

**RSA No.4038 of 2013 (O&M)**

Manoj Kumar  
2018/01/18 11:52  
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH**

**RSA No.4038 of 2013 (O&M)**

Mahavir Singh

...Appellant

Versus

Mohan Singh and Ors.

....Respondents

**Date of Order: 15.5.2018**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sandeep Sharma, Advocate for  
Mr. Rajesh Bhateja, Advocate for the appellant.

Mr. Naresh Kumar Manchanda, Advocate for  
respondent Nos.1 & 2.

**AMIT RAWAL, J (ORAL)**

**CM No.10910-C of 2013**

For the reasons stated in the application, which is supported by an affidavit, the same is allowed. Delay of 67 days in re-filing the appeal is condoned.

**RSA No.4038 of 2013**

Plaintiff-appellant is challenging concurrent judgments and decrees passed by both the courts below whereby suit for rendition of account and recovery of the amount which may be found due after the rendition of the account, has been dismissed vide judgment and decree dated 05.3.2011 passed by learned Civil Judge (Jr. Division), Moga and affirmed in appeal by the lower Appellate Court vide judgment and decree dated 10.12.2012.

Plaintiff-appellant instituted the suit on the premise that he

being an agriculturist used to sell his crop through the agency of the defendants since the year 1996 and thus there was relationship of principal and agent between the parties. The details of his crops being sold to the defendants is described in the impugned judgment of the trial Court commencing from 04.11.1996 till 27.4.2002 but the defendants did not pay money and cause of action arose to file the suit.

Upon notice, defendants appeared and contested the suit by taking various objections qua limitation, deficiency of court fee etc. On merits, it was stated that there was nothing due to the plaintiff.

On the basis of preponderance of evidence, the trial court dismissed the suit of the plaintiff and the appeal preferred against the same was also dismissed by the lower Appellate Court.

Learned counsel for the appellant submitted that the findings recorded by both the courts below are patently illegal and are liable to be set aside. The learned courts below proceeded on wholly misconceived and perverse approach, while dismissing the suit on the ground of limitation resulting into serious miscarriage of justice, for, the plaintiff filed application bearing CM No.10911-C/2013 under Order 41 Rule 27 CPC for bringing on record statement dated 28.3.2005 of Mohan Singh-respondent No.1 made before the police in complaint case wherein he admitted that the payment, in lieu of alleged transaction, was made to the plaintiff on 16.5.2002, therefore, the suit could not be said to be barred by law of limitation.

On the other hand, learned counsel for the defendants submitted that both the courts below have rightly dismissed the suit on the basis of correct appreciation of evidence. The last transaction as per the pleaded

case of the appellant-plaintiff was in April 2002 and suit was filed on 09.5.2005 i.e beyond the period of limitation i.e three years. Statement made before the police, which is sought to be placed on record by way of additional evidence cannot be read into evidence.

After hearing learned counsel for the parties and perusing the paper book, I am of the view that there is no illegality and perversity in the impugned judgment and decrees of both the courts below, for, concededly the last transaction took place between the parties on 27.4.2002 and the suit was filed on 09.5.2005. Even if the statement sought to be brought on record by way of additional evidence is taken on record, it would not help, for, it is well settled that any statement made before the police cannot be read into evidence.

It was incumbent upon the plaintiff-appellant to prove the transaction by leading proper and cogent evidence by putting specific questions in this regard. If payment had actually been paid to the defendants, it would have been recorded in the account book which has not seen the light of the day.

In such circumstances, I do not find any reason to discard the findings recorded by both the courts below much less no substantial question of law arises for adjudication.

Resultantly, the present appeal is dismissed.

**May 15, 2018**  
**manoj**

**^(AMIT RAWAL)**  
**JUDGE**

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