IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2266-2013(O&M)
Date of decision:-14.1.2019

Karnail Kaur and others

...Appellants

Versus

M/s Sekhon Trading Company

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.S. Swaich, Advocate
for the appellants.

Mr.Gopal Sharma, Advocate
for the respondent.

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H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff M/s Shekhon Trading Company, New Grain Market, Khanna through its partner Rajinder Singh had brought a suit for recovery of Rs.5,62,851.34 i.e. Rs.5,21,159.34 as principal amount and Rs.41,692/- as interest thereon w.e.f. 31.10.1998 to 21.2.1999 at the rate of 2% per month against Gurmail Singh son of Sardara Singh, resident of village Kotla (Bhari), Tehsil Samrala, District Ludhiana on the averments that plaintiff has been working as a commission agent in New Grain Market, Khanna and defendant had dealings with it; that the defendant used to sell his agricultural produce through the plaintiff and at times used to borrow money in cash; that the entries in that regard were made in the account books of the plaintiff; that account of the defendant was being maintained regularly in the account books of the plaintiff in due course of business; that on 31.10.1998 the account of the defendant was settled with the plaintiff firm and an amount of Rs.5,21,159.34 was found to be due from the defendant to the plaintiff; that the defendant agreed to pay the interest on the said amount @ 2% per month, which is customary and prevalent in the market, however, he did not do so despite several requests made by the plaintiff and service of legal notice by the plaintiff upon defendant giving rise to a cause of action to the plaintiff to file the suit in question.

On notice, the defendant appeared and filed written statement contesting the suit taking various legal objections contending that the suit is not within limitation; that the plaintiff has no *locus standi* to bring the suit and no cause of action arose to it to do so; that the Court at Khanna did not have territorial jurisdiction to entertain and try the suit and suit was not maintainable; that the plaintiff had not produced his account books at the time of filing of the suit together with the photocopies of the entries on which it relied upon for the purpose of examination and comparison by the Court and to mark the same for the purpose of identification as provided under Order 7 Rule 17 CPC, therefore, the entries are inadmissible in evidence. On merits, the defendant admitted that he used to sell his agricultural produce through the plaintiff but the alleged entries in books of account of plaintiff were wrong and concocted stating that the plaintiff with *mala fide* and fraudulent intention added the figure 30 before the figure 3700 in the entries dated 24.10.96, added figure 1 before figure 5000 in entry dated 4.11.96, added figure 1 before figure 10,000/- in the entry dated 13.11.96, added the figure 1 before the figure 6,000/- in the entry dated 13.10.1997, added figure 1 before figure 80,000 in the entry dated 10.11.97 and added figure 3 before the figure 200 in the entry dated 30.5.1998, therefore the entries are fraudulent and forged and cannot form any basis of claim against the defendant; that the defendant is an illiterate rural person; that from Hari – 1995 onwards up to Hari – 1998, the defendant had sold his crop at the shop of the plaintiff of value of more than Rs.4,50,000/- but payment of that amount was not made to the defendant on one excuse or other; that the plaintiff runs shop/purchase centre of commission agents at village Kheri and village Raipur Majri also where too the defendant used to sell his crop; that the plaintiff did not credit the amount of crops sold at the said shop/purchase centre vide 'J' form and receipts of some other sales in the account of defendant, therefore, the amount claimed in the suit was false and frivolous. The defendant contended that he had not settled his account with the plaintiff on 31.10.1998 and alleged entry dated 31.10.1998 was not signed/thumb marked by him. The defendant had not agreed to pay any interest. Denying the remaining assertions, the defendant prayed for dismissal of the suit.

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

On the pleadings of the parties, following issued were framed vide order dated 24.2.2000:

1. Whether the plaintiff is entitled to recover the suit amount along with interest? OPP.
2. Whether the suit is not within limitation? OPD.
3. Whether the plaintiff has no locus standi to file the present suit?OPD.
4. Whether the plaintiff has no cause of action to file the present suit? OPD.
5. Whether this Court has no jurisdiction to entertain the present suit? OPD.
6. Whether the suit is not maintainable? OPD.
7. Relief.

In order to prove its case, the plaintiff had examined Sh.Navdeep Gupta, Handwriting and Finger Print Expert, Patiala as PW1, Sh.Yashpal as PW2, Sh.Ved Parkash as PW3, Sh.Rajinder Singh as PW4, Ms.Promila Kukreja, Sr.T.A., Income tax Office, Khanna as PW5.

On the other hand, the defendant had appeared himself as DW3, further examining Dr.Inderjit Singh, Handwriting and Finger Print Expert, Patiala as DW1 and Sh.Harvinder Singh, Auction Recorder, Market Committee, Khamano as DW2.

In additional evidence, plaintiff again examined Sh.Yaspal as PW2 and in rebuttal to the said defendant examined Sh.Gurprit Singh as DW4.

In rebuttal evidence, the plaintiff examined Dr.Navdeep Gupta, Handwriting and Finger Print Expert, Patiala as PW6.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 6 in favour of the plaintiff and against the defendant, issue No.2 against the defendant in favour of the plaintiff, issue No.3 against the defendant and in favour of the plaintiff, issue No.4 against the defendant and in favour of the plaintiff, issue No.5 against the defendant and in favour of the plaintiff, resultantly the suit was decreed with cost and the plaintiff was held entitled to recovery of Rs.5,21,159.34 along with interest as prayed for. The plaintiff was further entitled to pendentelite and future interest @ 6% per annum till realization.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal in the Court of District Judge, Ludhiana, which was assigned to learned Additional District Judge, Ludhiana. The plaintiff had filed cross-objections in that appeal. However, learned Additional District Judge, Ludhiana vide judgment dated 21.5.2011 dismissed the said appeal upholding the judgment and decree passed by the trial Court. The cross objections filed by plaintiff were also dismissed.

Being dissatisfied with the judgments and decrees passed the Courts below, since the defendant Gurmail Singh had died, his legal representatives filed the present regular second appeal before this Court, notice of which was issued and the respondent-plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I do not find any merit in the said appeal.

The law is well settled that the fact, which is admitted need not be proved. The defendant in the written statement had conceded that he had been selling his crops through the commission agency of the plaintiff, which means that business dealings were there between the parties. Though the defendant had challenged the genuineness of the entries in the account books of the plaintiff stating that there had been tampering with the figures to show the enhanced liability of the defendant, nevertheless both the Courts below on appreciation of evidence adduced by the parties have found version of the plaintiff to be worthy of acceptance, rejecting the pleas put forward by the defendant. The relevant entries qua the defendant in the account books of the plaintiff carries his thumb impressions, which go to prove the genuineness of the entries. As regards tampering in the various entries alleged by the defendant, he had examed DW1 Dr.Inderjit Singh, Handwriting and finger Print Expert, Patiala in that regard, who had given the report favourable to the defendant. The plaintiff had proved the necessary entries by examining PW2 Yashpal and PW3 Ved Parkash. Above all, the amount in question has been shown in income tax returns of the plaintiff firm, which goes a long way in ruling out any tampering or forging of the entries. PW1 Navdeep Gupta, Handwriting and finger Print Expert, Patiala after comparison opined that the disputed thumb impressions of Gurmail Singh on the relevant entries tallied with a standard thumb impressions. The suit is not based upon *BAHI* entries alone but rather such entries find corroboration from the income tax record and oral evidence adduced by the plaintiff. The first Appellate Court by giving plausible reasoning has upheld the judgment and decree passed by the trial Court.

The judgments and decrees passed by both the Courts below are well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

Finding no merit in the present appeal, the same stands dismissed with costs.

14.1.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No