IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1746 of 2013 (O&M)
Date of decision : 3.12.2019
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Iqbal Singh
................Appellant

vs.

Hardayal Rai
.................Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sandeep Jasuja, Advocate for the appellant.

Mr. Rajiv Joshi, Advocate for the respondent.

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H. S. Madaan, J.

Briefly stated facts of the case are that plaintiff Hardayal Rai, had brought a suit for recovery of Rs.6,27,000/- against defendant Iqbal Singh, on the averments that plaintiff is sole proprietor of M/s Hans Raj and sons; that he is maintaining account books consisting of *Rokar bahi, Gadda bahi* and *Khata* in ordinary course of business and balances are worked out on daily basis; that the plaintiff firm is also assessed for the income tax and sales tax and assessment is based on *bahi* entries; that the defendant was selling his crop through the commission agency of the plaintiff and was obtaining loans/credit from time to time; that the defendant took a loan of Rs.1,50,000/- on 20.9.2005, for purchase of car and entry was duly made in *Rokar bahi*; that the defendant again took an amount of Rs.1,400/- on 30.9.2005 and it was duly entered in the account books; that an amount of Rs.15,425/- was debited to the account of the defendant as interest @ 18% per annum from 20.9.2005 to 31.3.2006, on the instructions of the defendant; that the defendant got *manauti* for Rs.11,200/- of Harbans Singh s/o Narain Singh on 13.5.2006 and an entry was duly made in that regard in *Rokar bahi*; that the defendant again took an amount of Rs.2,00,000/- on 28.6.2006 and it was duly entered in the *Rokar bahi*; that the defendant took an amount of Rs.2,25,000/- on 1.7.2006 and an entry was duly made in *Rokar bahi*; that the defendant sold his crops amounting to Rs.97,500/- on 21.4.2006 with the plaintiff and after deducting the necessary expenses, the defendant received amount of Rs.921/- and an amount of Rs.96,000/- was credited to the account of the defendant and entries were duly made; that an amount of Rs.7,500/- was credited to the account of the defendant on 30.5.2006 as bonus for the crop and an entry was duly made in the *Rokar bahi*; that all the abovesaid transactions were entered in *khata* of the defendant; that the defendant had agreed to pay interest @ 18% per annum and in that way an amount of Rs. 4,99,525/- as principal amount and Rs.1,27,475/- as interest from 1.4.2006 to 30.8.2007, total amount of Rs.6,27,000/- was due to the plaintiff from the defendant. On refusal of the defendant to pay such amount to the plaintiff, he filed the suit in question.

On being put to notice, the defendant appeared and filed written statement, contesting the suit contending that an amount of Rs.2,25,000/- was due upto 1.7.2006 and plaintiff Hardyal Rai confirmed the same in his own hand writing in the diary of the defendant; that on instructions of defendant Raj Pal Singh cleared the said amount of Rs.2.25,000/-; that the defendant had stopped all types of dealings with the plaintiff; that the plaintiff is not maintaining his account books correctly and no presumption under Section 34 of the Evidence Act could be raised in that regard. However, the defendant admitted that he had sold crops through the commission agency of the plaintiff. He also admitted that he had been selling the crops but denied that plaintiff used to adjust the amount of the said crops and denied having received the amount on 1.7.2006. In the end he prayed for dismissal of the suit.

The plaintiff filed replication, controverting the allegations in the written statement, whereas reiterating the averments made in the plaint.

From the pleadings of the parties, following issues were framed vide order dated 30.10.2008 :-

1. Whether the plaintiff is entitled to recover a sum of Rs.4,99,525/- from the defendant? If so, at what rate of interest? OPP
2. Whether plaintiff concealed material facts from this court? OPD
3. Whether plaintiff is not maintaining account book regularly

and properly and thus suit is not maintainable under Section 34 of Indian Evidence Act ? OPD

4. Whether on 1.7.2006, settlement was arrived at between the parties whereby plaintiff has confirmed outstanding liability of Rs.2,25,000/- OPD
5. Whether defendant paid Rs.2,25,000/- to the plaintiff through Rajpal Singh ? OPD
6. Whether plaintiff got no cause of action and locus standi to file the present suit? OPD
7. Whether plaintiff firm is un-registered partnership firm and thus suit is not maintainable? OPD
8. Relief.

Parties were afforded adequate opportunities to lead their evidence, in support of their respective claims.

