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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2488-2017 (O&M)
Date of decision : 24.04.2018

M/s Roop Singh and sons

... Appellant(s)

Versus

Nihal Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Khunger, Advocate
for the appellant.

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AMIT RAWAL, J. (ORAL)

CM-6112-C-2017

For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed and the delay of 61 days in re-filing the appeal is condoned.

RSA-2488-2017

The appellant-plaintiff-Firm is in regular second appeal against the concurrent findings of fact, whereby the suit seeking recovery of ₹7,94,122.06/- (₹5,01,481.06 as principal amount + ₹2,92,641/- as interest @ 1.5% per month), has been dismissed by both the Courts below.

Succinctly, the facts as enumerated from the pleadings of the parties to the suit are that the appellant-plaintiff instituted the suit seeking recovery of the aforementioned amount on the premise that the plaintiff-Firm was a registered partnership firm and had been paying income tax. The respondent-defendant, being an agriculturist, approached the plaintiff-firm with a request to having a dealing with him and assured to sell his agriculture produce and pay interest @ 1.5% per month on the advances taken by him. The detail of the advances given from 07.04.2005 to 10.08.2005 shows that the certain amount of rupees was given to the defendant. However, the defendant's account was duly debited with the advancements. A sum of ₹26,628.60 was credited towards receipt of the sale of agriculture produce through the plaintiff firm on dated 29.04.2005.

In response to the aforementioned notice, the respondent-defendant denied the alleged payment of amount, rather stated that he never approached the plaintiff-firm to open, mutual, and concurrent account in his name in its books of account. Neither the defendant took any advance nor signed any debit voucher in favour of the plaintiff-firm.

Since the parties are at variance, the trial Court framed the following issues:-

1. *Whether the plaintiff is entitled to recover the suit amount of ₹7,94,122.06 from the defendant? OPP*
2. *Whether the plaintiff is entitled to interest? If so, at what rate? OPP*
3. *Whether the suit is time barred? OPD*
4. *Whether the suit is not maintainable? OPD*
5. *Relief.*

The plaintiff in support of his case examined Surjit chand-accountant as PW1 and Sukhpal Vir Singh-the partner as PW-2 and brought on record certain documents. On the other hand, the defendant examined himself as DW-1.

The trial Court on the basis of the preponderance of the evidence dismissed the suit and the appeal preferred thereto before the lower Appellate Court was also met with the same fate.

Learned counsel appearing on behalf of the appellant-plaintiff submitted that the trial Court only laid an emphasis on the debit voucher without noticing the fact that PW-1 Surjit chand, the Accountant and PW-2 Sukhpal Vir Singh, the partner, categorically established on record by bringing on record the accounts' books i.e. cash books, ledger and other documents, therefore, there had been a compliance of the provisions of Section 34 of the Indian Evidence Act. The vouchers were not of the account book or part of the account book and the same were prepared as evidence in correctness of the transaction. The Courts below miserably failed to note of the fact that respondent had not pleaded that the signatures on the vouchers, in question, were forged and fabricated, in essence, admitted the signatures, therefore, there was no requirement of discharging the onus by taking the aid of an Expert. It was a running account and normally, it is practice that the agriculturist obtained a loan by agreeing to pay the interest @ 1.5% per month, thus, urges this Court for setting aside the concurrent findings, under challenge.

I have heard learned counsel for the appellant-plaintiff/firm, appraised the paper book as well as the records of the Courts below and of the view that there is no merit and force in the submissions of Mr. Khunger, for, since the defendant had denied the signatures on the vouchers, it was incumbent upon the plaintiff to take the aid of an Expert under Section 45 of the Indian Evidence Act. Having failed to do so, the alleged transaction had not been proved to the hilt. In the absence of the same, the entries in the *rokad bahi* would not carry a presumption of truth or positive inference in favour of the plaintiff and adverse against the defendant. In my view, the plaintiff-firm miserably failed to discharge the onus with regard to the advancements of the money on interest @ 1.5% per month. The arguments of Mr. Khunger, have not been able to cut an ice enabling the Court to form a different opinion than the one arrived at by both the Courts below.

No ground is made out for interference, much less, no substantial question of law arises for determination, accordingly, the present regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

24.04.2018
Yogesh Sharma

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**