

In the High Court of Punjab and Haryana at Chandigarh

RSA- 2163 of 1998 (O&M)

Date of Decision:7.5.2019

Jagjit Singh

---Appellant

vs.

Registered Partnership Firm M/s Gurdit Singh Jagrup Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ashok Aggarwal, Advocate
for the appellant

None for the respondent

Rekha Mittal, J.

The present appeal directs challenge against the judgment and decree dated 16.4.1998 passed by the Additional District Judge, Muktsar whereby appeal against judgment and decree dated 1.12.1994 passed by the Additional Senior Sub Judge, Malout (hereinafter referred to as 'the trial court') was allowed, judgment and decree dated 1.12.1994 were set aside and suit filed by the respondent-plaintiff for recovery was decreed to the following effect:-

“In view of my findings recorded above, the appeal is allowed and the suit of the plaintiff for recovery of Rs. 60,000/- as principal amount along with interest at the rate of 14% per annum from the date of the suit till the

actual realisation, with costs, is decreed.”

The respondent-plaintiff filed the suit on allegations that firm M/s Gurdit Singh Jagrup Singh is a registered partnership firm and Major Singh is its registered partner. The firm is maintaining account books in the ordinary course of business and daily transactions are entered in the books. Jagjit Singh was known to the plaintiff firm previously and came to the firm representing that he would again start bringing his crop at the shop of plaintiff and requested for loan of Rs. 60,000/- to meet his existing liabilities, to be adjusted out of sale of crop. He agreed to return the amount with interest. The loan of Rs. 60,000/- was advanced to the defendant on 4.10.1990 by way of cheque. An entry was made in the account books of the plaintiff and the defendant signed the same. The defendant got the amount credited in his account in the bank. The defendant failed to bring his crop to the shop of the plaintiff nor paid the loan amount. Hence the suit.

The appellant-defendant filed the written statement and raised the plea that the plaintiff is not a registered firm and Major Singh had no right to file the suit. He has not taken any loan or cheque from the plaintiff firm. He was visiting the firm about 7-8 years earlier and the plaintiff got his signatures on a number of account books and forms and even on the forms of the bank on the pretext of submitting the same to the income tax department. False records have been prepared and a wrong suit has been filed. All other material averments were denied with a prayer for dismissal of the suit.

The respondent-plaintiff filed replication and denied the

averments raised in the written statement with regard to blank signatures.

The controversy between the parties led to framing of issues, reproduced in para 4 of judgment of the Appellate Court. The trial court dismissed the suit vide judgment and decree dated 1.12.1994. As has been noticed hereinbefore, appeal preferred by the respondent-plaintiff was allowed and the suit was decreed in the aforesaid terms.

Counsel for the appellant-defendant would argue that the appellate court set aside the judgment and decree passed by the trial court by misdirecting itself as it was held that the appellant-defendant was obligated to lead evidence to establish that the documents relied upon by the respondent-plaintiff do not bear his signatures. It is vehemently argued that this finding of the Appellate Court is in complete contradiction to the settled position in law that the a litigant who approaches the court for relief has to prove his case and can not derive strength from weakness of defence.

Another submission made by counsel is that the respondent-plaintiff examined Radha Kishan Singal, Assistant Manager of State Bank of Patiala PW1 but the said witness has not produced the original documents pertaining to account opened in the name of appellant on 4.10.1990, encashment of cheque in question on that date when otherwise statement of account pertaining to the said account reveals that there is no other transaction in the said account except deposit and withdrawal of Rs. 60,000/-. It is further argued that as per form 'A', there are five registered partners of the firm M/s Gurdit Singh Jagrup Singh but Buta Singh whose name finds reference in the cross examination of Major Singh PW2 is not registered as a partner of the said firm, therefore, suit filed by

the firm is liable to be dismissed. In support of his contention, he has relied upon judgment of Punjab High Court **V.S.Bahl vs. S.L.Kapur and Company 1956 PLR 443.**

There is no representation on behalf of the respondent earlier being represented by a counsel.

The respondent-plaintiff has pleaded that loan amount of Rs. 60,000/- was paid to the appellant through cheque and copy of the same is Ex. P1. The amount of this cheque was credited in the account opened in the name of Jagjit Singh as per statement of account pertaining to saving account No. 1288 produced by an official of the concerned bank. It is also plea of the respondent -plaintiff that an entry was made in the account books and the same was signed by the loanee/appellant. The respondent-plaintiff produced copies of Bahi entries containing purported signatures of the appellant-defendant.

Counsel for the appellant has sought to condemn the judgment of the first appellate court by attacking its observations that it was obligation of the appellant to prove that the document do not bear his signatures.

There cannot be any dispute about settled position in law that it is the obligation of the plaintiff to prove his case as he cannot derive any strength from weakness of defence. Equally settled is that if a party admits his signatures on document in dispute, it is for him to explain the circumstances under which his signatures were obtained on blank papers and the compulsion under which he opted to sign the blank papers despite knowing fully well that the same may be misused to create liability.

In the case at hand, the appellant had raised a plea that his signatures were obtained on account books, forms and bank forms on the pretext that the same is to be submitted with the income tax department. Ordinarily, a prudent person would not put his signatures on blank papers. No such plea has been raised by the appellant that he was under some obligation of the respondent or there were any compelling circumstances because of which he appended his blank signatures at so many places viz account books, forms and bank form etc. In the given circumstances, once the appellant has admitted his signatures on the documents, the court was right in saying that he was under obligation to prove that the same do not bear his signatures. In this view of the matter, observations made by the first appellate court cannot be faulted with.

The respondent-plaintiff produced the original account books containing signatures of the appellant with regard to taking of loan of Rs. 60,000/- by way of cheque. It is difficult to accept to reason that the officers/officials of the bank would play in the hands of respondent-plaintiff to create documentary evidence with regard to encashment of cheque, crediting that amount in account of Jagjit Singh and withdrawal of said amount on the basis of withdrawal form submitted to the bank. The appellant has failed to establish that partners of the respondent-firm could wield any such influence with officials of the bank or officials of the bank have any hostility against the appellant to permit creation of record.

The firm M/s Gurdit Singh Jagrup Singh is a registered partnership firm as per form 'C' Ex. P10. Form 'A' Ex. P11 records that the firm had five registered partners namely Major Singh, Gursewak Singh,

Budh Singh, Jagrup Singh and Gurdip Singh. It appears that because of evidence has not been written in good hand, name of one of the partners in the statement of Major singh plaintiff was read as Buta Singh in place of Budh Singh and for that reason, the trial court by relying upon judgment **Dr. V.S.Bahl's case (supra)** has held that the present suit is hit by the provisions of Sections 63 and 69(2) of the Partnership Act, 1932. Since the respondent-firm is a registered firm and all its partners are also registered partners of the firm, it is difficult to sustain findings of the trial court that suit filed by the respondent is hit by Section 69(2) of the Partnership Act. As such, contention raised by counsel for the appellant in this regard is devoid of merit, thus, untenable.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

7.5.2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No