

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

RSA-829-2014(O&M)

Date of decision:-19.3.2019

Basant Singh

...Appellant

Versus

M/s Sai Mahesh & Company

...Respondent

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

Present: Mr.S.K. Aneja, Advocate
for the appellant.

Mr.Manu Loona, Advocate
for the respondent.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff M/s Sai Mahesh & Company, Commission Agents, New Grain Market, Fazilka through its Proprietor Sh.Subhash Chander had brought a suit against defendant – Basant Singh seeking recovery of Rs.6,56,015/- i.e. Rs.4,27,250/- as principal and Rs.2,28,165/- as interest thereon @ 1.5% per month from the date of institution of the suit till actual

realization, on the assertions that the plaintiff has been working as a commission agent advancing loan amounts to agriculturists only for meeting their needs in connection with sowing crops etc. as well as daily requirements, which amounts were adjusted by sale of crops by such agriculturists through commission agency of the plaintiff; that the defendant being an agriculturist approached the plaintiff giving an assurance to sell his agricultural produce through commission agency of the plaintiff and in that way to have dealings with him; the plaintiff acceded to such request of the defendant and opened an account in the name of the defendant in his account books; that the defendant had agreed to pay interest @ 2% per month on the amount taken by him as advance from the plaintiff; that during the period 24.2.2002 to 30.8.2002, the defendant borrowed various sums including an amount of Rs.2 lacs on 24.5.2002, Rs.1,50,000 on 4.6.2002 and Rs.77,250/- on 30.8.2002 and signed the vouchers in that regard, however, subsequently the defendant neither sold his crops through the commission agency of plaintiff nor returned the amount so borrowed by him with interest, giving rise to a cause of action to the plaintiff to bring the suit.

On notice the defendant appeared and filed a written statement contesting the suit raising preliminary objections that suit was not maintainable since it had not been filed by a competent person inasmuch as M/s Sai Mahesh & Co. is a proprietorship

concern; that the plaintiff had not been maintaining true, correct and proper accounts, therefore the suit was liable to be dismissed in view of Punjab Regulation of Accounts Act; that the suit was barred by law of limitation; that no cause of action had arisen to the plaintiff; that the plaintiff was estopped by his own act and conduct from filing the suit; that the suit had not been properly valued for the purpose of court fee and jurisdiction and the suit was based upon false, fictitious and frivolous grounds. The defendant had further asserted that the vouchers of the plaintiff's concern were in loose form and any of the blank voucher could be inserted or taken out of it and the entries made in the cash book do not bear the signatures of the alleged loanee. According to the defendant, he had dealings with the plaintiff till 26.3.2002, however on deposit of Rs.80,186 on that date, the defendant had not approached the plaintiff again requesting for grant of any loan; that the defendant had stopped dealings with the plaintiff for the reason that plaintiff was not maintaining true and proper accounts giving rise to its dispute with various persons. On merits, the defendant reiterated the pleas taken by him in the preliminary objection while craving 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 issues were

framed:

1. Whether plaintiff is entitled to recover the suit amount alongwith interest? If so at what rate? OPP.
2. Whether suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether plaintiff firm has not maintained the true, correct and proper account books? OPD.
4. Whether suit of the plaintiff is barred by law of limitation? OPD.
5. Whether plaintiff has no cause of action to file the present suit? OPD.
6. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
7. Whether suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD.
8. Relief.

Both the parties led evidence in respect of their claims.

During the course of their evidence, the plaintiff got his statement recorded as PW1 besides tendering some documents.

On the other hand, the defendant got his statement recorded as DW1 besides tendering some documents.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff and in favour of the

defendant, issue No.2 against the defendant and in favour of the plaintiff, issue No.3 in favour of the defendant and against the plaintiff, issue No.4 against the defendant and in favour of the plaintiff, issue No.5 against the defendant and in favour of plaintiff, issue No.6 against the defendant and in favour plaintiff, issue No.7 against the defendant and in favour of the plaintiff. Resultantly, suit of the plaintiff was dismissed with costs. This was so done vide judgment and decree dated 2.5.2012.