During the course of evidence of plaintiff, he got his own statement recorded as PW-1 and tendered in evidence his affidavit Exhibit PW 1/A. He proved entries of *Rokar, Khata* and *Gadda bahi* as Exhibits P1/A to P12/A and translation of same as Exhibits P1 to P-12, carbon copy of notice dated 15.11.2006 as Exhibit P13, Postal receipt Exhibit P-14, registered A.D. Exhibit P-15. The second witness examined by the plaintiff happened to be PW-2 Ram Singh, Accountant, who submitted his affidavit Exhibit PW 2/1, in which he stated that while working as Accountant with the plaintiff, he is maintaining the record regularly in ordinary course of business and deposed that the defendant had raised a loan of Rs.1.50,000/- on

20.9.2005 and a further loan of Rs.2.25,000/- on 1.7.2006. PW-3 Anil Kumar Gupta, Handwriting and finger Print Expert, Fazilka, proved his report Exhibit PW 3/1, photocharts Exhibits PW 3/2 to PW 3/5, specimen handwriting of Hardyal Rai as Exhibit PW 3/6.

In rebuttal, the defendant examined Sanjeev Sharma, Handwriting Expert, who tendered his affidavit Exhibit DW 1/A and report Exhibit DW 1/1, photocharts Exhibits DW 1/2 to DW 1/11, negatives Exhibits DW 1/12 to DW 1/21.

DW-2 Rajpal Singh had submitted his affidavit Exhibit DW 2/A, in which he stated that on 1.7.2006 there was an outstanding amount of Rs.2,25,000/- of the commission agency of plaintiff towards Iqbal Singh, which was paid and in the diary of Iqbal Singh the entry was made by the plaintiff and the said amount was paid to him by Iqbal Singh for further making payment to Hardyal Rai.

Defendant No. 1 Iqbal Singh had appeared as DW-3 and tendered his duly sworn affidavit Exhibit DW 3/A in which he repeated on oath his case, as given in the written statement, stating that he has already paid due amount of Rs.2,25,000/-.

After hearing the arguments, the trial Court decided issue No. 1 in favour of the plaintiff observing that plaintiff is entitled to recover a sum of Rs.4,99,525/- alongwith interest @ 12% per annum from the date of filing of suit till the date of decree and future interest @ 6% per annum from the date of decree till actual realization.

Issue No. 2 was decided holding that the defendant had failed to prove any fact which the plaintiff had concealed from the

Court. Accordingly, the issue was decided in favour of the plaintiff and against the defendant.

With regard to issues No. 3 to 5, those were decided against the defendant and in favour of the plaintiff. Issues No. 6 and 7 were adjudged holding that defendant has miserably failed to prove that there is no cause of action for filing the suit and it has been proved by the plaintiff that plaintiff firm is a sole proprietorship concern and not a partnership concern. Issue No. 8 was decided in favour of the plaintiff and against the defendant.

Accordingly, vide judgment and decree dated 9.9.2011, the suit of the plaintiff was decreed and the plaintiff was found to be entitled to recover a sum of Rs.4,99,525/- alongwith interest @ 12% per annum from the date of filing of the suit till the date of decree and future interest @ 6% per annum from the date of decree till actual realization.

The defendant felt aggrieved by the said judgment and decree and had preferred an appeal before the District Judge, Sri Muktsar Sahib. The appeal was however, dismissed by the learned District Judge, Sri Muktsar Sahib, vide judgment and decree dated 4.5.2012.

The plaintiff was found entitled to recover the principal amount of Rs.4,70,000/- from the defendant alongwith interest @ 9% pr annum for pre-suit period and 6% per annum for pendente lite and future period. Except for that modification, rest of the findings of the trial Court were affirmed in the appeal.

Still feeling dissatisfied, the defendant has approached this Court by way of filing the present regular second appeal, notice of which was given to the respondent-plaintiff.

I have heard learned counsel for the parties, besides going through the record.

The operative part of the judgment passed by the trial Court is para No. 13, which for ready reference is being reproduced as under :-

> "13. After hearing both learned counsel for the parties and perusal of the record, this court is of the opinion that a simple slip Exhibit D1 cannot negate the due entries made in the account books of the plaintiff. The defendant claims to have paid amount of Rs.2,25,000/-, which is not supported by any document. The defendant has therefore miserably failed to prove that he had paid amount for which he had regularly obtained the loans from the commission agency of the plaintiff. The issue is therefore decided in favour of the plaintiff by holding that the plaintiff is entitled to recover a sum of Rs.4,99,525/- alongwith interest at the rate of 12% per annum from the ate of filing of the suit till the date of decree and future interest is adjudged 6% per annum from the date of decree till actual realization."

