

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

RSA No.5043 of 2013 (O&M)

Decided on:-March 27, 2018.

Gursewak Singh.

.....Appellant.

Versus

M/s Kler Brothers.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. S.S. Swaich, Advocate
for the appellant.

Mr. G.S. Sandhu, Advocate
for the respondent.

HARI PAL VERMA, J.

Appellant Gursewak Singh (hereinafter referred to as the defendant) has filed the present regular second appeal against the judgment and decree dated 01.08.2013 passed by learned Additional District Judge, Fatehgarh Sahib whereby the appeal filed by the respondent-plaintiff M/s Kler Brothers through its partner Tarlochan Singh (hereinafter referred to as the plaintiff firm) against the judgment and decree dated 19.11.2012 passed by learned Civil Judge (Senior Division), Fatehgarh Sahib, was allowed.

Vide judgment and decree dated 19.11.2012, trial Court had dismissed the suit of the plaintiff firm for recovery.

Briefly stated, the plaintiff firm had filed a suit against the defendant for recovery of Rs.2,15,800/- i.e. Rs.1,30,000/- as principal amount and Rs.85,800/- as interest @ 2% per month on the principal amount along

with future interest @ 18% per annum from the date of filing of the suit till realisation of the amount on the basis of Bahi entries. As per the plaint, the plaintiff is a registered firm and Tarlochan Singh through whom the suit had been filed is a registered partner of the plaintiff firm, who is competent to file the suit. The plaintiff firm had advanced a loan of Rs.1,30,000/- to the defendant in the following manner:

- | | | |
|----|------------|---------------|
| 1. | 27.11.2002 | Rs.1,00,000/- |
| 2. | 21.01.2003 | Rs.25,000/- |
| 3. | 04.04.2003 | Rs.5,000/- |

The defendant had assured that he would sell his crops at the shop of the plaintiff firm and in this manner, would return the aforesaid loan amount out of the sale proceeds of the crops along with interest. The defendant had put his signatures against the said amount in the Bahi Khata of the plaintiff. The plaintiff firm maintains the account books in the ordinary course of business, but the defendant had neither brought the crops for sale at the shop of the plaintiff firm nor had returned the loan amount in spite of repeated requests, leaving no other option with the plaintiff firm except to file the present suit for recovery of the amount shown therein.

The defendant contested the suit and had taken preliminary objections that the suit was not maintainable as Tarlochan Singh being the single partner of the plaintiff firm had no locus standi to file the suit on behalf of the partnership firm. Even otherwise the entries in the alleged Bahi dated 27.11.2002, 21.01.2003 and 04.04.2003 are false, forged and fabricated which were never signed by him (defendant). The defendant submitted that he signs in English only. The claim of the plaintiff firm in respect of the interest @ 2%

per month is not maintainable as it was never agreed upon between the parties. Since the plaintiff firm has no cause of action, the suit is not maintainable. The defendant never approached the plaintiff firm to avail loan of Rs.1,30,000/- as alleged in the plaint. The signatures in the Bahi are also denied. In nutshell, the defendant denied the very amount allegedly borrowed by him as he never signed the Bahi and never agreed to pay any interest to the plaintiff firm. Therefore, the entries in the Bahi are false and forged one.

The plaintiff firm filed replication to the written statement filed by the defendant wherein the averments made in the written statement were denied and the contents of the plaint were reiterated.

Considering the pleadings of the parties, the civil Court had framed the following issues:

1. Whether plaintiff is entitled to recovery of the suit amount along with interest? OPP
2. Whether suit is not maintainable? OPD
3. Whether plaintiff has no cause of action to file the present suit? OPD
4. Whether plaintiff is estopped by his own act and conduct to file the present suit? OPD
5. Relief.

Plaintiff Tarlochan Singh had examined himself as PW1 and tendered into evidence his affidavit Ex.PW1/A and certified copy of Form-A showing the firm registered with the Registrar of Firms as Ex.P1 and also Form-C as Ex.P2. Copy of ROKAR Bahi entries were proved as Ex.P3 to Ex.P5 and copy of Bahi ROKAR were proved as Ex.P6 and Ex.P7. The documents Ex.P3 to Ex.P5 bear the signatures of the defendant showing the borrowed

money. The plaintiff has also examined PW2 Amrinderjeet Singh, who is working as a Munim, who while tendering into evidence his affidavit Ex.PW1/A has corroborated the entries made in Ex.P3 to Ex.P5 and Ex.P6 and Ex.P7. He has stated that these entries have been made in due course of business. He corroborated the facts as narrated in the plaint as well as the entry explained by the plaintiff in his affidavit Ex.PW1/A.

