

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

RSA No.654 of 2018 (O&M)

Date of Decision: April 17, 2018

M/s Khalsa Sales Corporation Commission Agents Smalsar, Tehsil Baghapurana, District Moga through its Prop. Jatinder Singh.

---Appellant

Versus

Baldev Singh and others

---Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. N.S. Sodhi, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

This is a regular second appeal against the judgment of the Courts below, whereby, the suit of the plaintiffs-respondents for recovery of Rs.2,11,200/- has been decreed.

Baldev Singh plaintiff-respondent (now represented by his legal heirs) filed a suit for recovery of Rs.2,11,000/- from the defendants-appellants with the averment that the Jatinder Singh - defendant no.2 being the sole proprietor of Khalsa Sale Corporation (defendant no.1) took a loan of Rs.1,56,000/- from the plaintiff on 2.8.2008. He executed a writing on the same date on the letter pad of defendant no.1 to repay the amount alongwith interest @ 1.50% per month. However, on demand, defendant No.1 failed to make the payment because of which the suit was filed.

In his written statement the defendant denied even knowing the plaintiff and stated that there was no question of taking any loan from the plaintiff.

The plaintiff died during the pendency of the suit which was

later pursued by his legal representatives. To prove their case the plaintiffs examined Charanjit Kaur (widow and LR of Baldev Singh deceased) as PW-2 and Pritam Singh as PW-1. Pritam Singh corroborated the case of the plaintiff. He proved the writing dated 2.8.2008 Ex.P1. He further deposed that Jatinder Singh defendant no.2 had taken a loan of Rs.1,56,300/- from Baldev Singh(plaintiff) and had executed the writing dated 2.8.2008 on the letter pad of Khalsa Sales Corporation. He deposed that the amount was handed over to Jatinder Singh in his presence. He stated that he used to sell his agricultural commodities through the defendant's firm and hence was familiar with his signature and had seen him signing earlier. In his cross-examination he stated that defendant Jatinder Singh had, in fact, asked him to lend him the amount but as he had no money he contacted Baldev Singh plaintiff to lend the money to defendant no.1 Jatinder Singh. Baldev Singh brought the money from Ramuwala and gave it to defendant no.2. PW-2 Charanjit Kaur, widow of plaintiff Baldev Singh also proved the writing Ex.P-1 by deposing that she was present at the time when the said writing was executed and the amount of Rs.1,56,000/- was paid to Jatinder Singh. She stated that the amount was handed over to Jatinder Singh through Pritam Singh.

Jatinder Singh defendant did not step into the witness box. The defendants only examined DW1 Balwinder Singh, father of defendant no.2 who appeared as attorney of defendant No.2. He stated that the firm M/s Khalsa Sales Corporation stood dissolved in the year 2009. However, no documentary proof was brought on record to establish its dissolution. He denied that the Firm had taken any loan from the plaintiff. In his cross examination he admitted that he had retired from the post of Sub-Divisional Soil Conservator on 31.10.2010. He also admitted that the Firm was independently run by his son and he had no connection with the same. He

had no knowledge about the accounts, assets and liabilities of the Firm. He had never inspected the account books of the Firm. He also admitted that he did not know from whom his son took loans or credit. .

Based on the above evidence, the Ld. Trial Court concluded that the advancement of the amount and the execution of the writing had been duly proved. The evidence of DW1 was of no help to the defendants as he was not conversant with the affairs of the Firm and had no knowledge from whom defendant No.2 took loans or credits. Moreover, the defendant in his written statement simply denied that any loan had been taken by him from the plaintiff. But he had not specifically denied his signatures on the writing dated 2.8.2008. Thus the Trial Court decreed the suit of the plaintiff.

The Ld. Lower Appellate Court affirmed the findings of the Ld. Trial Court. The Ld. Lower Appellate Court also did not find substance in the plea of the defendants that defendant No. 2 was in Canada and hence could not depose as his own witness. It noted that the power of attorney was executed by him in favour of his father on 12.12.2014 and prior to that the case had been adjourned for the evidence of defendant no. 2 on 28.10.2014. Thus defendant was present in India and could easily have deposed had he so desired.

Learned Counsel for the appellant argued:

- (i) That there was no evidence to prove that the letter pad on which the writing was executed belonged to the defendant Firm;
- (ii) The signatures of the appellant on the writing had not been proved;
- (iii) The witnesses of the plaintiffs are related to the plaintiff and hence being interested witnesses cannot be implicitly relied on,
- (iv) the writing dated 2.8.2008 was not properly stamped and as such was not admissible in evidence.

There is no merit in any of the submissions. The Courts below have already considered the evidence and held that the writing has been duly proved. Ld. Counsel has not been able to show that the findings are perverse, against the evidence and are hence not sustainable.

The issue of the writing being un-stamped and hence not admissible has been considered by the Ld. Lower Appellate Court. The Ld. Lower Appellate Court has noted that as the writing was unstamped, the counsel for the plaintiff himself moved application for the same to be impounded. Upon this application, the Ld. Trial Court vide order dated 28.08.2014 after impounding the receipt Ex.P1 asked the plaintiff to make up the deficiency of stamp fee, which was made good by the plaintiff.

Accordingly, there is no merit in this argument of the Ld. Counsel as well.

No question of law arises for consideration.

Dismissed.

April 17, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No