i) the Punjab Regulation of Accounts Act, 1930, and provisions of Section 2 (7) (8) (9) of the Punjab Registration of Money Lenders Act, 1938 and for violation of Haryana Agriculture of Relief Act and/or under the law on the issue for non-production of original documents in the Court, the impugned judgment and decree can be sustained and the suit is maintainable?

(2) Whether the judgment and decree of the Courts are perverse being contrary to the material on file i.e. pleadings and evidence and the Courts below have committed a grave error of law and miscarriage of justice has not been committed?

(3) Whether the suit is bad for framing of proper issues and separate decision, resulted in miscarriage of justice?

Instead of addressing his grievance as per the questions of law framed, he has raised only the above said contentions.

The fact which has not been disputed in this entire litigation is that there was a commission agent and farmer relationship between the plaintiff and the defendant.

The dispute started from the recovery of Rs.1,20,000/- which according to the plaintiff, the defendant had taken as an advance from him. The plaintiff successfully discharged his onus to establish that the defendant had taken an advance of Rs.1,19,000/- on 8.12.2005 and Rs.1000/- on 29.4.2008. The said onus was discharged by the deposition of 'Muneem' PW1. The plaintiff himself appeared as PW2 and even handwriting Expert PW3 deposed that the standard signatures and the writing on rojmancha is of the same person. Rather contention of the defendant was that the signatures on rojnamcha is as a result of fraud and forgery.

The legal position with regard to allegation of fraud and forgery is settled that one who alleges fraud and forgery he has to prove the same.

With regard to fraud, the Hon'ble Apex Court in ***Union of India Versus M/s Chaturbhai M. Patel and Co.***, 1976 (1) SCC 747, has held as under :-

*“7. The High Court has carefully considered the various circumstances relied upon by the appellant and has held that they are not at all conclusive to prove the case of fraud. It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt; per Lord Atkin in **A.L.N. Narayanan Chettyar v. Official Assignee, High Court Rangoon**, AIR 1941 PC 93. However suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof. In our normal life we are sometimes faced with unexplainable phenomenon and strange coincidences, for, as it is said, truth is stranger than fiction. In these*

circumstances, therefore, going through the judgment of the High Court we are satisfied that the appellant has not been able to make out a case of fraud as found by the High court. As such the High Court was fully justified in negating the plea of fraud and in decreeing the suit of the plaintiff.”

Further, in **Smt. Shrisht Dhawan Versus M/s Shaw Brothers**, 1992 (1) RCR SCC 534, relying upon its earlier decision reported in **Pankaj Bhargava Versus Mohinder Nath**, 1991 (1) RCR 96 (SC), it has been held as under :-

“In Pankaj Bhargava v. Mohinder Nath, 1991 (1) R.C.R. 96 (SC), it was observed (para 13) :

“It is true that in Noronah's case a challenge to the validity of the limited tenancy was permitted even after the period of limited lease. But later cases have substantially denuded this position. In Vohra's case, this Court laid down that a tenant who assails the permission was procured by fraud a ground not dissimilar to the one urged in the present case must approach the Rent Controller during the currency of the limited tenancy for an adjudication of his pleas as soon as he discovers facts and circumstances which, according to him, vitiate the permission.”

Thus a tenant cannot wait for the entire period of lease and then raise objection to execution on fraud or collusion unless he is able to establish that it was not known to him and he came to know of it, for the first time only at the time of execution. In other words the Controller shall not be justified in entertaining an objection in execution unless the tenant establishes, affirmatively, that he was not aware of fraud before expiry of the period of lease. To the following extent, therefore, the law on procedural aspect should be taken as settled.

- (1) Any objection to the validity of sanction should be raised prior to expiry of the lease.*
- (2) The objection should be made immediately on become aware of fraud, collusion etc.*
- (3) A tenant may be permitted to raise objection after expiry of lease in exceptional circumstances only.*
- (4) Burden to prove fraud or collusion is on the person alleging it."*

The Full Bench of this Court in ***Smt. Niranjana Kaur and others Versus The Financial Commissioner, Revenue & Secretary to Government, Punjab and others***, 2010 (4) RCR (Civil) 610, observed as under :-

"47. However, the fraud and mis-representation is to be on the part of the vendee, or with his consent, by his vendor. In absence thereof, it would be unfair to deny the right to contest to the subsequent vendee. It will be for the party alleging fraud to prove the fraud and misrepresentation, as no presumption can be drawn."

In the above decisions, the law has been enunciated that one who alleges fraud has to prove it.

In the present case, apart from the deposition of defendant himself, nothing has been brought on record to prove forgery and fraud.

There is another angle of the matter that there are not only the signatures on the rojnamcha but the defendant in his own handwriting has written in words "one lakh nineteen thousand" (Rs.1,19,000/-). There is no rebuttal to the said evidence.

The defendant has failed to put forth any explanation that how his signatures and his writing of the amount was there on the Books of Account. The defendant has not put forth any case that he had actually

repaid the amount of Rs.1,19,000/- to the plaintiff and the same has been wrongly entered by the plaintiff in the Books of Account.

The Books of Account produced were supported by the deposition of Muneem. The handwriting expert's deposition is that the signatures and the writing were of the defendant. There was no rebuttal to the report of the handwriting expert also. The Courts below have rather recorded that even to the naked eye it was evident that the standard signatures and the signatures on the account books were of the same person. The defendant only made a bald statement that he has not borrowed the said amount from the plaintiff rather the plaintiff owed money to him. This claim has not been substantiated by any evidence.

