IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.1402 of 2015 (O&M)
Date of Decision: March 23, 2018

Ranjit Singh & another

...Appellants

Versus

M/s Ram Sarup Singh and Sons, Commission Agents, Sirhind

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Balbir Singh Sewak, Advocate,
for the appellants.

Mr.Nikhil Chopra, Advocate,
for the respondent.

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AMIT RAWAL, J. (Oral)

Appellant-defendants are in Regular Second Appeal against the concurrent findings of facts and law, whereby the suit for recovery of ₹5,36,934/- along with interest pendente lite and future @ 6% per annum till the date of realization, has been decreed.

Respondent-plaintiff instituted the aforementioned suit on the premise that it was a partnership firm and carrying on the business of commission agent. Defendant No.1, being son of defendant No.2, had been selling crops and obtaining loan for the purpose of carrying on the agricultural activities and in this regard, signed the account books of the plaintiff firm after adjustment of the account on 1.7.2005. During the year 2005-2006, amount due was ₹3,12,983/-. Along with interest, total outstanding amount came to be ₹5,36,934/-.

The aforementioned suit was contested by the appellant-defendants by denying the alleged entries to be false, fabricated, self created and manipulated, much less the suit was time barred. It was stated that the suit was also barred as per Section 3 of the Punjab Registration of Money Lenders Act, 1938.

On the basis of the pleadings of the parties, the trial Court framed the following issues:-

> "1. *Whether the plaintiff is entitled for recovery of Rs.5,36,934/- as prayed for? OPP*
> *2. Whether the suit is not maintainable? OPD*
> *3. Relief."*

The trial Court, on the basis of the evidence led by the parties to the lis, decreed the suit. The Lower Appellate Court, in appeal, also upheld the findings of the trial Court.

Mr.B.S.Sewak, learned counsel representing the appellant-defendants, in support of the grounds taken in the memorandum of appeal, raised the following arguments:-

a) The suit was liable to be dismissed as plaintiff firm was unregistered as per Section 3 of 1938 Act;

b) In cross-examination, PW-2 admitted that he did not remember the number of ledger;

c) The Bahi entries and account books were not regularly maintained;

d) Section 34 of the Indian Evidence Act does not require that only the Bahi entries are admissible piece of evidence, which can be only for the purpose of corroboration;

e) There is a categoric admission of the defendants that respondent No.1 was not selling the crops and, therefore, liability could not have been fastened upon him. In support of his contention, relied upon unreported judgment dated 9.1.2014 rendered by this Court in **Regular Second Appeal No.1892 of 1986 (Dhup Singh Versus Pheru and others)** by holding that the Bahi entries cannot be treated as promissory note, for, it required stamp papers and, thus, urged this Court for setting-aside the concurrent findings.

Mr.Nikhil Chopra, learned counsel representing the respondent-plaintiff submitted that the judgment relied upon by the learned counsel for the appellant-defendants is not applicable to the facts and circumstances of the present case, for, it was a case where Handwriting Expert, who had been examined to prove the signatures, was not able to prove the same as he did not know the Urdu language. It is in that background, occasion arose to ponder upon the admissibility of the Bahi entries. By referring to all the case law, the Court found that the respondent-plaintiff miserably failed to prove the outstanding amount, therefore, the said ratio would not apply to he present case.

He further contended that no original record has been proved in the testimony of PW-1 Mohan Singh, which has not been objected to at the time of evidence, whereas the defendant in cross-examination admitted his signatures on the written statement and Vakalatnama. On comparison of the same, the signatures in the Bahi entries are of the same person. If at all, the Bahi entries bore the signatures/thumb impressions of the defendant, nothing prevented the other side to prove the same and, thus, urged this Court for dismissal of the appeal.

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-defendants.

PW-1 Mohan Singh in examination-in-chief, stated in the following terms:-

> "*I have today brought the Rokar Bahi/cash books and Khata Bahis/ledger from the years 2005-2006 and 2006-2007, which are being kept and maintained regularly by the plaintiff-firm in due course of its business and the said books are being produced in the department of Income Tax and Sales Tax.*"

In the cross-examination of the aforementioned witness, no suggestion was put to him as to whether record, i.e., Bahi entries and the account books brought on record were not the original. Neither the aforementioned documents were objected to qua its mode of admissibility and proof. Similar is the statement of Ashok Kumar PW-2. One line here and there in the cross-examination of not remembering the number of the ledger would not entail into dismissal of the case.

I have seen the record of the Courts below and as well as the signatures of Ranjit Singh DW-1 on the Vakalatnama and the affidavit and that of the ledger and they are of the one and same person. This exercise has been taken as per Section 45 of the Indian Evidence Act.

The argument of Mr.Chopra with regard to the non-applicability of the judgment is squarely applicable to the facts and circumstances of the case as the occasion arose with regard to the admissibility of the documentary evidence vis-a-vis the facts brought on record which were with regard to the testimony of the Expert, who had examined the signatures which were of Ranjit Singh despite the fact that he did not know Urdu language. Mr.Chopra also relied upon the judgment rendered by this Court in **Himmat Singh Versus M/s Hukam Chand and Company, 2018 (1) R.C.R. (Civil) 774** to contend that for the sale and purchase of the agricultural produce, if the money was taken by the farmers, the commission agency is not required to be registered under the aforementioned Act. I am in agreement with the aforementioned submission and the ratio decidendi culled out in paras 7 and 8 of the judgment **Himmat Singh** supra. The arguments of Mr.Sewak have been duly repelled, which do not enable me to form a different opinion.

For the reasons stated above, there is no illegality and perversity in the concurrent findings. No ground for interference is made out, much less any substantial question of law. Resultantly, the appeal is dismissed.

March 23, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**