IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.59 of 2017 (O&M)
Date of decision : 10.08.2017

Simru Ram

...Appellant

Versus

Oriental Bank of Commerce

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Malkeet Singh, Advocate for the appellant.

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ANIL KSHETARPAL, J.

The defendant-appellant has filed this Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below decreeing the suit for recovery filed by the respondent-plaintiff-Oriental Bank of Commerce.

Oriental Bank of Commerce had filed a suit against the appellant-defendant seeking recovery of ₹8,45,772/- on account of non-payment of the Agriculture Cash Credit Limit under Oriental Green Card Scheme.

The defendant contested the suit and took a stand that he has not executed any writing. He has stated that at the time of advancing loan, some signatures were taken on the papers. He has further submitted that he has not withdrawn ₹6,00,000/- whereas he has withdrawn only ₹5,15,000/-.

The learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff.

The First appeal preferred by the defendant-appellant was ordered to be dismissed. However, the learned First Appellate Court ordered that the amount be recovered alongwith interest at the rate of 13.5% p.a. instead of 14.5% p.a. with yearly rest to be calculated on the principle amount.

Learned counsel for the appellant has referred to the provisions of Section 65(B) of the Indian Evidence Act, 1872. Learned counsel for the appellant has submitted that the statement of account submitted by the plaintiff-bank to recover the amount was electronic generated account statement. Therefore, he asserts that the procedure prescribed under Section 65(B) was required to be followed. He further submits that since procedure prescribed was not followed, therefore, the account statement was not admissible in evidence.

I have carefully considered the submission of the appellant. However, I am unable to agree with the same.

In the present case, the plaintiff-bank produced on record statement of account Ex.P2, agreement of hypothecation Ex.P3, mortgage deed Ex.P4 and balance confirmation letter dated 05.09.2012 Ex.P5. Apart from the statement of account, remaining documents are duly signed by the defendant. There is concurrent findings of fact to that effect. Counsel for the appellant has not challenged the aforesaid findings. The agreement of hypothecation, mortgage deed and balance confirmation letter dated 05.09.2012 clearly prove that the appellant had taken the facility of Agriculture Cash Credit Limit under Oriental Green Card Scheme.

Still further, defendant in the written statement has himself admitted that he has received ₹5,15,000/- and not ₹6,00,000/-.

With respect to the statement of account which is computer generated, it is suffice to mention here that the statement of account is duly certified by the Manager of the Oriental Bank of Commerce. The aforesaid Manager has stepped into the witness-box as PW1. A look at the cross-examination of PW1, Manager would show that when this statement of account Ex.P2 was produced before the Court, the counsel for the defendant did not raise any objection to the admissibility of the document. Counsel for the appellant was further given opportunity to cross-examine the Manager of the bank. Learned counsel for the defendant-appellant did not even give suggestion to the bank Manager that the statement of account is not in accordance with the regular books of accounts or statement of account is not a correct copy of the accounts being maintained by the Nationalized bank.

Therefore, in these circumstances, in my opinion, the appellant cannot be permitted to object to the admissibility of the statement of account at this stage.

Although, it is true that the defendant-appellant pressed this point before the trial Court, however, the defendant-appellant did not even raise this issue before the First Appellate Court. Now at the stage of second appeal, defendant-appellant cannot be permitted to raise such point for two reasons. Firstly on account of the fact that when the statement of account was admitted in evidence, no objection was raised by the counsel for the defendant. Secondly, no such point was raised or pressed during the course of First Appeal.

Finding no reason to interfere with the concurrent findings of fact arrived at by the Courts below, the present Regular Second Appeal is ordered to be dismissed.

10.08.2017 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**