Whereas the Ist Appellate Court has upheld the judgment and decree passed by the trial Court with little modification. The main points observed by the Ist Appellate Court are that :-

1. PW-1 Hardayal Rai – plaintiff had deposed that the defendant had taken the amount of Rs.1,50,000/- from him on 20.9.2005 and signed an entry in the account books of the plaintiff on that date. Such entry being Exhibit P1/A.
2. That the defendant while appearing in the Court as his own witness also admitted his signatures on this entry Exhibit P1/A dated 20.9.2005. In that way, defendant does not dispute such entry. Plaintiff Hardayal Rai had further stated that defendant had received Rs.1,400/- from him on 30.9.2005 on credit and an entry to this effect was made in the account books of the plaintiff, such relevant entry being Exhibit P2/A. However, this entry is not signed by the defendant and an unsigned entry which has been denied by the defendant, would not fasten any liability on the defendant under Section 34 of the Indian Evidence Act. Therefore, it was held that a sum of Rs.1,400/- mentioned in entry Exhibit P2/A recorded in the account books of the plaintiff does not create any liability of the defendant. PW-1 Hardayal Rai and his accountant

PW-2 Ram Singh further deposed that the interest amount of Rs.15,425/- was debited in the account of the defendant for the period from 20.9.2005 to 31.3.2006 and an entry to this effect is Exhibit PW 3/A on the record dated 28.3.2006. Such entry is not signed by the defendant and unsigned entry does not bind the defendant in the account books of the plaintiff, which remained in the custody of the plaintiff.

3. Furthermore, entry of Rs.11,200/- as *manauti* of Harbans Singh was unsigned, therefore, not binding on the defendant. Entry of Rs.2,00,000/- stated to have been taken by defendant from plaintiff on 28.6.2006, is duly signed by the defendant, in *Rokar* of the plaintiff. The defendant had admitted his signatures on that entry. But he could not explain about the same.

4. Entry of Rs.2,25,000/- dated 1.7.2006 is signed by the defendant on a stamp. The stand of the defendant is that even this amount of Rs.2,25,000/- has been paid by him through Raj Pal Singh, the mortgagee of his land to the plaintiff. There is nothing due from him to the plaintiff.

5. As regards entry in the diary of the defendant, the Court had observed that the word '*tak*' in writing

Exhibit D-1, appeared to have been added later on, because if there had been any settlement of accounts between the parties, then there was no question of writing entry Exhibit P7/A on the same day in the account book of the plaintiff by the defendant, thereby leading to the inference that word '*tak*' had been materially altered by the defendant in the entry Exhibit D-1, which remained in his possession. The conclusion drawn by the Ist Appellate Court is that the unsigned entries do not bind the defendant in this case in creating the liability against him as they have not been corroborated on the record under Section 34 of the Indian Evidence Act. Nevertheless, it stood proved that the defendant received the sum of Rs.1,50,000/- from the plaintiff on 20.9.2005, on the basis of entry Exhibit P1/A, on which the defendant has admitted his signatures. Similarly, it is proved on record by the plaintiff that the defendant received the sum of Rs.2,00,000/- from the plaintiff on 28.6.2006 and signed the entry Ex. P6/A in the account books of the plaintiff. It was further established that defendant had received the amount of Rs.2,25,000/- from the plaintiff on 1.7.2006 and signed entry Exhibit P7/A in the account books of the plaintiff.

6. The testimony of DW-2 Raj Pal Singh was disbelieved observing that no person would pass such a large amount without obtaining a receipt thereof. The Ist Appellate Court took into consideration entry Exhibit P1/A dated 20.9.2005 for a sum of Rs.1,50,000/-, Exhibit P6/A dated 28.6.2006 for a sum of Rs.2,00,000/- and entry Exhibit P7/A dated 1.7.2006 for a sum of Rs.2,25,000/- , are proved to have fastened the liability of the defendant, as he duly signed them in the account books of the plaintiff. However, rest of the entries do not fasten any liability upon the defendant. The total amount of three entries was worked out to Rs.5,75,000/- and then observing that plaintiff himself admitted that amount of Rs.97,500/- was credited to the account of the defendant on account of sale of crops on 21.4.2006 by the defendant, that the amount of Rs.7,500/- was credited to the account of the defendant on account of bonus of his crops on 30.5.2006. The total amount being Rs.1,05,000/-. Deducting that amount from the total amount of Rs.5,75,000/-, the plaintiff was found entitled to recover the principal amount of Rs.4,70,000/- from the defendant.

The finding of the trial Court was modified accordingly. Such findings recorded by the Courts below are proper and appropriate. The judgments passed by the Courts below do not suffer from any illegality or infirmity. No ground is there to upset such judgments. No substantial question of law arises.

There is no merit in the appeal and the same stands dismissed accordingly.

(H.S. Madaan)
Judge

3.12.2019
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Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No