109 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-235-2021 (O&M)
Date of decision : 23.08.2022

Bhag Chand ...Appellant

Vs.

M/s Ram Lal Raj Kumar and another ...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. J.S.Gill, Advocate for the appellant.

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MANOJ BAJAJ, J.

Appellant-defendant is aggrieved against the judgment and decree dated 22.01.2020 passed by the first appellate court, in civil appeal No.213 of 2018, whereby the judgment and decree dated 19.03.2018 passed by Civil Judge, (Junior Division), Sirsa dismissing the plaintiff's suit for recovery of Rs.4,24,000/- along with interest @ 18 % per annum was reversed by decreeing the suit and held that respondent/plaintiffs are entitled to recover Rs.4,24,000/- along with interest @ 6 % per annum, from the date of filing of the suit, till realization of the amount.

Briefly the facts of the case are that plaintiff No.1 (respondent No.1) a commission agency being run by its proprietor (plaintiff No.2), used to advance money to defendant, and in return adjusted the amount through sale proceeds of his agriculture produce or sometimes by receiving cash from defendant, who was having a current account with plaintiff No.1. As per pleadings, on 21.01.2014, plaintiffs advanced a sum of Rs.3 lacs to defendant, who had put his thumb impression on revenue stamp affixed on voucher, and in the financial year 2014-15, defendant brought his agricultural produce for sale

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and the amount of Rs.37,600/- was credited in the account books of plaintiff No.1 on 18.12.2014. Again, on 24.12.2014, defendant along with his son, namely, Suraj Bhan visited the plaintiffs and requested for advancing sum of Rs.77,600/- and it was given to him by plaintiff No.2, after obtaining his thumb impressions on revenue stamp affixed on the vouchers along with impression of his son-Suraj Bhan. On 24.12.2014, an amount of Rs.3,40,000/- was outstanding against defendant, which he failed to return to the plaintiffs. On this cause of action, plaintiffs filed the suit for recovery of Rs.4,24,000/- (Rs.3,40,000/- principal amount + Rs.84,000/- as interest @ 18% per annum up to 15.07.2015).

The suit was contested by defendant, who filed his written statement and raised various objections regarding maintainability of suit, concealment of true and material facts. On merits, it was denied by the defendant that he had current account with the plaintiffs as he stopped his dealings with plaintiffs in the year 2014, therefore, all the entries after 2014 are false. Defendant further denied the stand of plaintiffs that he borrowed Rs.3 lacs from them and ever put his thumb impressions on the revenue stamps affixed on the vouchers, who pleaded that his impressions were obtained with *mala fide* intentions on blank vouchers and J-Form. The other averments in the plaint were also denied, and it was prayed that suit be dismissed.

The trial Court after considering the pleadings, framed in all six issues and thereafter, the parties were allowed to adduce their respective evidence. Upon considering the pleadings and evidence on record, the trial Court vide judgment and decree dated 19.03.2018 dismissed the suit of the respondents/plaintiffs.

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Plaintiffs (respondents) being dissatisfied with the judgment and decree dated 19.03.2018 filed an appeal bearing No.213 of 2018, and the same was accepted through the impugned judgment and decree dated 22.01.2020 by holding that plaintiffs are entitled to recover Rs.4,24,000/- along with interest @ 6% per annum. Hence this regular second appeal.

Learned counsel has argued that the judgment passed by the trial Court was well reasoned, therefore, the appellate Court has wrongly set aside the same by decreeing the suit of the plaintiffs. He submits that while filing suit for recovery, the copies of the account books/Bahi were not attached with the plaint, therefore, in order to prove the said Bahi, scribe, namely, Jai Singh-Muneem (accountant) was not examined by him. He submits that the plaintiffs were not having any licence under Punjab Registration of Money Laundering Act, 1938, therefore, they were not authorized to advance the loan as claimed by them and considering these material defects in the claim made by the plaintiffs, the trial Court had rightly dismissed the suit, but the appellate Court reversed the findings by brushing aside the important evidence. He submits that the impugned judgment and decree dated 22.01.2020 deserves to be set aside, and further the judgment and decree passed by trial Court be restored.

After hearing learned counsel and considering the material on record, this Court finds that admittedly the original of Bahi (account book) maintained by plaintiffs was produced by him during evidence as Ex.P-1 and P-2. Merely because, the copies of the Ex.P-1 and P-2 were not attached with the plaint at the time of filing of the suit, cannot be construed as an adverse circumstance to non-suit the plaintiffs. Apart from it, the defendant during his cross-examination specifically admitted that he had been engaged in the

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dealings with the plaintiffs for selling crop since 2007 up to 2013 and further the advancement of money by plaintiffs to him was also not disputed. Though in the written statement as well as in his deposition/cross-examination, the defendant took a candid stand that he had paid a sum of Rs.1,67,000 and 1,50,000/- to the plaintiffs, but in this regard, no evidence was produced by him.

Thus, considering the documentary evidence relied upon by the plaintiffs, admission of defendant relating to his dealings with the plaintiff-firm and absence of any evidence to controvert the claim of the plaintiffs, this Court has no hesitation in holding that the first appellate Court has justifiably accepted the appeal and the findings returned on the material issues are based upon proper appreciation of evidence. The judgment and decree dated 19.03.2018 passed by the trial Court suffered from perversity, therefore, the appellate court rightly exercised its jurisdiction in interfering with the said judgment and decree.

Resultantly, finding no merit in this appeal, much less involvement of any substantial question of law, the appeal fails and is dismissed.

(MANOJ BAJAJ)
JUDGE

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No

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