The plaintiff was aggrieved by the said judgment and decree and he had filed an appeal before the Court of District Judge, Ferozepur, which was assigned to Additional District Judge, Fazilka, who vide judgment and decree dated 7.10.2013 accepted the appeal, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff for recovery of amount of Rs.4,27,250/- with interest @ 12% per annum from the date of advancement of loan till the date of decree only on principal amount and future interest @ 6% per annum from the date of decree till actual realization on the principal amount.

Now it was turn of the defendant to feel dissatisfied and he had filed the present regular second appeal before this Court, notice of which was issued to the respondent/plaintiff, who appeared through counsel.

I have heard learned counsel for the parties besides going

through the record and I find that there is no merit in the appeal.

It may be mentioned here that the approach of the trial Court in deciding the case was not correct and it fell in error in dismissing the suit for recovery filed by the plaintiff. However, that wrong was undone by learned Additional District Judge, Fazilka. In the present case business dealings between the parties are admitted and defendant does not deny that he had been raising loan from the plaintiff on different occasions. His contention that he had stopped raising the loans since the plaintiff was not keeping proper accounts and he had cleared the due amount on 26.3.2002 to the tune of Rs.80,186/- and thereafter he did not have any dealings with the plaintiff. However, the defendant could not prove those facts clearly. The trial Court by unconvincing reasoning has come to the conclusion that it was so and disbelieved the cogent and convincing evidence in the form of the vouchers duly corroborated by entries in the account books, while rejecting the case of the plaintiff.

Learned counsel for the appellant has submitted that the vouchers proved in evidence by the plaintiff were in loose form and should not have been relied upon to fasten pecuniary liability upon the defendant. In support of his such contention, he has referred to authority **Central Bureau of Investigation Versus V.C. Shukla and others, AIR 1998 Supreme Court 1406**. Such submission of learned counsel for the appellant is clearly devoid of merit. The vouchers

relied upon by the plaintiff do not come out to be forged or fabricated. Those vouchers bear signatures of the defendant. The defendant has failed to prove that those are result of any fraud or misrepresentation. The defendant has not examined any Handwriting Expert to show that his purported signatures on vouchers were not appended by him, rather those are forged. The vouchers are found to have been duly signed by the defendant. With supporting entries in the accounts books having been placed on record by PW1 plaintiff Subhash Chander, not even an iota of doubt is left in the mind about their genuineness.

As regards objection by learned counsel for the appellant that the MUNIM, who had made entries was not examined, learned counsel for the respondent has rendered adequate explanation stating that as per version of the plaintiff Subhash Chander, the account books used to be maintained under his supervision, as such, he had duly proved entries in the account books. I find that under the circumstances non-examination of the MUNIM, who had made entries in the account books does not have much affect on the merits of the case. Learned counsel for the appellant has referred to authority **Kaka Ram Sohanlal and others Versus Firm thakur Das Mathra Das and another, AIR 1962 Punjab 27** by a Division Bench of this Court wherein it was observed that where the writer of the account books is alive but has not been examined, the account books

cannot be said to be duly proved and are therefore inadmissible in evidence. The said authority does not find application to the present case due to different facts and circumstances and the context in which such observations had been made and in view of the explanation rendered by counsel for the respondent.

The authority referred to by learned counsel for the appellant ***Central Bureau of Investigation Versus V.C. Shukla and others***(supra) does not help the appellant in advancing his case. For similar reasons the other authority i.e. ***State through CBI Versus Devilal & Ors., 2007(2) RCR(Civil) 391*** by Delhi High Court does not come to rescue of appellant. The authority referred to by learned counsel for the appellant i.e. ***Randhir Singh Versus Ram Kumar, 2015(4) Civil Courts Cases 356*** by a Co-ordinate Bench of this Court also does not come to help the appellant.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Fazilka.

The appeal stands dismissed accordingly.

19.3.2019
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No