IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4621-2013
Reserved on : 10.01.2025
Pronounced on : 18.01.2025

Baljeet Singh

..... Appellant

Versus

Registered Firm M/s Prem Chand Krishan Lal, Commission Agent

..... Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

***

Present : Mr. Mohinder Singh Joshi, Advocate
for the appellant.

Mr. Akash Kundu, Advocate
for the respondent.

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VIKRAM AGGARWAL, J

This is defendant's appeal against the judgment and decree dated 22.05.2013, passed by the Court of learned Additional District Judge, Kaithal, allowing the appeal filed by the plaintiff against the judgment and decree dated 16.12.2010, passed by the Court of learned Additional Civil Judge (Senior Division), Guhla, vide which the suit for recovery filed by the plaintiff had been dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff-firm M/s Prem Chand Krishan Lal filed a suit for recovery of ₹2,34,967/- with future interest @ 1.5% per month against the defendant Baljeet Singh. The case of the plaintiff was that the plaintiff-firm was

running the business of commission agent at Grain Market, Cheeka and, therefore, used to advance money to its customers. The defendant Baljeet Singh was a customer of the plaintiff-firm since July, 2004 and had borrowed various amounts, the details of which were given in the plaint. In 2004, the defendant sold his crops to the plaintiff-firm and received a sum of Rs.67,494.85. Account books used to be maintained and Bahi entries used to be executed by the plaintiff-firm whenever some amount was taken by the defendant. It was claimed that after adjusting the amount due towards crops etc., a sum of Rs.2,34,967/- was due to the plaintiff-firm with interest upto 31.03.2006.

4. The suit was opposed by the defendant. Certain preliminary objections as regards maintainability, locus-standi, cause of action, estoppel etc. were raised. It was averred that the plaintiff had not approached the Court with clean hands. The case set up by the defendant was that the defendant had been selling his food-grains through the plaintiff-firm and part payments used to be made to the defendant. While making the said part payments, thumb-impressions/signatures of the defendant used to be obtained by the plaintiff on the *bahis*. It was denied that any advance had ever been taken from the plaintiff. A stand was taken that the *bahi* entries, if any, showing such amount outstanding against the defendant were false and not binding on the rights of the defendant. It was claimed that infact, the plaintiff-firm had not settled the account of the defendant. On merits as well, a similar stand was taken.

5. From the pleadings of the parties, the trial Court framed the following issues:-

> *i). Whether the plaintiff firm is entitled for recovery of Rs.2,34,967/- along-with interest as alleged in the plaint? OPP*

ii) Whether the suit of the plaintiff is not maintainable in the present form ? OPD

iii) Whether the plaintiff has no locus-standi and cause of action to file the present suit ? OPD

iv) Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD

v) Whether the plaintiff has not come to the court with clean hands if so what effect ? OPD

vi) Whether the plaintiff has suppressed the true and material facts from the court ? OPD

vii) Relief.

6. The plaintiff examined two witnesses namely Krishan Kumar as PW1 and Swaran Singh as PW2 and also produced on record two documents Ex.P1 and Ex.P2. On the other hand, the defendant did not lead any evidence and its evidence was, therefore, closed by Court orders.

7. The trial Court dismissed the suit holding that the relevant record had not been produced. The Appellate Court, however, allowed the appeal, set aside the judgment of the trial Court and decreed the suit primarily on the ground that no evidence had been led by the defendant to rebut the oral evidence led by the plaintiff. Cognizance was also taken of the documents annexed with the affidavit of PW1 when he appeared as a witness. Aggrieved by the judgment of the First Appellate Court, the defendant has preferred the present appeal.

8. Learned counsel for the parties were heard.

9. It was submitted by learned counsel representing the appellant-defendant that the First Appellate Court had erred in allowing the appeal filed by

the plaintiff and decreeing his suit without there being any evidence to prove the case of the plaintiff. It was submitted that only two documents Ex.P1 and Ex.P2 which were registration certificates of the firm were produced by the plaintiff and no record including *bahis* etc. was produced. It was submitted that merely on the bald statement of the plaintiff, the suit could not have been decreed and the First Appellate Court believed the statement of PW1 as a gospel truth. Learned counsel submitted that even though, the defendant had not led any evidence, it was primarily for the plaintiff to prove his case by leading cogent evidence and no benefit could have been given to the plaintiff on account of no evidence having been led by the defendant. Learned counsel referred to the statements of PW1 and PW2 as also the documents Ex.P1 and Ex.P2. Learned counsel placed reliance upon the judgment of Supreme Court of India in ***L.I.C. of India and Anr. Versus Ram Pal Singh Bisen 2010 (2) R.C.R. (Civil) 459***; judgment of Madhya Pradesh High Court in ***Jethanand and Company versus M/s Mohan and Company 2007 (4) R.C.R. (Civil) 464*** and the judgments of this Court in ***Karnail Singh versus M/s Kalra Brothers, Sirsa 2009 (2) R.C.R. (Civil) 380, Randhir Singh versus Ram Kumar 2015 (2) PLR 125, Dhup Singh versus Pheru and others 2015 (4) R.C.R. (Civil) 463*** and ***Harbans Lal versus Gurjit Kaur and another*** in ***RSA No.4840-2015***, decided on ***07.01.2016***.

