IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.2579 of 2010 (O&M)
Date of Decision: February 02, 2018

Surjit Singh

...Appellant

Versus

Jay Aar Trading Co.& another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.B.S.Saini, Advocate,
for the appellant.

Mr.S.L.Bhalla, Advocate,
for the respondents.

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AMIT RAWAL, J. (Oral)

Appellant-defendant is in Regular Second Appeal against the concurrent findings, whereby the suit for recovery of ₹57430/- along with pendente lite interest @ 9% per annum and future interest @ 6% per annum on the principal loan amount, has been decreed by both the Courts below.

Mr.B.S.Saini, learned counsel appearing on behalf of the appellant-defendant submits that both the Courts below have committed illegality and error in decreeing the suit as the suit was not maintainable in view of the provisions of 69(2) of the Indian Partnership Act, 1932 because the alleged Forms `A' and 'C' related to the year 1990-91, whereas the case of the respondents-plaintiffs is based upon the partnership deed dated 1.4.1993 and the newly constituted firm was not registered. The Account books did not bear any certificate of authentication by Income Tax and Sales Tax Authorities, which were required to be proved. The account books were fabricated by the respondent-plaintiffs and expert report in this regard had gone unrebutted, yet the Courts abdicated in decreeing the suit.

He further submits that the trial Court decreed the suit by ignoring the testimony of Rattan Kumar partner, who, in cross-examination admitted that all the entries made in the account books had not been written by him. Non-production of the accountant was also fatal to the case. The Courts below have wrongly held that as per documents Ex.P1 and Ex.P2, the firm was in existence since 2.5.1990, but the perusal of Ex.P1 shows that the firm was initially registered by the Registrar of Firms in 1990-91 and Ex.P2 was prepared in 1990-91 and registered on 1.4.1993. The suit on the basis of unregistered partnership deed was not maintainable and, thus, prays for allowing the appeal by formulating the substantial questions of law.

Mr.S.L.Bhalla, learned counsel representing the respondent-plaintiffs submits that concurrent findings cannot be interfered unless and until there is a gross illegality and perversity, which has not been pointed out, for, the plaintiffs have examined PW-1 Rattan Kumar and PW-2 Rajiv Malhotra and also tendered in evidence documents Ex.P1 to Ex.P24. He submits that he has produced Ex.P4 statement of account prepared by him as per account books, Rokar, Cash-book and ledger-book pertaining to the years 1999-2000 to 2004-05, entry dated 21.10.1999 Ex.P5 written by Rattan Kumar, the Rokar-bahi regarding borrowing ₹48,000/- by the defendant, Ex.P6 and Ex.P7 corresponding entries in the cash book and the ledger for the year 1999-2000, Ex.P8 copy of entry dated 2.2.2000 made by him regarding borrowing of ₹2200/-, Ex.P9 and Ex.P10 corresponding entries in the cash book and ledger-book. The corresponding entries in the cash book and the ledger for the year 2001-02 are Ex.P20 and Ex.P21. The expert examined by the defendant had admitted that he did not take the photographs from the original documents, but from the photocopies. The Courts below on preponderance of the evidence found that the plaintiffs proved the record of the entries which were in consistent and, therefore, carried a presumption under Section 34 of the Indian Evidence Act as it may not be a conclusive proof of evidence.

In rebuttal, Mr.Saini has relied upon the judgment rendered by this Court in **Ram Singh Versus Rajiv Kumar and Company, 2012(4) Civil Court Cases 337** to contend that bahi entries cannot be said to be proved merely from the statement of the proprietor of the firm.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the appellant-defendant.

The documentary evidence aforementioned are not only Rokar, but cash books and the ledger books. All these entries bore the signatures of the appellant-defendant. Expert Gopal Krishan candidly admitted that he had taken the photos from the photocopies, in essence the onus discharged by the plaintiffs by placing on record the documents had not been rebutted, therefore, the entries have been proved. The judgment relied upon by the learned counsel for the appellant-defendant would not apply as it was a case where only the bahi entries were brought on record and not the cash books and ledger-books. Section 34 of the Indian Evidence Act provides that an entry made in the books of account regularly kept in the course of business is a relevant fact, but they may not be a conclusive proof. In the present case, the ledger-books and cash books had also been brought on record other than the Rokar bahis.

Vis-a-vis the objection with regard to the maintainability of the suit as the firm was not registered, I am of the view that Forms `A' and 'C' are of 2.5.1990, whereas the earlier partnership firm was registered on 1.4.1993 as one of the partner had died and the entry was made. Registration of the firm had already been proved and that is what has been noticed by the Lower Appellate Court while dealing with the objection.

For the reasons stated above, I do not find any illegality and perversity in the judgments and decrees rendered by the Courts below, which are based on appreciation of evidence. No ground for interference is made out. No substantial question of law arises for determination.

Appeal stands dismissed.

February 02, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**