

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

Date of decision: 13.11.2018

1. RSA No.5088 of 2013

Ranjiv Kumar

..... Appellant

Versus

Raksha Devi

..... Respondent

2. RSA No.5115 of 2013

Ranjiv Kumar

..... Appellant

Versus

Darshna Devi

..... Respondent

3. RSA No.375 of 2014

M/s Bishna Mal Chhajju Ram and others

..... Appellants

Versus

Darshna Devi

..... Respondent

4. RSA No.3826 of 2013

M/s Bishna Mal Chhajju Ram and others

..... Appellants

Versus

Raksha Devi

..... Respondent

5. RSA No.3827 of 2013

Ranjiv Kumar

..... Appellant

Versus

Arshdeep Kumar

..... Respondent

6. RSA No.692 of 2015

Ranjiv Kumar

..... Appellant

Versus

Seema Devi

..... Respondent

7. RSA No.709 of 2015

Ranjiv Kumar

..... Appellant

Versus

Pankaj Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. M.K. Garg, Advocate
for the appellants (in all cases).

Ms. Aarti Gupta, Advocate
for the respondent.

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of seven regular second appeals bearing RSA No.5088 of 2013, RSA No.5115 of 2013, RSA No.375 of 2014, RSA No.3826 of 2013, RSA No.3827 of 2013, RSA No.692 of 2015 and RSA No.709 of 2015 which are connected.

In these seven appeals, arguments were heard and judgment was reserved on 02.11.2018 which is being released. In all these seven appeals which are connected, counsel for the parties have submitted that the issue which needs determination is common and therefore, these appeals can be disposed of by a common judgment. Parties to this litigation are related. Seven suits were filed for recovery of various amounts on the basis of books of accounts of the defendants submitted before the income tax

authorities. The trial Court dismissed the suits, however, reversed by the First Appellate Court. Facts are being noticed from RSA No.5088 of 2013.

Respondent-plaintiff filed a suit for recovery of Rs.4,17,302/- with the assertion that the aforesaid amount is due and payable to the plaintiff but in spite of demand, the defendant is refusing to pay. The plaintiff further pleaded that defendant in his own handwriting has given copies of the accounts which prove that amount is due and payable. The defendant contested the suit and pleaded that no amount is payable. He further pleaded that the date of alleged loan, mode of payment etc. have not been disclosed by the plaintiff. The plaintiff never deposited any amount with the defendant. The defendant-appellant claimed that he became partner of the firm M/s Ashok Kumar Sanjiv Kumar, Mansa for the first time on 01.04.1993.

Learned trial Court dismissed all the suits filed by the plaintiff on the ground that the plaintiff had failed to disclose as to when and from which source the amount was deposited with the defendant. The trial Court further held that the suit filed by the plaintiff is barred by limitation.

Learned First Appellate Court has reversed the finding of the trial Court after re-appreciation of evidence.

It will be noted that the defendant-appellant undisputedly had been filing his income tax returns along with the balance sheet wherein the amount payable to each of the plaintiff has been depicted. The aforesaid books of accounts including balance sheet submitted in the income tax record have been duly proved by examining the income tax official who has appeared in evidence and had brought the original income tax record. Still further, it has been proved on file that each year, on the amount of deposit,

the interest would be calculated and tax deducted at source on the interest accrued was being regularly deposited with the income tax department. The remaining amount of interest accrued every year would be added to the existing principle amount as the amount due and payable to the plaintiff in each case.

Learned counsel for the appellant submitted that the suit filed by the plaintiff was barred by limitation as found by the trial Court. He submitted while referring to Section 18 of the Limitation Act, 1863 that acknowledgment of the debt, has to be within the prescribed period of limitation resulting in beginning of fresh period of limitation when the acknowledgment was so signed. He submitted that since the date or time when the amount due and payable is not known to have been deposited by each plaintiff with the defendant, therefore, acknowledgment of the amount payable in the income tax records for the years 2006-07, 2007-08 and 2008-09 would not result in acknowledgment of the debt within the meaning of Section 18 of the Limitation Act.

On the other hand, learned counsel for the respondent while referring to the evidence of defendant-appellant Ranjiv Kumar, who has appeared as DW-1, has submitted that every year in the books of accounts (regularly maintained by the defendant-appellant), the amount is depicted as due and payable and tax deducted at source on accrued interest payable is being deposited in the income tax authorities. Hence, she submitted that once every year this exercise is being carried out, the limitation every year would begin afresh on account of written acknowledgment duly signed by the defendant.

On careful examination of Section 18 of the Limitation Act, it

is apparent that there are two requirements which have to be fulfilled by the plaintiff before it can claim benefit of Section 18 of the Limitation Act. Firstly, the acknowledgment has to be before the expiration of the prescribed period of limitation for filing a suit or application. Secondly, the acknowledgment of liability has to be in writing signed by the party against whom such property or right is claimed. Let us now test the argument of learned counsel on the aforesaid requirements of Section 18 of the Limitation Act. In the present case, every year accounts books were finalized and amount due and payable to the plaintiff was being worked out. The tax deducted at source was being deposited with the income tax authorities and the remaining amount of interest accrued was being added to the principle and thereafter, entered in the balance sheet of the year as amount due and payable. So every year the debt was being acknowledged which indisputedly is in writing and signed by the defendant. Hence, a fresh period of limitation shall begin to run. The defendant-appellant when appeared in evidence has admitted that he has signed the income tax returns filed before the income tax authorities including balance sheet filed for each year. Income tax official has been summoned who had brought before the Court income tax record for the assessment years of 2006-07, 2007-08 and 2008-09 which clearly prove that defendant-appellant had filed his income tax returns depicting the amount to be due and payable. Still further, once income tax deducted at source on the accrued interest is deposited by the defendant, it is also an acknowledgment of the amount payable. Hence, twin requirements of Section 18 of the Limitation Act stands fulfilled. The acknowledgment i.e. balance sheet for each year is in writing signed by the party against whom such property or right is claimed. The acknowledgment

is before expiration of prescribed period for a suit or application as every year such acknowledgment is admitted to have been made.

Next argument of learned counsel for the appellant is to the effect that the plaintiff has not himself appeared in evidence and therefore, adverse inference is to be drawn. It will be noted that the aforesaid argument also does not have substance because there is sufficient evidence available on the file to prove the case of the plaintiff. The adverse inference can only be drawn once sufficient evidence is not available.

It will be further significant to note that the defendant while filing the written statement had totally denied that any amount has been borrowed or any amount is payable. However, when the defendant-appellant appeared in evidence, he admitted the income tax returns including balance sheet filed by him with the Income Tax Department each year.

In view of the aforesaid discussion, the issue which has been framed earlier, is answered against the appellant.

Hence, there is no ground to interfere.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

All the appeals are dismissed.

13.11.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No