IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4902 of 2017 (O&M)
Date of Decision: November 20, 2018

Hans Raj

...Appellant

Versus

Ravi Kant

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Umesh Kumar Kanwar, Advocate,
for the appellant.

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AMIT RAWAL, J. (Oral)

CM No.12912-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 6 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.4902 of 2017

Appellant-defendant has not been able to defend the suit for recovery of principal amount of ₹ 2,95,050/- along with interest @ 12% per annum from the date of advancement of loan till filing of the suit and @ 6% per annum future interest.

Respondent-plaintiff alleged that the plaintiff firm was carrying on the business of commission agent in the New Grain Market, Fazilka. Appellant-defendant requested the plaintiff to open a mutual, open and current account with reciprocal demand in the name of the defendant with the understanding that he will sell his agriculture produce through the plaintiff agency. He promised to pay the outstanding balance amount with interest @ 2% per month, but failed to do so, therefore, cause of action arose to file the suit. An amount of ₹4,84,999.18P was found to be due as mentioned at page 92 of the ledger.

The defendant opposed the aforementioned suit by raising objections qua maintainability and limitation or charging of the interest. It was alleged that defendant had neither to pay any principal amount nor any interest.

Plaintiff, in support of his case, examined five witnesses and brought on record bahi entries and the statement of accounts, ledger spanning Ex.P1 to Ex.P50, including the bills and slips.

On the other hand, the defendant examined two witnesses and also brought on record various documents Ex.D1 to Ex.D20, Ex.D2/A to Ex.D2/E. It was alleged that no amount was due as the entire amount had been paid.

The trial court did not find weigh with the aforementioned documents and partly decreed the suit, as noticed above.

Mr. Umesh K. Kanwar, learned counsel appearing on behalf of the appellant-defendant submitted that the bahi entries are not conclusive proof of evidence as per the provisions of Section 34 of the Indian Evidence Act. Few of the pages did not bear the thumb impressions or the revenue stamps. The outstanding amount reflected in the sale of 2004-05 has not been shown in the next financial year, therefore, there was error in the calculations, thus, in such circumstances the principal amount could not have been awarded.

I am afraid, the aforementioned argument is not sustainable as the courts below, while relying upon the documentary evidence and the ledger, much less bills, found that the appellant-defendant had been dealing with the plaintiff. Plaintiff admitted that the amount of ₹ 3,60,472.55P was carried forward in the financial year 2005-06, therefore, the plea of carrying on the business in 2005 is neither here nor there. The defendant had also sold his crop to the plaintiff firm and the amount of ₹ 5,28,125/- was adjusted towards his account as mentioned in Ex.P1 and another amount of ₹5,86,088/- was adjusted on behalf of the defendant as per the account book of the plaintiff Ex.P2. By taking into consideration the aforementioned fact, objection qua limitation has been overruled. Defendant has not been able to belie the thumb impressions on the aforementioned accounts books.

In view of this matter, the decree awarding principal amount along with interest cannot be said to be faulty or suffering from any illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 20, 2018 **(AMIT RAWAL)**
ramesh **JUDGE**

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