IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3003 of 2014 (O&M)
Date of Order: 06.03.2018

Sukhwinder Singh and another ..Appellants

Versus

M/s Roshan Lal Harbans Singh ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Verma, Advocate,
for the appellants.

Mr. Aayush Gupta, Advocate,
for the respondent.

ANIL KSHETARPAL, J (Oral)

Defendants-appellants are in regular second appeal against the judgment and decree passed by the learned first appellate court.

While admitting the appeal, following substantial questions of law were framed:-

"*(i) Whether the findings of the lower Appellate Court regarding the liability of the appellants/defendants to pay in absence of any evidence showing calculation of amount of Rs.11,02,002/- are completely untenable and misdirected as the same are based upon illegal, erroneous and conjectural grounds?*

(ii) Whether the acknowledgment and Bahi entries not stamped are inadmissible in evidence under Section 34 of Evidence Act?

(iii) Whether the suit of the respondents/plaintiffs was barred under the provisions of Sections 3 and 4 of Punjab

Regulation of Accounts Act, 1930?"

Plaintiff filed a suit for recovery of the amount of Rs.18,15,000/- including the interest calculated upto 13.02.2006. Plaintiff pleaded that he is running a commission agent firm and the defendants were agriculturist, used to sell their agricultural produce and take advances from the plaintiff firm from time to time. Defendants no.1 and 2 are father and son. It was further pleaded that the rate of interest payable on the due amount was agreed at 18% per annum.

Defendants contested the suit by filing separate written statements. Defendant no.1 pleaded that there was no joint account of defendant nos.1 and 2 and defendant no.2 was never authorised to borrow the amount. Whereas defendant no.2 pleaded that the plaintiff-firm used to take their thumb impressions/signatures on the 'bahi' (account books) entries on the pretext that they have to produce it before the Sales Tax and Income Tax authorities. Defendant no.2 further pleaded that the entry of Rs.11,02,002/- does not bear thumb impression of the defendants.

Learned trial court dismissed the suit, whereas the learned first appellate court after re-appreciation of the evidence available on the file, decreed the suit.

Learned first appellate court has found that the account books show that defendant no.1 had acknowledged the balance amount to be Rs.11,02,002/- He has signed that entry. The court has further noticed that merely because the signatures are in a different directions that would not make the entry doubtful.

Now the stage is set for answering the question of law:-

Whether the findings of the lower Appellate Court regarding the liability of the appellants/defendants to

> ***pay in absence of any evidence showing calculation of amount of Rs.11,02,002/- are completely untenable and misdirected as the same are based upon illegal, erroneous and conjectural grounds?***
> ***Whether the acknowledgment and Bahi entries not stamped are inadmissible in evidence under Section 34 of Evidence Act?***
>
> ***Whether the suit of the respondents/plaintiffs was barred under the provisions of Sections 3 and 4 of Punjab Regulation of Accounts Act, 1930?"***

Learned first appellate court has noticed that defendant no.2 in the pleadings did not dispute his thumb impressions and signatures of defendant no.1, whereas in the evidence, defendant no.2 has gone to the extent of denying his own thumb impressions affixed on a vakalatnama. The court has found that DW2 Joga Singh is wholly unreliable witness. The court has further found that defendant no.1 has admitted in evidence that accounts used to be settled after every 6 months. It is the case of the plaintiff that while settling the accounts, entry of Rs.11,02,002/- was entered which was duly signed by defendant no.1.

With respect to first question of law raised by the learned counsel, it is significant to note that during cross-examination of PW2 i.e. Harbans Singh, counsel representing the defendants got a direction issued to the plaintiff to produce on record, books of accounts from the year 2000 and the cross- examination was deferred. PW2 brought the books of accounts from the year 2000, which contain previous entries. However, after summoning the books of accounts, counsel for the defendants did not cross-examine PW2 Harbans Singh in that direction. Counsel for the defendants did not even draw the attention of the court disputing the calculations or as to how the amount of Rs.11,02,002/- was arrived at.

Once the defendants had chosen to summon the record from the plaintiff, it was his duty to draw the attention of the Court to those books of accounts and impeach its credibility. In absence thereof, defendants-appellants are now estopped from challenging the correctness of the entry which acknowledges that the due amount is Rs.11,02,002/-.

On the second question of law, which has been framed by this Court, it is suffice to mention that when the documents were exhibited, no objection was raised by learned counsel for the respondents. The documents were admitted in the evidence. Hence, at this stage the defendants-appellants cannot be permitted to challenge the admissibility of the documents in evidence.

Still further, learned counsel for the appellants could not bring to the notice of this Court any provisions which requires that the books of accounts are required to be stamped as per Indian Stamp Act.

With regard to question no.(iii), which has been framed by this Court, learned counsel for the appellants did not address any argument.

In view thereof, there is no scope for interference with the findings of fact arrived at by the learned first appellate court. The findings arrived at are neither shown to be perverse nor result of misreading of any substantial evidence.

The regular second appeal is dismissed.

March 06, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No