10. Per contra, learned counsel representing the respondent-plaintiff submitted that the First Appellate Court in fact examined the matter from the correct perspective and had rightly allowed the appeal and decreed the suit whereas the trial Court had not examined the matter from the correct perspective and had erroneously dismissed the suit. Learned counsel submitted that it has to be borne in mind that no evidence worth its name was led by the defendant to

even rebut the oral version of the plaintiff as a result of which, the version of the plaintiff stood proved but the trial Court did not appreciate the said fact. Learned counsel referred to an application for endorsement of the documents referred to in the evidence of PW1 having been moved under Order 13 Rule 4 CPC. which was also erroneously dismissed by the trial Court. However, learned counsel conceded that the said order was never challenged further by the plaintiff.

11. I have considered the submissions made by learned counsel for the parties and have perused the record of the trial Court which was duly summoned.

12. Before adverting to the dispute on merits, this Court has no hesitation in stating that the instant case is a classic example of a suit having been handled with extreme carelessness by the counsel as also by the Court.

13. The matter started with the presentation of the plaint before the Court concerned. At this stage, the provisions of Order VII Rule 14 CPC were grossly violated. Order VII Rule 14 reads as under:-

> ***" Order VII Rule 14***
>
> ***[Production of document on which plaintiff sues or relies. —(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.***
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> ***(2) Where any such document is not in the possession or power of the plaintiff, he shall, whenever possible, state in whose possession or power it is.***

> ***(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]***
>
> ***(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.]***

14. A perusal of the provisions shows that the documents relied upon by the plaintiff were to be entered in a list and were to be produced in the Court at the time of presentation of the plaint. The documents and a copy thereof were also to be filed with the plaint. The record, however, shows that no such exercise was carried out. The plaint does mention the dates of transaction. Paragraph No. 5 of the plaint also mentions that the photocopy of the *Rokar bahi* and *Khata Bahi* were attached with the plaint. However, it appears that the originals were not produced. The interlocutory order dated 17.05.2006 show that the plaint was presented on 17.05.2006 before the Court of ACJ (SD), Guhla. The said order simply states as under:-

> ***"Suit presented today. Office report perused. Original bahi seen and returned. Suit be checked and registered. Now notice of this suit be issued to the defendant for 7.6.2006 on filing of copy of plaint etc***.

15. So, the first error was committed on the part of the Court/Court staff.

16. Then came the turn of the lawyers. The affidavit of PW1 Krishan

Kumar mentions about the documents Ex.P1 to P38. It also mentions that when the plaint was presented before the Court, the originals had been produced. However, when the affidavit was tendered into evidence, only documents Ex.P1 and Ex.P2 were tendered and the remaining documents were not tendered. It has to be borne in mind that litigants approach lawyers, for, mostly they have no legal knowledge and further mostly they are rustic illiterate villagers and the duty of the legally trained professionals is to assist them properly. However, grave prejudice was caused to the plaintiff on account of non-tendering of the documents alongwith the affidavit. When this error was realized by the counsel at the time of preparing of arguments, an application was moved under Order 13 Rule 4 CPC which was dismissed by the trial Court vide order dated 05.05.2010;

> ***"1. By this order of mine I shall dispose of an application dated 09.12.2009 under Order 13 Rule 4 C.P.C. for endorsement of documents i.e. bahi entries filed by the plaintiff.***
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> ***2. It has been averred in the paplication that while preparing the arguments by the learned counsel, it has come to his notice that while recording the evidence of PW1 Krishan Kumar, a mistake about the non-endorsements as exhibits on the document occurred. It has been averred that the case of the plaintiff is based upon bahi entries. The plaintiff had tendered his affidavit in evidence and exhibited the bahi entries as Ex.P3 to Ex.P38 and also photo-stat copies of the certificate of registration of firm. The Krishan Kumar was cross-examined by the defendant's counsel and no objection was raised by him. For the just and proper decision of the case it is necessary to make endorsement on the documents and for the above-said purpose it is also***

necessary to recall and re-examined PW1- Krishan Kumar.

In reply to the afore-said application, it has been submitted that the application is not maintainable as there is no provision in the law to make endorsement on the documents or to call another case file. Though pendency of another case file has no effect on the present suit.

