IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.3454 of 2017 (O&M)
Date of decision: 16.08.2018

Kuldeep Singh ...... **Appellant**

Versus

M/s Garg Commission Agents ...... **Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Shakti Singh, Advocate
for the appellant.

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ANIL KSHETARPAL, J. (ORAL)

Defendant-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below decreeing the suit for recovery of Rs.96,806.40.

Plaintiff filed a suit claiming that he is working as a commission agent and the defendant used to regularly deal with him by brining agriculture produce for sale. He also used to borrow money whenever required. As per account books, there is balance of Rs.96,806.40 which the defendant-appellant is refusing to pay. The defendant contested the suit and pleaded that the signatures of the defendant was taken on the pretext of sale of the agriculture produce brought in the defendant for sale in the market yard.

Both the Courts below after appreciating the evidence available on the file decreed the suit. In fact, the learned First Appellate Court has modified the decree and ordered that principal amount along with interest @

9% shall be payable.

Learned counsel for the appellant submitted that the plaintiff failed to produce any money lender licence and therefore, in absence thereof, the suit for recovery could not be filed. Learned counsel has relied upon the judgment passed by this Court reported as *Narsi Dass Vs. Surender, 2015(1) RCR (Civil) 108*. The aforesaid judgment has been delivered by this Court while considering a criminal appeal filed under a Negotiable Instruments Act. Still further, on careful reading of the Para 14 of the judgment, it is clear that if any one carries on business without getting the licence, he shall be liable for conviction and sentenced to a fine not exceeding Rs.1,000/- for the first offence and Rs.2,000/- for any subsequent offence. However, the aforesaid judgment does not deal with the issue that a commission agent in absence of licence is not entitled to file a suit. Still further, learned counsel for the appellant has very fairly admitted that this aspect was never pressed before the Courts below. In the considered view of this Court, the appellant cannot be permitted to argue a new point unless such point has been raised before the Courts below. The finding whether the plaintiff has a licence for money lending or not is a question of fact which was required to be raised before the Courts below enabling the plaintiff to lead evidence to rebut the same.

In view thereof, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

16.08.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No