IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.2932 of 2016 (O&M)
Date of Decision: 26.07.2018

M/s Nagpal Commission Agents

... Appellant

Versus

Partap Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. S.K.Arora, Advocate,
for the appellant.

TEJINDER SINGH DHINDSA, J.

A suit for recovery filed by plaintiff M/s Nagpal Commission Agents through sole proprietor Kashmir Singh was partly decreed by the trial Court on 29.04.2014 for Rs. 1 lakh against the defendant along with interest @ 12% per annum from the date of advancement of the loan i.e. 27.10.2007 till actual realization of the decretal amount.

Plaintiff preferred an appeal assailing the judgment and decree of the trial Court and seeking relief of recovery for the entire amount i.e. Rs.4,38,200/-. Such appeal stands dismissed vide judgment dated 02.12.2015 passed by the learned District Judge, Ferozepur.

Resultantly, plaintiff/appellant is in second appeal before this Court.

Brief facts are that the appellant filed a suit against the defendant/respondent for recovery of Rs.4,38,200/- along with

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interest @ 2% per mensem on the strength of entries made in the account books/Rokar Bahi.

It was averred that plaintiff/appellant was carrying on the business of commission agency at Ferozepur City and Kashmir Singh was the sole proprietor thereof. Account books were regularly maintained in the ordinary course of business. It was claimed that the defendant/respondent approached the plaintiff for advancing money for raising his crops as well as for other related needs on the assurance that he will bring his crops for sale through the commission agency of the plaintiff/appellant and the amount taken as loan would be adjusted at the time of sale of the crops. It was asserted that defendant/respondent was advanced Rs.60,000/- on 15.05.2007, Rs.1 lakh on 16.06.2007, Rs.1,50,000/-on 18.10.2007 and Rs.1 lakh on 27.10.2007 and at the point of each transaction the defendant/respondent had affixed his signatures against the relevant entries in the Rokar Bahi. Against such pleadings suit for recovery was instituted for a total sum of Rs.4,38,200/- along with interest @ 2 % per mensem.

Defendant/respondent contested the suit by taking a stand that the plaintiff is relying upon forged and fabricated Bahi entries. It was further stated that the suit had been instituted as a counter blast to a previously instituted suit for recovery of 12 lakhs by the defendant as sole proprietor of his firm, namely, M/s Surjit Singh Partap Singh against the plaintiff. A case of denial was set up that the defendant/respondent had never obtained any amount from the plaintiff and had not signed any entry in the Rokar Bahi

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which was stated to be maintained by the plaintiff.

Trial Court on the basis of due appreciation of evidence has returned a finding that the relevant entries in the Rokar Bahi duly maintained by the plaintiff/appellant were counter signed by the defendant/respondent. However, the suit was partly decreed with proportionate costs for recovery of Rs.1 lakh along with interest @ 12% per annum from the date of filing of the suit till actual realization. As regards recovery with regard to entries dated 15.05.2007, 16.06.2007 and 18.10.2007 suit was dismissed being barred by limitation. Judgment and decree dated 29.04.2014 passed by the trial Court stand affirmed by the Lower Appellate Court vide decision dated 02.12.2015.

Learned counsel representing the plaintiff/appellant has submitted that accounts in question inter se the parties were open, mutual and current accounts and the last transaction was recorded on 27.10.2007. Accordingly, it is urged that if computed from such date, the suit had been filed well within limitation i.e. 25.10.2010. Further argued that claim of the appellant was based upon entries in the account books maintained during the regular course of business and the prescribed period of limitation has to be reckoned as 03 years from the close of the year in which the last transaction recorded has been entered into account books. Counsel argues that Courts below have erred in denying to the appellant the relief of recovery pertaining to entries made in the account books dated 15.05.2007, 16.06.2007 and 18.10.2007.

Having heard counsel for the appellant at length and

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having perused the case paper book, this Court is of the considered view that there is no merit in the instant appeal.

The Courts below upon due appreciation of evidence adduced on record in the shape of Ex.P-1 to P-5 have recorded a finding that the plaintiff/appellant failed to prove and demonstrate that the entries in question had been carried forward in the account books. Finding has also been recorded that the 03 entries in question i.e. 15.05.2007, 16.06.2007 and 18.10.2007 were as per entries reflected in the account books and there was no demand of the plaintiff/appellant from the defendant/respondent regarding payment of the amount pertaining to that period. The Courts have rightfully taken a view that each transaction as such has to be considered as a separate loan transaction. Concededly, suit had been instituted by the plaintiff/appellant on 25.10.2010 and under such circumstances, the claim of the plaintiff/appellant with regard to transactions dated 15.05.2007, 16.06.2007 and 18.10.2007 has been rightfully declined being barred by limitation.

No interference in the case is called for.

Appeal is without merit.

Dismissed.

26.07.2018 **(TEJINDER SINGH DHINDSA)**
vandana **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No

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