IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA 4164 of 2019 (O&M)
Date of decision: 09.09.2019

Balbeer Singh ....*Appellant*

Versus

M/s Ganga Ram Roshan Lal ....*Respondent*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Bhanu Pratap Singh, Advocate
for the appellant

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Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery of Rs.9,59,927/- with interest was partly decreed by the Civil Judge (Senior Division) Phul (hereinafter referred to as 'the trial Court') to the following effect:-

> *The suit of the plaintiff succeeds and same is hereby decreed with costs for recovery of Rs.4,91,640/- along with interest at the rate of 6% per annum from the date of loans/borrowing till actual realization of the decretal amount.*

The appeal preferred by the appellant/defendant came to be dismissed by the first appellate Court and the judgment and decree passed by the trial Court was affirmed without any variance.

Counsel for the appellant would argue that findings recorded by the Courts are not based upon correct appreciation of materials on record particularly the facts elicited in cross examination of Sohan Lal, proprietor of M/s Ganga Ram Roshan Lal Commission Agents, Rampura Phul. It is argued that suit for recovery is based upon various entries made in the books of account of the respondent firm and first entry pertains to biggest amount of Rs.4,50,000/-. It is argued that neither signatures of the appellant were obtained on the said entry nor his having taken loan of Rs.4,50,000/- on 14.05.2008 is corroborated by any other documentary evidence. It is argued with vehemence that it is difficult to believe that a commission agent would lend a huge amount of Rs.4,50,000/- without obtaining signatures of the loanee either on the account books or on a document prepared for the purpose. In addition, it is argued that certain entries pertaining to small amount given to the appellant are purportedly signed by him but if the respondent got signatures of the appellant on entries pertaining to small amount, there was no reason for him not to obtain signatures of the appellant on entry pertaining to Rs.4,50,000/-, if the amount was actually lend to him.

Another submission made by counsel is that as per case of the respondent/plaintiff, the alleged outstanding loan was taken upto 13.10.2008. The respondent, in his cross examination, had admitted that subsequent to 14.10.2009, there was no dealing with the parties and the same falsifies the story of the respondent that the appellant approached the respondent for settlement of accounts and issued a cheque in respect of outstanding liability on 01.03.2011. It is further argued that this cheque appears to have been obtained by the respondent by way of deceitful means, therefore, the same has been wrongly considered by the Courts to record findings with regard to outstanding liability of the appellant as well as on the question of limitation. It is further argued that Sohan Lal, proprietor of the respondent firm in his cross examination had stated that he did not know who filled in blanks of the cheque which creates a doubt if the cheque in question was issued by the appellant in discharge of his alleged outstanding liability.

I have heard counsel for the appellant, perused the paper book and copies of documents supplied during the course of hearing.

Before adverting to the submissions made by counsel for the appellant, it is pertinent to note that consistent factual findings recorded by the Courts can be intervened in second appeal only if the same suffer from perversity or are based upon materials alien to proceedings. Equally settled is that no intervention in second appeal is allowed merely because a different view is possible on the basis of re-appreciation of the evidence.

Suit filed by the respondent/plaintiff is based upon entries in the books of account as well as cheque issued by the appellant/defendant to discharge his liability qua outstanding amount of Rs.4,91,640/-. The respondent had candidly admitted that entry in respect of loan of Rs.4,50,000/- does not bear signatures of appellant Balbir Singh. The Courts have rightly held that the entries in books of account are further corroborated by cheque issued by the appellant to discharge his outstanding liability. The appellant has not adduced any evidence to prove that the cheque in question does not bear his signatures. He has also failed to substantiate his plea that the cheque in question is a forged one. The appellant could not lead sufficient evidence on record as to how a cheque belonging to the appellant came in the hands of respondent. The appellant had tried to explain that his signatures might have been obtained by the respondent but the said facts amount to indirect admission that the cheque has been signed by the appellant. There is nothing on record suggestive of the fact that there was any animosity between the parties which could persuade the respondent firm to make false entries against the appellant at the cost of losing its good-will of business amongst its customers namely agriculturists. Counsel for the appellant has failed to point out any material on record to prove that any other case of similar nature is pending or remained pending at the behest of the respondent. He has also failed to point out that there is any overwriting or cutting in the books of accounts maintained by the respondent firm. In this view of the matter, I find myself unable to accept contention of the appellant that consistent findings recorded by the Courts suffer from an error much less perversity, warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

09.09.2019
Mohan Bimbra

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