131. 2024:PHHC:018230

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-79-2023 (O&M)
Date of decision: 30.01.2024

M/s Baldev Singh and Sons, Sirhind, Tehsil and District Fatehgarh Sahib through its Proprietor Amrik Singh

... Appellant

Versus

Sahib Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Brijesh Nandan, Advocate, for the appellant.

<u>GURBIR SINGH, J.</u>

1. Present Regular Second Appeal has been filed by the plaintiff-appellant against the judgment and decree dated 11.10.2022 passed by learned Additional District Judge, Fatehgarh Sahib, whereby the appeal filed by him against the judgment and decree dated 17.04.2018 passed by learned Civil Judge (Junior Division), Fatehgarh Sahib, has been dismissed.

2. Brief facts of the case are that the appellant-plaintiff (hereinafter called, "plaintiff") filed a suit for recovery of Rs.92,463/- as principal amount and Rs.1,26,504/- as interest. The suit was filed with the averments that the firm i.e. M/s Baldev Singh and Sons was being run by the plaintiff as its proprietor. The respondent-defendant (hereinafter called, "defendant") used to sell his crops to the

plaintiff and borrow amount from it @ 24% per annum. The plaintiff maintained account books regularly in the ordinary course of business in the shape of cash book, *rokar* and *bahi* and the defendant signed the documents of borrowed amount.

2.1 On the other hand, defendant admitted his dealings with the plaintiff that he used to sell his crops with it, but denied of having borrowed any amount from the plaintiff-firm, as alleged.

2.2 The trial Court dismissed the suit by holding that the plaintiff could not produce the corroborative documents in support of his plea and moreover, the claim was time barred. The findings recorded by the trial Court were also upheld before the learned Appellate Court.

2.3 Aggrieved against the judgments and decrees of both the courts below, the plaintiff has approached this Court by way of present appeal.

3. Learned counsel for the appellant has argued that the courts below have erred in dismissing the claim of the appellant-plaintiff as the loan advanced stood duly proved in the shape of accounts books and the factum of loan was admitted by respondent-defendant. It is submitted that the last payment was received by the respondent on 25.05.2011, so the period of limitation started from said date.

4. I have heard the submissions of learned counsel for the appellant and have gone through the file.

5. The appellant-plaintiff filed a suit for recovery of the amount on the basis of entries in the account books. The courts below

have non-suited the plaintiff mainly on the ground that the suit is barred by limitation. The entries shown in the account books were not regularly kept in the course of business. So, no reliance could be placed on the same.

6. As per the version of the plaintiff, a sum of Rs.92,463/- along with interest was received by the defendant on 29.04.2010 and 28.05.2010 whereas the suit has been filed on 23.05.2014. The plea of the plaintiff is that a sum of Rs.50,000/- was deposited by the defendant on 25.05.2011 in cash as part payment of the amount due, so period of limitation had commenced from 25.05.2011. PW1 admitted in his cross-examination that he did not get the said entry signed from the defendant.

7. Section 19 of the Limitation Act, 1963 is as under:-

> "***19. Effect of payment on account of debt or of interest on legacy.***—*Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:*
>
> *Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.*
>
> *Explanation.—For the purposes of this section,—*
>
> *(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;*
>
> *(b) "debt" does not include money payable under a decree or order of a court."*

8. Since the entry of deposit of Rs.50,000/- was required to be signed in writing by a person making the payment but there is neither

any acknowledgment nor signature of the person making the payment on the said entry, so, the courts below have rightly held that the suit is barred by limitation. If such a plea of plaintiff-appellant is accepted, then in every case, creditor will deposit some amount and say that fresh period of limitation has started from the date of deposit. The learned appellate Court has rightly held that the appellant is relying upon the entries which do not have opening or closing balance and do not contain entries of transaction. Same are incomplete and same cannot be taken as account books regularly kept in the regular course of business as provided under Section 34 of the Evidence Act.

9. Neither the appellant produced any day book nor roznama, so, such books of accounts cannot be held to be account books regularly maintained in the regular course of business and reliance cannot be placed on the same.

10. The courts below have recorded concurrent findings of facts. There is neither any misreading of evidence nor any substantial question of law is involved in the present appeal. The same is without any merit and is dismissed accordingly.

11. Pending application, if any, shall also stand disposed of.

(GURBIR SINGH)
JUDGE

January 30, 2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No