4. I have heard the learned counsels for both the parties and have perused the documents placed on record meticulously.

5. A perusal of case file shows that the applicant-plaintiff had examined Krishan Kumar as PW-1 on 20.08.2008 and tendered his affidavit as Ex.PW1/A with the documents Ex.P1 and Ex.P2 in examination-in-chief and thereafter, the cross-examination of the said witness was completed on 25.02.2009 and the learned plaintiff's counsel had closed the affirmative evidence on the very date. Now, the applicant-plaintiff wants to exhibit the bahi entries, while the plaintiff-applicant has already closed the affirmative evidence on 25.02.2009. Hence, the application in hand stands dismissed being devoid of merits. To come upon 02.06.2010 for entire evidence of the defendant to be brought at own responsibility."

17. It needs to be mentioned here that the trial Court, at this point of time, did not handle the matter with sensitivity and was probably in a hurry to dispose of the matter. I would not also entirely blame the trial Court for this. On account of the mounting arrears, most of us are now interested in disposal of cases rather than administering justice. The suit was almost five years old and the Court concerned, it appears, must have felt the pressure of disposing of an old case without realizing the implications of a decision on either side for either

of the parties. We should not forget that we are dealing with extremely important rights of parties and our first and foremost duty is to administer justice. We need to put our heads down and carefully deal with important rights of litigants more than anything else.

18. On merits, the entire controversy boils down to a very narrow issue. Two witnesses were examined by the plaintiff and only two documents Ex.P1 and Ex.P2 were produced. The remaining documents, as has been noticed, were not produced in evidence though they had been annexed with the plaint. The defendant chose not to rebut even this flimsy evidence led by the plaintiff and was, apparently, content with non-production of the relevant documents and, probably, did not want to appear in the witness box and be cross-examined. It has to be borne in mind that dealings between the parties were admitted by the defendant in the written-statement. He only denied having borrowed any amount from the plaintiff for which, the plaintiff, apart from giving the details, had produced the records. It was so stated by the plaintiff in his affidavit also which went totally unrebutted. Once, the defendant chose not to lead any evidence, the First Appellate Court, in the considered opinion of this Court, did not commit any illegality in relying upon the unrebutted testimony of PW1.

19. In the considered opinion of this Court, the Appellate Court administered true justice and, therefore, I do not find any fault with the said judgment. The argument that it was not stated as to who had made the entries in the *bahi* would not be relevant because the defendant chose not to rebut the evidence at all.

20. I have perused the judgments relied upon by learned counsel for the appellant. In the case of ***Karnail Singh versus M/s Kalra Brothers*** (supra), a

Coordinate Bench held that entries in an account book when the author of the bahi was not examined, could not be taken into consideration. It was also laid down that mere marking a document as an exhibit would not dispense with the formal proof of such documents. There is no quarrel with the aforesaid proposition. However, at the cost of repetition, it needs to be mentioned that PW1 Krishan Kumar was a partner of the plaintiff-firm. He stated that the firm maintained its accounts in the form of *bahis* etc. and that the income and expenditure were entered in the said *bahis*. He gave the details of the transactions and specifically stated that the defendant had put his thumb impressions against the entries. He repeatedly said that after every entry, the entry had been read out and explained to the defendant meaning thereby that it was PW1 Krishan Kumar who was maintaining the accounts and he had produced the account books before the trial Court. Under the circumstances, the ratio of the judgment would not apply to the facts of the present case. In the case of ***Jethanand and Company versus M/s Mohan and Company*** (supra), the Madhya Pradesh High Court held that mere production and proof of such entries is not by itself sufficient to charge anyone with liability and there must be some independent witnesses to prove the transaction. The evidence, in the present case, was the statement of PW1 Krishan Kumar which was not rebutted by the defendant. This judgment would also, therefore, not come to the aid of the appellant. In the case of ***L.I.C. of India and Anr. Versus Ram Pal Singh Bisen*** (supra), the Supreme Court of India held that the contents of documents are required to be proved either by primary or by secondary evidence and that further, the onus lies on the plaintiff to prove his case. It was held that the failure to prove the defence does not amount to an admission nor does it reverse

or discharge the burden of proof. There is again no quarrel to the proposition laid down in the said judgment. However, as has been discussed in the preceding paragraphs, the factum of no evidence having been led by the defendant would definitely go against the defendant and in view of the fact that the plaintiff had duly stepped into the witness box and had deposed about the entire facts supported with documents, it cannot be said that the plaintiff was unable to prove his case.

The aforesaid discussion leads this Court to the conclusion that there is no illegality in the impugned judgment and decree which the defendant has challenged by way of the instant appeal. In view of the same, the present appeal is found to be devoid of merit and is hereby dismissed and the judgment and decree dated 16.12.2010, passed by the learned Additional District Judge, Kaithal, is upheld.

(VIKRAM AGGARWAL)
JUDGE

Reserved on : 10.01.2025
Pronounced on : 18.01.2025
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No