The pleaded case of the defendant is that he had never borrowed any amount he signs only in English language, whereas the signatures in the Bahi have been shown to be in 'Punjabi' language and as such, his signatures are forged and fabricated. The trial Court vide judgment dated 19.11.2012 dismissed the suit observing therein that the plaintiff firm filed suit for recovery on the basis of Bahi entries. According to the plaintiff firm, the defendant had approached the plaintiff and had taken the aforesaid amount with an assurance that he will sell his crops at the shop of the plaintiff firm and had also put his signatures in the Bahi which were proved as Ex.P3 to Ex.P5, whereas the defendant denied the borrowing of loan amount as well as his signatures. The trial Court dismissed the suit on the ground that the documents Ex.P3 to Ex.P5 show the amount of Rs.1,30,000/- and these are of different dates. These entries have been made in the account books as shown in Ex.P6 and Ex.P7, yet the question arises as to whether anything was written against these entries to show the defendant ever borrowed the loan on any terms and conditions. There is no such condition mentioned in these documents that they are being taken as a loan. The plaintiff firm has not produced the balance sheet which could show as to how these amounts were shown in the balance sheet as outstanding against the loan. Therefore, the

documents Ex.P3 to P5 and further documents Ex.P6 and P7 have remained uncorroborated by independent evidence. The plaintiff should have proved that such local Bahi belonging to the firm of which Tarlochan Singh was a partner and while disbursing the loan amount, he had acted as a partner of a firm and on such date, he had done so on behalf of the firm. In this manner, the suit was dismissed by learned civil Court vide judgment and decree dated 19.11.2012.

The said judgment and decree dated 19.11.2012 was challenged by the plaintiff firm before the lower appellate Court. Vide judgement and decree dated 01.08.2013 learned lower appellate Court had allowed the appeal of the plaintiff firm and as a consequence thereof, the suit of the plaintiff firm was decreed with costs for recovery of Rs.1,30,000/- with interest at the rate of 6% per annum from the date of borrowing the amount till its realization.

It is in the aforesaid circumstances, the defendant has filed the present regular second appeal impugning the judgment and decree dated 01.08.2013 passed by learned lower appellate Court.

Following substantial questions of law have been raised by the plaintiff:

- I. Whether the findings of the learned lower appellate Court on issue No.1 are wholly wrong, illegal, erroneous, perverse being against the pleadings and evidence on record and are liable to be set aside?
- II. Whether the learned lower appellate Court erred by reversing the well reasoned findings given by the learned trial Court on the aforesaid issue No.1?
- III. Whether the Bahi entries Ex.P-3 to Ex.P-7 were inadmissible in evidence and no reliance could be placed on the same?
- IV. Whether the Bahi entries Ex.P3 to Ex.P7 were in itself

sufficient for decreeing the suit for recovery without any corroborative evidence?

- V. Whether the self serving oral statements of PW1 partner of the plaintiff firm and PW2 Munim of the plaintiff firm were sufficient corroborative evidence of the Bahi entries for decreeing the suit of the plaintiff for recovery?
- VI. Whether the unaudited Bahi entries can be relied upon and are admissible in evidence in a suit for recovery based on the said entries?

Mr. S.S. Swaich, learned counsel for the defendant has argued that the trial Court had passed a well reasoned judgment and decree and had given sound and cogent reasons in support of its judgment, but the lower appellate Court has committed gross error in reversing the well-reasoned findings recorded by the trial Court. Therefore, the judgment and decree dated 01.08.2013 passed by the lower appellate Court is liable to be set aside.

He argued that the oral testimony of PW1 Tarlochan Singh, partner of the plaintiff firm and PW2 Amrinderjeet Singh Accountant/Munim of the firm has wrongly been relied upon by the lower appellate Court while corroborating the alleged Bahi entries. The self-serving testimonies of said witnesses cannot be taken as corroborative evidence of the Bahi entries. The said entries were never proved as loan transaction. The lower appellate Court has erred in relying upon the inadmissible evidence in the shape of documents Ex.P8 to Ex.P14. The said documents have not been proved on record as per law and, therefore, cannot be read into evidence.

He has further contended that the lower appellate Court has wrongly and illegally relied upon the testimony of PW6 Dr. Jassy Anand, handwriting expert examined by the plaintiff firm. The crucial and important aspect of the matter in the present case is that there was no dealing or

transaction between the plaintiff firm and the defendant regarding the sale of crops either prior to or at the time or even after the alleged loan transaction and this fact has been admitted by PW1 Tarlochan Singh, who has stated that the defendant never sold his crops through the plaintiff firm either before the entries in question or subsequently. Similarly, PW2 Amrinderjeet Singh Accountant/Munim has also stated that the defendant never sold any of his crops through the plaintiff firm. He has further argued that since the plaintiff firm had no dealing with the defendant, the documents Ex.P3 to Ex.P5 are fabricated.

