



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

229

**RSA-170-2015 (O&M)
Date of decision : 26.08.2025**

M/s. Gosal Trading Company

..... Appellant

versus

Palwinder Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Amit Saini, Advocate
for the appellant.

Mr. Gurcharan Dass, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in second appeal aggrieved of the judgment and decree passed by the courts below, whereby the suit filed by the plaintiff for recovery of Rs.1,10,056.41 stands dismissed and the appeal preferred against the judgment and decree passed by the Court of the First Instance stands rejected.

2. Plaintiff filed suit for recovery of Rs.1,10,056.41 including Rs.75,123.75 as principal loan amount outstanding against the defendant upto 09.06.2005 along with interest at the rate of 1.50% per month for the period commencing from 09.06.2005 till the date of filing of that suit, i.e. 10.01.2008. Plaintiff further sought *pendente lite* as well as future interest. Plaintiff claimed to be a registered partnership firm carrying on business of Commission Agency at Khanna. Plaintiff claimed that defendant used to sell his crop through the plaintiff-firm.



He settled his accounts upto 31.3.2005. Thereafter, on 01.04.2005 he availed advance of Rs.1,000/- under the signatures in the account books. On 14.04.2005, he sold his crop worth Rs.24,777.30 to the plaintiff and on 17.4.2005, crop worth Rs.27,669.05 through plaintiff. Thereafter, another crop was sold on 18.11.2005 for a sum of Rs.13,419.90. On 16.05.2005, defendant received an amount of Rs.1.30 lakhs and signed in the account books of the plaintiff acknowledging the receipt. On 09.06.2005, defendant received another sum of Rs. 10,000/-. Plaintiff thus claimed that after setting off the amount of the crop sold and the amount/cash availed by defendant, he is liable to pay a sum of Rs.75,123.75 to the plaintiff-firm upto 09.06.2005. Defendant thereafter stopped selling his crops to the plaintiff and has refused to clear the accounts by paying outstanding amount.

3. Suit was contested by the defendant. As per defendant, the accounts between plaintiff-firm and defendant were settled on 08.06.2005. A certificate was issued in this regard, whereby the plaintiff certified that defendant was required to pay a sum of Rs.5,000/- only. The same was paid by defendant within a week from the issuance of certificate and thus nothing was due to be paid by the defendant.

4. Suit filed by the plaintiff was put to trial by the Court of First Instance framing following issues:-

- “1. Whether the plaintiff is entitled to principal amount of Rs.75,123.75 ps.? OPP
2. If issue No. 1 is proved, whether the plaintiff is entitled to interest, if yes, at what percent? OPP
3. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP
4. Whether the suit is not maintainable? OPD



5. *Whether the accounts were settled and the plaintiff handed over no due certificate to the defendant? OPD*
6. *Relief.”*

5. The Court of the First Instance after analyzing evidence on record, decided issue No.1, 3 and 5 against the plaintiff and dismissed the suit. The findings recorded by the Courts below stand affirmed in appeal. While assailing the findings recorded by the Courts below, learned counsel for the appellant has drawn attention of this court to the order dated 10.09.2015, whereby notice of motion was issued, observing as under:-

“Learned counsel for the appellant states that during pendency of first appeal, an application under Order 41 Rule 27 CPC was filed but the same has not been decided while disposing of the appeal.

Notice of motion for 07.12.2015.”

6. It has been contended that application under Order XLI Rule 27 CPC having not been decided along with appeal, the judgment passed by the Appellate Court cannot be sustained.

7. Learned counsel representing the respondent-defendants Mr. Gurcharan Das has produced copy of the order dated 21.01.2014, i.e. the date on which the appeal was decided, whereby application filed by appellant-plaintiff under Order XLI Rule 27 CPC seeking permission to lead additional evidence at the appellate stage, was dismissed by separate order.

8. Faced with the situation, counsel for the appellant submits that the Courts below erred in observing that the certificate dated 08.06.2005 propounded by defendant in para 4 of the written statement was not disputed by the plaintiff. He refers to averment made in para 7



of the replication to submit that there was a specific averment made in the application that no such certificate was ever issued by the plaintiff-firm. He further refers to testimony of DW1 to submit that even though in his examination in chief, he claimed that the certificate dated 08.06.2005 was signed by Kuldeep Singh, but in his cross examination, he testified that he cannot tell who signed Ex.D1. He further refers to the onus to prove issue No.5 and submits that the same was on the defendant. He having failed to discharge the onus to prove that no certificate was issued but to him, Courts below erred in dismissing the suit filed by the plaintiff.

9. *Per contra*, Mr. Guruchan Das submits that in written statement, a specific averment was raised by the defendant regarding issuance of certificate dated 08.06.2005. Replication to the written statement was filed by the plaintiff. There was no specific denial with respect to non-issuance of certificate dated 08.06.2005. The averment made in the replication to the effect that no certificate was issued by the plaintiff was not specific, but evasive. He submits that apart therefrom, once the defendant propounded certificate/receipt dated 08.06.2005 claiming the same to have been issued by the plaintiff-firm, it was incumbent upon the plaintiff-firm who had approached the Court with the suit to prove that the same was not issued by the plaintiff.

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. In the considered opinion of this court, the fate of the present suit hinges upon certificate dated 08.06.2005 Ex.D1, propounded by the defendant in his written statement. The certificate



was specifically pleaded by the defendant in his written statement claiming as under:-

“Para No. 4 of the plaint is wrong and denied. It is wrong to state that the any amount was taken by the defendant as alleged in this para as loan or advance from the plaintiff firm. The transactions mentioned in this para are specifically denied. It is wrong to state that the upto 09.06.05 the defendant was liable to pay the amount of Rs. 75,123.75 Paise to the plaintiff. It is mentioned here that the plaintiff firm issued a certificate dated 08.06.2005 to the defendant that a sum of Rs.5000/- is payable by the defendant to the plaintiff firm. This amount was also paid by the defendant within a week from that day. It is mentioned here that nothing is due against the defendant. The suit has been filed with malafide intention. The copy of the certificate/receipt is attached herewith.”

12. The same was responded to by the plaintiff in replication as under:-

“That para no.4 of the written statement is wrong and hence denied and the corresponding para of the plaint is correct and the same is reiterated here again.”

13. Evidently, there is no specific denial to certificate dated 08.06.2005 by the plaintiff in his replication. Even if for the sake of arguments, the plea raised by counsel for the appellant regarding pleading raised in para 7 of the plaint is accepted and it is deemed to be a valid denial once the plaintiff was in the knowledge of the case projected by the defendant, he was required to prove that the receipt propounded by defendant was forged and fabricated. From the testimony of plaintiff PW1, it is evident that the certificate dated 08.06.2005 was put to him. Thereafter, onus shifted upon the plaintiff to prove that the same did not bear his signatures. No effort was made by the plaintiff to



lead any evidence to dispute his signatures on receipt dated 08.06.2005. An effort made at the appellate stage invoking Order XLI Rule 27 CPC seeking permission to examine handwriting expert was too late in the day and was rightly rejected by Lower Appellate Court.

14. In view thereof, this Court finds that the defendant successfully proved truthfulness of Ex.D1. The best person to dispute the genuineness thereof is the plaintiff. Plaintiff having remained evasive, this court can safely presume under Section 114 of the Indian Evidence Act, 1872 that the evidence withheld by the plaintiff, if brought on record would have gone against him and that is why the plaintiff deliberately withheld the evidence and failed to dispute Ex.1

15. In view of above, finding no merits in the present appeal, the same is ordered to be dismissed.

16. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

26.08.2025

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No