IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.6926 of 2016 (O&M)
Date of decision:19.01.2018

Gurbachan Singh Randhawa ... Appellant

Vs.

Sher Singh and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ravish Bansal, Advocate
for the appellant.

Mr. J.S.Brar, Advocate
for the caveator/respondent No.1.

AMIT RAWAL J.

C.M.No.17973-C-2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 09 days in re-filing the appeal is condoned.

C.M stands disposed of.

RSA No.6926 of 2016 (O&M)

The appellant-defendant No.1 is in Regular Second Appeal against the judgment and decree dated 04.09.2015 rendered by the trial Court, whereby, suit for recovery of ₹10,00,000/- along with interest at the rate of ₹12% per annum from the date of execution of writing Ex.P1 till filing of the suit from M/s G.S.Randhawa Commission Agency, has been partly decreed and the appeal filed against there, has been allowed by the Lower Appellate Court, vide judgment and decree dated 26.07.2016.

Mr. Ravish Bansal, learned counsel for the appellant-defendant No.1 submitted that genesis of the suit for recovery of the amount was based upon the alleged receipt dated 15.02.2010 bearing the signature of one Sabjit Singh-PW1, which was scribed on the letter pad of M/s G.S. Randhawa Enterprises, Bhawainigarh-defendant No.1, by his Accountant Suresh Kumar. The case set out by the plaintiff-respondent No.1 was that defendant No.1 was the cousin brother of the plaintiff and owing to such close relations with the plaintiff, had borrowed a sum of ₹10,00,000/- from him on interest @ 1.20% p.m in the presence of Sabjit Singh son of Nahar Singh and the writing aforesaid to this effect was also executed but on receipt of the notice, defendant no.1 had taken many objections with regard to locus standi, cause of action and further contended that defendant no.1 had no concern with the firm, i.e., defendant No.2 G.S.Randhawa Enterprises as appellant-defendant No.1 was arrayed as partner and proprietor of Gurcharan Singh, but it was Puspinder Singh, who was partner of the aforementioned firm.

On merits, it was stated that the plaintiff used to come at the house of defendant no.1 and on 15.02.2010, had come out with a receipt of even date written on the letter pad of G.S.Randhawa Enterprises, Commission Agents. Believing the approach of the plaintiff to be bonafide, appellant signed the aforementioned receipt as a witness, as the plaintiff had assured that he would get the signatures of Pushpinder Singh on the receipt. In fact, G.S.Randhawa Enterprises had already closed the business due to loss and crisis.

Defendant No.1 had examined Clerk of the Market Committee, as DW1-Harjinder Singh, DW-2 himself and closed the evidence, whereas, the plaintiff-respondent No.1 examined PW1-Sabjit Singh, PW-2 himself and tendered certified copies of plaint dated 13.12.2011 Ex.P3, written statement dated 10.04.2012 (Ex.P4), receipt dated 15.11.2009 (Ex.P5), statement of Gurbachan Singh (Ex.P6), plaint dated 29.11.2011 (Ex.P7), plaint dated 5.12.2011 (Ex.P8), jamabandi for the year 2007-08, Ex.P9, jamabandi Ex.P10, copy of receipt dated 01.10.2008 Mark A and receipt dated 15.03.2010 Mark B.

He further submitted that judgment and decree of the Lower Appellate Court is liable to be dismissed on the following grounds:-

i) Relevant portion of cross examination of PW2 has been extracted in the grounds of appeal, wherein, it has been stated that Pushpinder Singh was running commission agency situated in the grain market at Bhawanigarh only and Pushpinder Singh was proprietor of firm G.S.Randhawa Enterprises.

ii) Receipt Ex.P1 only bore the signatures of appellant-defendant No.1 in the same fashion/manner as that of Sabjit Singh-PW1. It is nowhere mentioned that the appellant-defendant No.1 had signed it as an executant or that the amount had been handed over to the appellant-defendant No.1.

iii) There was no iota of pleading either in the plaint or replication to the effect that appellant-defendant No.1 ever mis-represented to him that he was owner/proprietor of defendant-respondent No.2.

iv) Suresh Kumar, who was accountant of M/s G.S.Randhawa Enterprises and scribe of receipt-Ex.P1 was a very important witness in the entire transaction but has been withheld from the Court and therefore, the adverse inference, as per the provisions of Section 114 Illustration (g) of The Evidence Act, was liable to be drawn.

