

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

RSA No.49 of 2016

Date of Order: 28.02.2018

Suresh

....appellant

Versus

M/s Shiv Shakti Enterprises

....Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. V.K. Sandhir, Advocate for the appellant.

AMIT RAWAL, J (ORAL)

Appellant-defendant is in appeal against the concurrent findings of facts recorded by both the courts below whereby suit of the plaintiff-respondent for recovery of Rs.4,05,473/- along with interest at the rate of 6% per annum from 1.4.2007 till its realization has been decreed vide judgment dated 28.1.2012 passed by the learned Addl. Civil Judge (Sr. Divn.), Assandh and the appeal filed against the same has been dismissed by the lower Appellate Court.

Respondent-plaintiff instituted the suit for recovery of the afore-mentioned amount on the premise that it had been working as commission agent for the purpose of purchasing of paddy, wheat etc and providing assistance to the customers for purchasing fertilizers, seeds, oil and other expenses. Appellant-defendant was customer of the plaintiff and had obtained some amount from the plaintiff on different dates as he had

taken the land measuring approximately 57 acres @ Rs10,600/- per acre per year from one Chap Singh son of Sukhbjir Singh, and on the request of the defendant-appellant, the plaintiff added a sum of Rs.6,04,200/- in the account of the appellant for the purposes of making payment to abovesaid Chap Singh. On 31.3.2007, the appellant told the plaintiff-respondent that the said amount was to be excluded from his account and he would directly settle the account with Chap Singh. On the request of the appellant-defendant, the plaintiff deducted the amount of Rs.6,04,200/- including the interest amount of Rs.1,20,800/- on the said amount. After deduction of the said amount, Rs.5,07,597/- was due on the appellant. Although the defendant-appellant had agreed to pay interest at the rate of 2% per month i.e 24% per annum but he failed to make the payment. Hence a legal notice dated 25.4.2007 was served upon the appellant but the same was not replied.

Appellant contested the suit by taking preliminary objections with regard to maintainability, locus standi, cause of action and suppression of true and material facts but on merits, it was submitted that the plaintiff had no licence as money lender. Plaintiff had robbed defendant of all the crop of 57 acres of land in connivance of local police. The defendant-appellant was not the customer of the plaintiff before April, 2005. The plaintiff had given the credit to the appellant-defendant on the asking of said Chap Singh but manipulated and forged the accounts of the appellant.

From the pleadings of the parties, the following issues were framed by the trial Court:

- “1. Whether the plaintiff is entitled to recover Rs.5,07,673/- alongwith the interest from the defendants as prayed for?OPP*
- 2. Whether suit of plaintiff is not maintainable in*

the present form?OPD

3. *Whether plaintiff has got no locus standi to file and maintain the suit?OPD*

4. *Relief.”*

Plaintiff-respondent brought on record copy of ledger account of Suresh Ex.P.1 and Ex.P2, copy of J-Form as Ex.P.3 to Ex.P.8, balance sheet from 1.4.2006 to 31.3.2007 as Ex.P.9, balance sheet of dated 31.3.2007 Ex.P.10 and copy of cash book as Ex.P.11 to Ex.P49. He also tendered copy of legal notice dated 24.4.2007 as Ex.P50 and postal receipt dated 25.4.2007 as Ex.P51.

On the other hand, the defendant produced on record copy of FIR No.127 dated 20.4.2007 under Section 379 IPC. DW2-Desh Raj Kaushik, DW3-Sher Singh Bawa, Reporter, Dainik Bhaskar and DW4-Gulshan Mongia have proved the newspaper cuttings, DW5- Jai Singh retired SHO has proved copy of ledger of the account of Suresh as Ex.P1. DW-6/Om Pal Atri deposed that he had already produced the record which he was having in his possession. Defendant-appellant Suresh himself appeared as DW7 and reiterated the stand taken in the written statement.

The courts below on the basis of evidence, decreed the suit of the plaintiff, as mentioned above, and the appeal filed against the said judgment has been dismissed, hence the present regular second appeal.

Learned counsel for the appellant submitted that the impugned judgments and decrees passed by both the courts below are based on conjectures and surmises and the same have been passed without appreciating the material available on record. He submitted that the entries made in Ex.P.1 to Ex.P49 were not accurate and it was the duty of the respondent-plaintiff to examine any handwriting expert to prove the

signatures of the appellant on various entries as shown in Ex.P11 to Ex.P49. Both the courts below have miserably failed to comply with the provisions of Section 34 of the Evidence Act. There were lot of irregularities in the accounts which surfaced during the cross examination of the plaintiff-respondent. Even the plaintiff-respondent included exorbitant interest, which was not permissible being against the prevailing bank rate. An FIR No.127 dated 20.4.2007 was lodged against the plaintiff-respondent for theft of crop of 57 acres.

After hearing learned counsel for the appellant-defendant and appraising the case file, I find no force in the contentions raised by learned counsel for the appellant. Balance sheet (Ex.P.9) showed that Ex.P.1 and P.2 bears the signatures of the appellant much less on Ex.P.11 to P.49 and it is on the basis of that outstanding amount, the courts below have passed the decrees. In my view, once the provisions of Section 34 have been complied with, there was no occasion to lead any other evidence. If at all the appellant-defendant was not sure about his signatures, he could have taken assistance of an handwriting expert to disprove the documents Ex.P.11 to Ex.P49. Once he himself admitted his dealing with the plaintiff upto April, 2007, he should have come forward to place on record some relevant material in support. Ex.P.1 bore the signatures of the appellant-defendant confirming the previous balance on 21.4.2006 amounting to Rs.4,26,953/- whereas the suit was filed on 10.5.2007 therefore it was not beyond the limitation. As regards taking of the crop and lodging of the FIR, the courts below have recorded that the cancellation report had already been filed and the appellant is facing trial under Section 182 of the IPC. No other point has been raised.

Having discussed the aforesaid arguments raised on behalf of the appellant, this court finds no merit much less any substantial question of law in the present appeal and the same is dismissed.

February 28, 2018
manoj

(AMIT RAWAL)
JUDGE

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