On the other hand, learned counsel for the plaintiff firm has argued that there is no illegality in the judgment and decree dated 01.08.2013 passed by learned lower appellate Court. The plaintiff firm had rightly filed a suit for recovery on the basis of entries recorded in the Bahi Khata, which are maintained in the ordinary course of business. The Bahi has duly been signed by the defendant. The plea that the defendant knows English language, whereas the Bahi entries contained the signatures of the defendant in Punjabi language is of no relevance. It is the sweet will of the person to sign in Punjabi or in English language more particularly when he is conversant with both the languages.

He has further argued that PW3 Jaspal Singh, registration Clerk in the office of Sub-Registrar, Khamanon had brought the record of the registered sale deed executed by the defendant along with his father and another person in the year 2006. The plaintiff firm had also examined Mangat Rai, deed writer as PW4 to prove that the defendant signed in Punjabi language. These witnesses are not related with the plaintiff. Whereas PW3 is

an official, who has brought the official record, PW4 is an independent official, who has proved the fact of scribing the sale deed on which the defendant had signed in Punjabi language.

I have heard learned counsel for the parties.

The claim of the plaintiff firm for recovery is based on the Bahi entries maintained by the firm during the course of business. As per the plaintiff firm, the defendant had approached the plaintiff firm and had taken an amount of Rs.1,30,000/- on three different dates as detailed above with an assurance that he will sell his crops to the plaintiff firm and in this manner, will return the loan amount from the price of crop sold along with interest. It is on this assurance, the plaintiff firm had advanced the loan of Rs.1,30,000/- to the defendant on three different dates. The plea of the defendant that PW3 and PW4 in their cross-examinations have stated that the defendant had never sold his crops through the plaintiff firm either before the entries in question or subsequently is of no relevance as it is nowhere the case of the plaintiff that in the past, the defendant was selling his crops to the plaintiff. It is only on the assurance given by the defendant that he (defendant) will sell his crops through the plaintiff firm, the plaintiff had advanced the loan amount to the defendant. The plea of the defendant that he used to sign in English language, whereas as per the Bahi entries, his signatures are mentioned in Punjabi language, cannot be accepted. It is the personal decision of an executor to sign in the language in which he feels comfortable. But it is not disputed that defendant is conversant with both the languages.

It is not the pleaded case of the defendant that he does not know Punjabi language at all, rather, he is conversant with both languages i.e.

English as well as Punjabi. Moreover, this Court had an occasion to look into the record i.e. documents Ex.P3 to Ex.P5, wherein the defendant had put his signatures in Punjabi language. On perusal of the Bahi entries Ex.P3, Ex.P4 and Ex.P5, it is clear that the plaintiff had made entries of making an advance amount not only to the defendant, but to a number of other persons as well. PW3 Jaspal Singh, who is a registration Clerk with the Sub-Registrar, Khamanon has produced the summoned record of sale deed executed by the defendant along with his father and another person in the year 2006. The plaintiff has also examined PW4 Mangat Rai, a deed writer, and it is proved that the defendant had signed in Punjabi language. These witnesses have no enmity or ill-will with the defendant. They are not related to the plaintiff as well and they being independent witnesses, have proved the fact of scribing of the sale deed, where the defendant had signed in Punjabi language. So, the plea of the defendant that he signs in English language cannot be accepted. Further more, the plaintiff has examined Manjit Singh, Assistant Manager, PADB, Khamanon as PW5, who has brought the material documentary evidence showing the signatures of the defendant in Punjabi language. The documents have again been proved on record as Ex.P12 to Ex.P15. Normally, if a person who is a Punjabi person and usually signs in English language being literate, then it is well presumed that the person of Punjabi region, who can sign in English must also be knowing how to sign in Punjabi language as well. Thus, the plaintiff firm has been able to establish that the defendant had signed in Punjabi language also.

Further, PW6 Dr. Jassy Anand, who is an handwriting expert has also corroborated the fact that the defendant borrowed the amount and signed

the entries in Punjabi language. This witness was cross-examined by the defendant, but the defendant failed to extract any such material which could prove the stand of the defendant. There is no over-writing or tampering in the Bahi and, therefore, it cannot be said that these documents have been fabricated or forged in any manner at the instance of the plaintiff. Thus, learned lower appellate Court has rightly held that the plaintiff firm has successfully proved the fact that the defendant had borrowed the aforesaid amount and had put his signatures in the entries in the account books on the respective days. The account books are regularly maintained by the plaintiff firm in the ordinary course of business and show the entries of other persons also.

Therefore, this Court does not find any reason to interfere with the impugned judgment and decree dated 01.08.2013 passed by learned lower appellate Court.

No other point has been argued.

No substantial question of law is involved in the present regular second appeal.

Accordingly, the impugned judgment and decree dated 01.08.2013 passed by learned Additional District Judge, Fatehgarh Sahib is upheld and the present regular second appeal, being devoid of any merit, is dismissed.

(HARI PAL VERMA)
JUDGE

March 27, 2018
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No