v) The Lower Appellate Court has committed illegality and perversity in giving the finding that there was no dispute with regard to execution of receipt between the parties on 15.02.2010 but the candid stand of defendant No.1 was that he had admitted the signatures on the said document and not its execution. The plaintiff-respondent No.1 miserably failed to discharge the onus to prove the execution of receipt by defendant No.1 and therefore, the findings of the lower Appellate Court are not liable to be sustained in the eyes of law in drawing the presumption against the appellant.

vi) Even the receipt Ex.P1 was unstamped and thus, was not admissible in evidence under Section 35 of Indian Stamp Act and thus, urged this Court for setting aside the judgment and decree of the Lower Appellate Court as substantial questions of law arise for adjudication of the present appeal.

Mr. J.S.Brar, learned counsel for the caveator/respondent No.1 submitted that the findings of the Court below are perfectly legal and justified and do no call for any interference, much less no substantial questions of law arise for adjudication of the present appeal. The appellant had admitted the signatures on the receipt alongwith interest @ 1.20% p.m. The stand now taken in the grounds of appeal and before the Court below was an afterthought. The appellant-defendant No.1 failed to adduce any evidence that the plaintiff had lend an amount of ₹10,00,000/- to Pushpinder Singh or M/s G.S.Randhawa Enterprises. Nothing prevented the appellant/defendant No.1 to examine Suresh Kumar, Accountant of M/s G.S.Randhawa Enterprises and rightly so, the Lower Appellate Court modified the findings of the trial Court by fastening the liability of decretal amount upon defendant No.1 instead of defendant No.2, as done by the trial Court.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the arguments of Mr. Ravish Bansal. The reason is not one but many.

(1) During the course of hearing, a copy of the receipt-Ex.P1 has been shown to the Court. It unequivocally bore the signatures of the appellant and as well as of Sabjit Singh, who was examined as PW1. Both the witnesses have extensively been examined in cross-examination but nothing contrary had surfaced enabling this Court to form a different opinion.

(2) The aforementioned receipt-Ex.P1 was not objected to and therefore, the objection taken for the first time in this Court for invoking the provisions of Section 35 of the Indian Evidence Act, is not sustainable. The appellant-defendant No.1 had all the opportunities to make request to the Court for impounding of the documents for want of sufficient stamp duty.

(3) Sabjit Singh had candidly stated in the evidence that plaintiff had extended a loan of ₹10.00 lacs to defendant No.1/G.S. Randhawa.

(4) No doubt, the plaintiff had arrayed defendant No.2 as G.S.Randhawa Enterprises by branding defendant No.1, as its proprietor, whereas the evidence brought on record revealed that Pushpinder Singh was the proprietor and the said enterprise had closed its business but the fact of the matter is that Pushpinder Singh is the nephew of defendant No.1. If at all some fraud had been played upon the defendant, he had opportunity in the world to make a complaint to the police for making him liable to pay the substantial amount of ₹10 lacs. No FIR had been registered in this regards.

(5) Non-examination of the scribe would pale into insignificance as appending of the signatures on the receipt had been admitted.

(6) Non-admission of the plaintiff with regard to Pushpinder Singh, proprietor of the firm would also not be fatal to the decision of the suit as defendant No.1 had not challenged some findings given by the trial Court *vis-a-vis* execution of the receipt by defendant No.1 but was assailed by the plaintiff. No cross objection to the findings given by the trial Court regarding execution of the receipt by defendant No.1, had been filed.

(7) In view of the candid admission of defendant No.1 on the

receipt, the Courts below had no other chance but to draw a presumption against the extension of loan of ₹10 lacs by respondent No.1/plaintiff which has not been rebutted.

(8) There is also no force in the argument of Mr. Bansal with regard to the adverse inference, as per the provisions of Section 114 Illustration (g) of The Evidence Act as nothing prevented the appellant/defendant No.1 to examine Suresh Kumar, Accountant of M/s G.S.Randhawa Enterprises, particularly when Pushpinder Singh was his nephew.

As an upshot of my findings, I do not intend to differ with the findings of the Lower Appellate Court, which are based upon the appreciation of oral and documentary evidence, much less there is no illegality and perversity as no substantial question of law arises for adjudication of the present appeal.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 19, 2018
savita

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No