

128 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.408 of 2022 (O&M)
Date of Decision : 23.02.2022

Sunil Kumar

...Appellant

Versus

M/s Ram Saroop Devinder Nath Commission Agents

...Respondent

CORAM : HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present : Mr. Sarju Puri, Advocate
for the appellant.

ANIL KSHETARPAL, J (ORAL)

The defendant assails the correctness of concurrent findings of fact arrived at by the Courts below while decreeing the suit for recovery of Rs.1,75,000/- along with interest @ 6% from the date of filing of the present suit till its actual realization.

Some facts are required to be noticed.

The plaintiff (respondent herein) claiming to be commission agent filed the suit for recovery on the basis of account books (*bahi khata* entries), which were alleged to have been maintained in the regular course of business. The appellant is a farmer, who used to sell his harvest through the respondent. The plaintiff claimed that the defendant after having borrowed the amount, has failed to repay the same. The appellant contested the suit with an assertion that he used to sell his harvest through the plaintiff firm, however, he never borrowed the loan. He took a stand that he received the payment of agricultural produce. During evidence, the defendant admitted that he took Rs.1,25,000/- vide an entry dated 14.03.2012.

However, the plaintiff disputes the correctness of entry dated 04.02.2013.

As already noticed, both the Courts have decreed the suit.

The learned counsel representing the appellant contends that the accounts books have not been proved, as the author of the entries has not been examined. He further submits that the suit was filed on 04.02.2016, whereas, the last admitted entry is of 14.03.2012, therefore, the suit has been filed beyond the prescribed period of limitation. He further submits that the courts have misread the evidence.

This Bench has considered the submissions of the learned counsel and with his able assistance perused the judgments passed by both the courts below. The managing partner of the plaintiff (respondent-herein) appeared as PW-1. He explained that the entries are in his handwriting as well as in the handwriting of his other partner and the accounts clerk. However, the attention of the witness was not drawn to the entry, in question, to solicit his response as to whether such entry is in his handwriting or not. In such circumstances, the defendant has failed to cross-examine the witness to establish that the entry, in question, is not made by the managing partner himself, who has been examined.

Keeping in view the aforesaid facts, this Court does not find substance in the first argument.

The next argument of the learned counsel is on the question of limitation. Admittedly, neither the defendant objected on the question of maintainability of the suit on the question of limitation nor any issue on that aspect was framed by both the Courts below. Learned counsel representing the appellant submits that this is a legal issue, which can be taken up at any point of time. In the present case, there was a running account of the

appellant maintained by the plaintiff firm. In such a situation, the question of limitation is a question of fact, which is required to be proved by leading the sufficient evidence. Moreover, as it was a running account, there were a large number of entries of debit and credit and the account was never closed or settled, therefore, the limitation will not begin to run from the last admitted entry i.e. 14.03.2012, as contended by the learned counsel representing the appellant.

The last argument of learned counsel representing the appellant is that there is a misreading of the evidence as the managing partner while appearing in the witness box has admitted that the defendant (appellant) for the last time has sold his crop through the plaintiff firm in the year 2008. The learned counsel contends that once the defendant (appellant-herein) stopped selling his crop to the plaintiff firm, there was no occasion for the plaintiff to give advance payment to him.

In the considered opinion of the Court, the argument of the learned counsel is without substance. The defendant does not dispute borrowing of Rs.1,25,000/- on 14.03.2012. This being the position, the argument of the learned counsel representing the appellant loses its sheen.

Hence, no ground for interference is made out.

Dismissed.

Pending application(s), if any, shall also stand disposed of.

(ANIL KSHETARPAL)
JUDGE

23.02.2022

Manpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No