In such circumstance, no fault can be found in the judgments and decrees passed by learned Lower Courts holding that the plaintiff is entitled to recover the amount mentioned in the suit from the defendant.

Learned counsel for the appellant-defendant contended that both the trial Court and the Appellate Court have wrongly recorded facts in their judgments. It was alleged that the trial Court wrongly recorded that issue No.5 was not pressed. It would be pertinent to mention here that the said allegation is only a bald statement and has not been substantiated. Even otherwise the said statement cannot be accepted as it is not disputed by the counsel that no evidence was produced in support of Issue No.5.

Similar is the position with regard to the allegation made against learned First Appellate Court that it is wrongly recorded in the judgment that record was produced whereas no record was produced.

In this case also apart from the bald statement nothing else has been brought on record.

In the present case, there was no day-to-day dealing between the plaintiff and the defendant. There was no occasion for the plaintiff to produce the entire record before the Courts. The relevant record was produced and has not been disputed by learned counsel for the defendant.

The other contention raised is part of the contention raised above. The learned counsel contended that the Trial Court was duty bound to decide all the issues raised before it. He relied upon the decision of Hon'ble the Apex Court in **Foreshore Co-operative Housing Society Limited Versus Parveen D. Desai (Dead) Through LRs and others,** 2015 (2) RCR (civil) 442.

He relied upon the above citation to state that Courts should decide all the issues whether relating to fact or law and especially issue that relates to jurisdiction.

In the present case, the issue No. 5 was not pressed at all. No evidence was led on the said issue. Even no arguments were addressed. In such circumstance, the Court could not be expected to decide the issue in vacuum. Even otherwise a perusal of the said issue will show that for its decision certain basic facts were required to be proved which were not put forth before the learned Trial Court.

The last contention of learned counsel is that the plaintiff was not registered as money lender and hence the suit filed was without jurisdiction as the Punjab Registration of Money Lenders Act, 1938 was applicable in the present case. The said contention is also without any substance and is liable to be rejected.

Hon'ble the Apex Court in **Gajanan and others Versus Seth Brindaban** 1970 (2) SCC 360 has held as under:

"11. This decision was followed by T.C. Shrivastava J., of the Madhya Pradesh High Court in ***Hariprasad v. Sobhalal***, MFA No. 124 of 1956, D/- 18-12-1957 : 1958 MPLJ Note No. 11 and by Shiv Dayal, J., of the same High Court in ***Gurmukh Rai v. Hari Har Singh***, SA No. 39 of 1961, D/- 26-3-1964 : 1964 MPLJ Note No. 102. The same view was taken by K.L. Pandey J., of the same High Court in ***Chaith Ram v. Baparimal***, C.R. No. 374 of 1959, D/- 1-7-1960 : 1960 MPLJ Note No. 198. In this case both Section 2(v) and Section 11-H of the Section 2 (v) and Section 11-H of the Act came up for construction. In Sitaram Shrawan, (supra) it was also held that the person seeking advantage of the Moneylenders Act has to prove that the plaintiff is a moneylender. To the same effect is the decision by T.C. Shrivastava J., in ***Kishanlal v. Laxmibai***, C.R.P. No.109 of 1962, D/- 20-7-1962 : 1963 MPLJ Note No. 119."

Further this Court in ***Har Lal Versus Kanwar Bhan*** 2017 (3)

RCR (Civil) 481 has held as under:

"32. To establish the plea that plaintiff was a **money lender**, it was incumbent upon the appellant-defendant to establish that the plaintiff-respondent had indulged in the business of **money** lending systematically. To attract the provisions of the **Money Lender's Act** lending **money** should be regular business and not casual instances. There should be element of continuity and habit to constitute business or profession. There must be more than occasional and disconnected loan. Word "business" imports the notion of system, repetition and continuity. But, in the instant case, all these ingredients are totally missing. The appellant-defendant has not led any evidence to establish the aforesaid ingredients. The plaintiff-respondent has not been even questioned as to what was the intervals in the transactions of loan

conducted by him. The casual advances of money to few persons does not make a person **money lender**. Thus, appellant-defendant has not been able to establish that plaintiff-respondent was a **money lender** and provisions of **Money Lenders Act** were applicable to him. To support these observations, reference can be made to cases **Balvinder Singh v. M/s Basaikhi Ram Saina Ram 2008 (2) RCR (Civil) 467**, **Khachen V. Ram Ditta Mal 1984 PLJ 408**, **Kampa Wati Devi v. Basant Rai 1968 (4) DLT 395**, **Sant Lal v. Noria Mal 1977 PLR 687** and **S.S.S. Amar Singh v. Kuldip Singh and others 1951 PLR 303.**"

This Court in **Vir Kaur and others Versus M/s Badri Parshad Gian Chand Commission Agents, 2016 (2) RCR Civil) 770**, has held as under:

"6. 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."

It has been held that in order to argue that the plaintiff was required to be registered as a money lender, the onus is on the defendant to prove that he is indulging in the business of money lending.

It is admitted case that there was a relationship of farmer and commission agent between the defendant and the plaintiff. No evidence has been adduced by the defendant to show that amount borrowed was a loan

and not an advance. The defendant in this issue has also just made a statement that the plaintiff was money lender. No evidence has been brought on record to show that the plaintiff was indulging in the business of money lending.

The transaction in the present case was not of a loan, atleast the same has not been proved to be so.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

27.11.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No