

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2118-2018(O&M)
Date of decision: 16.01.2020

Adarsh Kumar

.....Appellant

Versus

Nishan Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Parvez Chugh, Advocate for the appellant

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-appellant is in Regular Second Appeal against the judgment passed by learned First Appellate Court partially accepting the appeal filed by defendants. Learned Trial Court had decreed the suit for a sum of Rs.4,68,939.40 alongwith interest at the rate of 6% per annum. Whereas the First Appellate Court on re-appreciation of evidence has held that the amount due and payable comes to Rs.2,18,939.40 alongwith interest at the rate of 6% per annum. Thus, the dispute in the present appeal is for a total amount of Rs.2,50,000/-.

The plaintiff-appellant is running a commission agent firm, whereas defendants are farmers. Plaintiff claims the aforesaid amount on the strength of books of accounts and has stated that principal amount of Rs.5,0,9,664.40 is due and payable. Learned Trial Court on appreciation of evidence found that the plaintiff has failed to prove his complete case and amount of Rs.4,68,939.40 as noticed above was found payable.

Learned First Appellate Court considered that in the month of April/May, 2012 defendants had sold their agricultural produce (wheat crop) through the shop of plaintiff-appellant. Thereafter, payment of Rs.2,50,000/- was made through a cheque dated 14.5.2012. Plaintiff claims that the aforesaid amount was a loan whereas defendants claim that the aforesaid amount was towards part payment of the agricultural produce (wheat crop). Adarsh Kumar-plaintiff appeared in evidence and admitted that price of the agricultural produce is also paid through cheque. The Court has found that plaintiff has admitted that wheat crop was sold through his shop in April/May, 2012. On the basis thereof, learned First Appellate Court has held, on appreciation of evidence, that amount of Rs.2,50,000/, the cheque amount, was not towards loan but towards part payment of the wheat crop.

This Court has heard learned counsel for the appellant at length and with his able assistance has gone through the judgments passed by the Courts below.

Learned counsel for the appellant submits that the inference drawn by the learned First Appellate Court is erroneous. He submits that there is no clear/explicit admission of the plaintiff to this effect. He submits that learned First Appellate Court has erred in misreading the evidence. Learned counsel for the appellant has read over the deposition of the plaintiff. Plaintiff has admitted that the defendants used to sell their agricultural produce through his shop and sale price of the aforesaid agricultural produce used to be paid through cheque as well as in cash.

On a pointed question by the Court, learned counsel for the

appellant admitted that in the account books except the entry of disputed amount of Rs.2,50,000/- paid through cheque, there is no other entry proving advancement of loan through cheque. In other words, there was no entry in the account book maintained by the plaintiff evidencing payment of loan through cheque, except entry in dispute. Thus, the obvious inference is that the loan amount was being paid only in cash against signatures in the account books.

Keeping in view the aforesaid facts, learned First Appellate Court has drawn conclusion on appreciation of evidence which is not shown to be suffering from any material irregularity. Keeping in view the aforesaid facts, no ground to interfere is made out.

Hence, dismissed.

Deficiency in Court fee has been made good. Delay of 327 days in re-filing and 17 days in filing is condoned for the reasons stated in the applications.

16.01.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No