IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A No.3882 of 2016(O&M)
Date of decision :03.10.2018

Chhaju Ram

...... Appellant

Versus

Ram Singh

.... Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Manoj K. Tanwar, Advocate for the appellant.

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LISA GILL,J

Appellant-plaintiff is aggrieved of judgement and decree dated 02.11.2015, passed by the learned Civil Judge (Sr. Division), Narnaul, as well as judgement and decree dated 04.03.2016, passed by the learned Additional District Judge, Narnaul, whereby the suit filed by the appellant-plaintiff has been dismissed.

Brief facts necessary for the adjudication of the case are that appellant-plaintiff filed a suit for recovery of ₹28,000/- from the defendant-respondent along with interest. It was pleaded that a loan of ₹28,000/- was taken by the defendant-respondent on 15.07.2007 and a Bahi entry on the same date was scribed and attested by the defendant. The amount in question was to be returned with interest at the rate of 2% per month. Despite requests, the loan was not returned. Hence the suit was filed.

Defendant-respondent resisted the suit. Written statement was filed raising various preliminary objections in regard to locus standi of the plaintiff. Averments on merits were controverted. It was denied that any loan was ever taken by the defendant from the plaintiff or any Bahi entry was attested by him. It was specifically pleaded by the defendant that the plaintiff who is a professional money lender is a clever person. Defendant's father borrowed a sum of ₹5000/- in the year 1996 from the plaintiff as well as two bags of wheat at the rate of ₹800/- per bag. The said claim was settled by the defendant-respondent along with his brother on deposit of a sum of ₹75,000/- with the plaintiff. To endorse the payment of the previous liability, the plaintiff had asked the defendant to sign over the page of the Bahi and that could have been converted into the entry as mentioned in the plaint. While referring to judgement Ex.D-6, pleaded that the plaintiff was a money lender without licence. Nothing was stated to be due towards the plaintiff. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to recover the principal amount of Rs.28,000/- from the defendant on the basis of the Bahi entries maintained by him?OPP
2. Whether plaintiff is entitled to recover interest on principal amount, if so at what rate?OPP
3. Whether the plaintiff has no locus-standi and cause of action to file and maintain the present suit?OPD
4. Whether the plaintiff is doing the business of money lending without a valid licence, if so its effect?OPD
5. Whether alleged entry in the Bahi is forged and frivolous as pleaded by defendant in para no.1 of his written statement, if so its effect?OPD
6. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court concluded that the plaintiff was a professional money lender without having any permit in this regard. Moreover, entry Ex.P-1 in the Bahi was not relied upon. Suit filed by the plaintiff was dismissed.

Appeal filed by the appellant-plaintiff was also dismissed by the learned Additional District Judge, Narnaul, vide impugned judgement and decree dated 04.03.2016.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellant vehemently argues that the appellant-plaintiff is not proved to be a professional money lender in any manner. Therefore, both the learned Courts below have misdirected themselves in dismissing the suit filed by the appellant-plaintiff. It is urged that the factum of defendant-respondent taking a loan from the plaintiff is duly proved on record. Therefore, the impugned judgements and decrees be set aside and the suit filed by the plaintiff-appellant be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

In order to prove his case, the plaintiff appeared as PW-1 and reiterated the contents of the plaint. PW-2-Ram Narain, the scribe of the entry of the Bahi deposed that he had written the same on 15.07.2007 and the defendant-respondent appended his signatures thereon, finding it to be correct after hearing and understanding the same.

Respondent-defendant appeared as DW-1 and reiterated his stand. It is not denied that PW-2 is closely related to the plaintiff. It is rightly held by the learned trial Court that the factum of PW-2 being closely related as well as the entry Ex.P-1 not appearing to be prepared during the regular course of business does not advance the plaintiff's case. It is not proved that the loan was obtained by the defendant from the plaintiff. Attesting witness was not examined. In my considered opinion, learned trial Court has rightly held that the plaintiff is a professional money lender without any permit as required under the Punjab Registration of Money Lenders Act, 1938.

Specific reference has been made to the judgments Ex.D-6 and Ex.D-8 to hold that the appellant-plaintiff is a money lender. At this stage, it is relevant to note that the plaintiff had moved an application for an adjournment before the learned trial Court for production of proof of proceedings pending before the Collector whereby the plaintiff had sought a license in this respect. There is however, no proof to even suggest the pendency of the application before the Collector. Be that as it may, the very fact that an application had been moved by the plaintiff for a license to carry on the work of money lender, substantiates and buttresses the finding of the learned Courts below that the appellant-plaintiff was in-fact a money lender.

Respondent-defendant in his written statement has specifically raised an objection about the plaintiff being a money lender without registration and license as required under the Punjab Registration of Money Lenders Act, 1938. Despite a pointed query in respect to the judgements Ex.D-6 and Ex.D-8, learned counsel for the appellant is not forthcoming with any cogent or any convincing argument. It is to be noticed that there is nothing on record to indicate that the said judgements Ex.D-6 and Ex.D-8 have not attained finality and are not binding upon the appellant.

Learned counsel for the appellant-plaintiff is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 02.11.2015 and 04.03.2016 passed by the learned Civil Judge (Sr. Division) Narnaul and learned Additional District Judge, Narnaul, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

03.10.2018 **(LISA GILL)**
s.khan **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No