

RSA-1551-2014 (O&M)

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

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RSA-1551-2014 (O&M)

Date of Decision : 11.05.2018

Pawan Kumar [Rana@Partap](#) Rana

..... Appellant

Versus

M/s Sheokaran Dass

..... Respondent

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present : Mr. Jagdish Manchanda, Advocate
for the appellant.

Mr. V.B. Aggarwal, Advocate
for the respondent.

Amit Rawal, J. (Oral)

The appellant-defendant is aggrieved of the judgment and decree rendered by the lower Appellate Court dated 4th September 2013 whereby the appeal preferred by the respondent-plaintiff against the judgment and decree dated 24th October 2011 of the trial Court whereby civil suit has been allowed/decreed.

In brief, the facts of the case are that the respondent-plaintiff instituted the suit for recovery of an amount of ₹8,70,000/- i.e. ₹5,65,000/- as principle and ₹3,05,000/- as interest on the premise that it being a proprietorship concerned was carrying business of maintaining books of accounts and extended the loan to the appellant-defendant. In lieu thereof,

the appellant-defendant had appended his signatures on the books of accounts. The appellant-defendant did not pay the amount which gave a cause of action to the respondent-plaintiff to file the suit. Preceding to the filing of suit, a legal notice was also sent but the same was not replied to.

The appellant-defendant in the written statement had taken many preliminary objections of maintainability, locus- standi, suppression of facts from the court, cause of action and suit being not properly valued for the purpose of court fee and jurisdiction etc. and on merit denied of having borrowed ₹15,000/- on 6th December 2004 and ₹5,50,000/- on 3rd of December, 2004. It was rather stated that the defendant used to borrow the money from the respondent-plaintiff but also used to sell crops at the shop of the respondent-plaintiff. The plaintiff never gave any statement of accounts to the appellant-defendant, thus, the entries were stated to be forged, bogus and concocted.

Both the parties adduced evidence in support of their respective claim and examined witnesses. The respondent-plaintiff examined as many as two witnesses. On the other hand, appellant-defendant also examined four witnesses. Both the parties examined their own hand writing experts. The trial Court on examination of the oral and documentary evidence found that the signatures of the appellant-defendant did not tally with the statement of accounts Ex.P/1 and P/3 and therefore, dismissed the suit.

The lower appellate court after examining the witnesses and appreciating the evidence on record decided the case in favour of respondent-plaintiff and allowed the appeal in favour of the respondent-

plaintiff, which is challenged by the appellant- defendant by filing the present appeal.

Mr. Jagdish Manchanda, learned counsel appearing on behalf of the appellant submitted that no doubt both the parties had examined the experts who gave their opinions in support of the parties, but the fact of the matter is that the respondent-plaintiff failed to place on record sufficient evidence as the books of accounts is not a good piece of evidence for seeking recovery of the amount as alleged. The signatures on the realization of loan of ₹ 5,50,000/- on 3rd December, 2004 and on 6th December 2004 vis-a-vis ₹15,000/- did not tally. The trial Court had rightly assumed the role of expert by rendering findings against the respondent, thus, urged that the findings of the lower appellate court may be set aside.

Mr. V.B. Aggarwal, learned counsel appearing on behalf of the respondent-plaintiff submitted that the trial Court abdicated in not referring to the cross examination of the defendant as in unequivocal terms admitted the dealings with the plaintiff much less obtaining of the loan and lower appellate Court on examination of both the entries found that the signatures were of the same person as described. In view of the above urged that the findings of the lower appellate court being well reasoned and justified be upheld.

I have heard learned counsel for the parties and appraised the paper book and also Ex.P/1 and P/3. During the course of hearing, it was noticed that by examining the signatures of Pawan-appellant/defendant vis-à-vis the signatures on the power of attorney, while exercising the power

under Section 45 of the Indian Evidence Act, it is established that they are of the same person i.e. on the entry on 3rd December, 2004 vis-à-vis ₹5,50,000/- and ₹15000/- on 6th December 2004. The lower Appellate Court ignored the testimony of both the afore-mentioned experts which in my view is the correct exercise of powers for as it is a common practice amongst the hand-writing experts to give a report in favour of the client engaging them. DW/1- Rattan Singh, Mandi Supervisor, MC Safidon, deposed that the appellant-defendant had submitted an application for taking J-form for sale of wheat. DW/2- Chand Ram, Mandi Supervisor, M.C. Asandh also stated that there is no firm. The aforementioned evidence was totally brushed aside by the cross examination of the appellant-defendant who stated as above and admitted that he had been dealing with the aforementioned commission agents. Rather his testimony in examination-in-chief was not in accordance with it and against the stand taken in the written statement.

For all intents and purposes, I am of the view that the findings rendered by the lower Appellate Court is perfectly legal and justified and cannot be said to be suffering from any perversity. No ground of interference is made out. The judgment and decree passed by the lower appellate court is upheld.

The second appeal is dismissed.

11.05.2018

W. Ansari/seema

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No