

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

**RSA No. 4781 of 2014 (O & M) &
XOBS-2-C of 2015
Date of Decision:-12.2.2018**

Mohinder

...Appellant

Versus

M/s Dalbir Singh Baljit Kumar and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S. Dalal, Advocate and
Mr. Maninder Dalal, Advocate
for the appellant.

Mr. Amit Kumar Jain, Advocate
for the respondents/cross-objectors.

AMIT RAWAL J.(Oral)

This order of mine shall dispose of the present regular second appeal filed by the appellant-defendant and the cross objections filed by the respondents-plaintiffs.

The respondents-plaintiffs instituted a suit claiming an amount of Rs.9,80,944/- on the premise that they are carrying on the business of commission agency and being the sole proprietor were competent to file the present case. It was alleged that the following payments on different dates were made to the defendant :-

<u>Date</u>	<u>Advances in Rs.</u>
23.5.2005	2,11,240/-

22.6.2005	75,000/-
04.10.2005	60,000/-
18.10.2005	3,23,000/-
18.10.2005	24,000/-

But on refusal for payment of the amount by the defendant, the suit aforementioned was filed in June 2008. The appellant-defendant raised the customary pleas qua maintainability, limitation and locus standi and submitted that in lieu of the amount taken the crop was sold, which has not been adjusted by the plaintiffs as he used to issue kacha parchis i.e. the temporary receipts and their intention became dishonest. The crop worth Rs.2,50,000/- was sold but there was no adjustment. To prove his case the plaintiffs have examined the following witnesses :-

PW1	Dhan Singh, Muneem
PW2	Satpal
PW3	Shri Robin Garg, Advocate
PW4	Dalbir Singh
PW5	Ram Phal Kundu, Manager, Dhanori Prathmik Krishi Sehkari Samiti Ltd.
PW6	Yas Pal Chand Jain, Hand Writing and Finger Print Expert.

and placed on record various documents i.e. profit and loss account, list of debtors, income tax returns, balance sheets about 38 documents, described in para 4 of the trial Court judgment.

The appellant-defendant appeared in the witness box as DW1 and further examined Suresh Kumar, Clerk of an Advocate as DW2.

The trial Court on the basis of the evidence, decreed the suit by holding that the plaintiffs are entitled for a sum of Rs.9,80,944/- along with

the pendente lite interest @ 18% per annum and future interest @ 6% per annum.

The appeal against the judgment and decree of the trial Court dated 18.9.2012 was preferred and the same was partly allowed whereby the amount has been reduced to Rs.6,69,588/- @ 6% interest in essence by reducing the amount as decreed by the trial Court, even the interest of 18% was also reduced. It is in this background of the matter, the cross-objections were filed.

Mr.S.S. Dalal and Mr. Maninder Dalal learned counsels appearing on behalf of the appellant submitted that since the amount of Rs.2,11,240/- was advanced on 23.5.2005, whereas the suit was filed in June 2008. In the absence of any acknowledgement of the debt as per Section 18 of the Limitation Act the aforementioned suit had become time barred. With regard to the advancement of payment of Rs.3,23,000/- on 18.10.2005, Dhan Singh witness appeared in the witness box and categorically stated that the entry was not in his hand writing. The account book was written by Dalbir Singh PW4. Dalbir Singh PW4 submitted his affidavit as Ex.PW4/A wherein he did not state the facts qua advancement the loan and copy thereof was also given to the defendant. But the Courts below have abdicated in not noticing the aforementioned arguments by holding that there was an insertion with the pen regarding the advancement of loan of Rs.3,23,000/- and in the absence of cross-examination of the defendant, the same was *per se* admissible. In this regard he has drawn the attention of this Court to the finding of the lower Appellate Court whereby

while noticing the contention in paragraph 17 and 21 there is no adjudication, thus, there is illegality and perversity.

Mr. Amit Kumar Jain, Advocate learned counsel appearing on behalf of the respondents-plaintiff has not controverted the fact with regard to the adjudication on the grounds specifically raised on behalf of appellant-defendant regarding advancement of payment on 18.10.2005.

In such circumstances I am of the view that it is a fit case where the controversy requires to be revisited by the lower Appellate Court. As regards the cross-objections it shall be open to the respondents-plaintiffs to argue with regard to the interest before the lower Appellate Court.

Resultantly, the impugned judgment and decree of the lower Appellate Court is hereby set aside and the matter is remitted for reconsideration. The appeal of the lower Appellate Court is ordered to be restored. The lower Appellate Court shall decide the appeal afresh in accordance with law with liberty to the plaintiffs to raise plea of the interest. Let this exercise be done within a period of four months. Parties through their counsel are directed to appear before the lower Appellate Court on 16.4.2018.

Appeal as well as objections are disposed of in the aforementioned terms.

February 12, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No