IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1801 of 2015(O&M)
Date of decision: 10.05.2018

Sudhir Vij

… Appellant

Versus

Vipin Kumar and another

… Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. CB Goel, Advocate for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the appellant was dismissed by the trial Court, vide judgment and decree dated 26.09.2011. As even the appeal against the said decree failed and was dismissed on 12.12.2014, the appellant is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff filed a suit for recovery of Rs.6,11,350/- against the defendants. In brief, the case set out by him was that he is the sole proprietor of M/s Sai Kirpa Traders, Kurukshetra and was carrying a business of commission agent in the New Grain Market. The defendants used to take advance from the plaintiff firm to meet their needs. Prior to 02.06.2006, all pending accounts between the parties were cleared and nothing was outstanding. But on 02.06.2006 defendant No.1 borrowed a sum of Rs.2,57,500/- and a similar amount i.e. Rs.2,57,500/- were also borrowed by defendant No.1 in the account or for his brother (defendant No.2). However, as subsequently the defendants stopped getting their crop to the shop of the plaintiff and even failed to clear the loan, thus, the suit.

In the written statement filed by defendant No.1, he denied the claim of the plaintiff. It was pleaded that firm M/s Sai Kirpa Traders was constituted on 07.11.1990, and plaintiff Sudhir Vij with three others i.e. Jagdish Chander Handa, Mandhir Mohan Vij and Karam Chand Chopra, were the partners therein. The defendant used to sell his crop through the said firm and would sign various blank papers in good faith. But post dissolution of the said firm on 15.07.2000, the defendant never dealt with the plaintiff or sold his crop through him. He never obtained any loan, as alleged by the plaintiff and, therefore, the entries if any in this regard were false.

In a separate written statement filed by defendant No.2, he maintained that neither did he open any account with the plaintiff nor sign any entry of loan. Further, he never authorized defendant No.1 to take advance on his behalf. Thus, the suit being frivolous and false was liable to be dismissed.

On a consideration of the matter in issue, and the evidence on record, both the Courts concurrently concluded that the entries Ex.P2 and Ex.P3 showed that an amount of Rs.1,46,667/- was obtained by each of the defendants on 29.04.2004. And was alleged to have been obtained to be deposited in the account of their third brother. Likewise, the entry Ex.P36 showed that defendant No.1 had borrowed a sum of Rs.2,33,333/- on 18.11.2005 and a similar amount was obtained by defendant No.2, through his brother defendant No.1, again to be deposited in the account of their brother Yashpal. Significantly, the entries Ex.P22 and Ex.P23, pursuant to which the amount in question was lent, revealed that a sum of Rs.2,57,500/- were advanced to both the defendants on the same day, which on the face of it was quite strange and unnatural. For it was highly improbable that both the brothers would require the same amount of money and that too in strange figures, and not in round figures. Further, the version of the plaintiff that after borrowing the amount they deposited the same in the account of their brother Yashpal was also highly improbable. Particularly, for the case of the plaintiff as also the statement of one of his witnesses was that all the three brothers had separate accounts with the plaintiff, if that was so the plaintiff ought to have produced the accounts of all the three brothers to substantiate his claim. Not just that, no cogent evidence was led to show as to in whose presence amount of Rs.2,57,500/- was advanced to the plaintiff. And if indeed there was any authorization by defendant No.2 to advance the amount to defendant No.1. Although the witnesses of the plaintiff maintained that defendant No.2 authorized the plaintiff on phone, but conceded in his cross-examination that defendant No.2 actually lived abroad. Further, he could not say anything as regards the mobile number from which defendant No.2 had allegedly called. Further, the books of accounts could only be relied upon if they were kept or maintained in a regular/normal course of business. Which was not the case either. Thus, the entries relied upon by the plaintiff were inadmissible in evidence. On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

10.05.2018
Rajan

Whether speaking / reasoned: YES
Whether Reportable: NO