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(1967) 12 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 967 of 1965

Badri Parsaad APPELLANT

Vs

Bachan Singh RESPONDENT

Date of Decision : 20-12-1967

Acts Referred:
Punjab Regulation of Accounts Act, 1930 — Section 3(1)(a)

Citation : (1967) 12 P&H CK 0004

Hon'ble Judges : Mehar Singh, J

Bench : Single Bench

Advocate : Dalip Chand Gupta and J.V. Gupta, for the Appellant; S.P. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Mehar Singh, C.J.—A suit for recovery of Rs. 510/- on the basis of an acknowledgement, dated June 3, 1961, with the amount of interest, all totalling to Rs. 860/-, was brought by Badri Parshad applicant against Bachan Singh respondent. The trial Court decreed the suit as regards the amount of Rs. 510/- of the acknowledgement with entire costs including the stamp duty and penalty paid by the applicant because he had to prove the disputed acknowledgement and three earlier acknowledgements by the respondent so as to prove consideration for the disputed acknowledgement since he had to prove consideration for that the Trial Court disallowed interest claimed by the applicant finding that he is a money lender but that the did not send the accounts regularly and has not produced the copies of the periodical accounts''. The decree of the trial Court is of December 17, 1964.

2. There was an appeal by the respondent against the decree which was disposed of by the Senior Subordinate Judge on June 15, 1965, when he maintained the decree for the amount of Rs. 510/- in favour of the applicant but disallowed the total amount of the costs on the ground that the applicant being a money-lender had not complied with section 3 (1)(a) of the Punjab Regulation of

Accounts Act, 1960 (Punjab Act 1 of 1960). with the result that he was not entitled to costs according to section 4 (b) of that Act. This is a revision application against the appellate decree by the applicant. It is confined only to the question of costs disallowed by the appellate Court to the applicant in the decree against the respondent.

3. The original loan of Rs. 2,000/- vvas incurred by the respondent under the document, Exhibit P, B, on Jeth Sudhi 52015 BK. (May, 1958). The loan carried certain agreed rate of interest. On Chet Sudhi 8, 2016 Bk. (March, 1959), after giving credit for certain payments, a balance entry, Exhibit P. C., was executed by the respondent in favour of the applicant This was for an amount of Rs. 220/ The mode of payment is stated in the document. A sum of Rs. 100/- was to be paid in cash within fifteen days of the date of the document, a buffalo of the value of Rs. 250/- was to be supplied within a few days of its coming to give birth to a calf, and the remaining amount of Rs. 670/- was to be paid in the shape of delivery of cotton. On Jeth Sudhi 13, 2017 Bk. (May, 1960) again after giving credit for payments made by the respondent, the applicant obtained from him balance entry, Exhibit P.D. for an amount of Rs 640/. In this document also the manner of payment is stated. A sum of Rs. 50/- was to be paid by Har Sudhi 13, 2017 Bk (June, 1960) a buffalo of the value of Rs 260/- was to be given thereafter, and the balance was to be paid but it is not clear in what manner, possibly in cash. On Jeth Sudhi 13, 2019 Bk. (June 3, 1961) the last balance entry, which was the basis of the claim of the applicant, was executed by the respondent for an amount of Rs. 510/-. In this also the mode of payment is described- The amount of Rs. 200/- and interest were to be paid within ten days of the date of the document and a buffalo of the value of Rs. 300/- was to be supplied as soon as it was in a state to give milk. The four documents were not stamped with stamp of any denomination according to the Indian Stamp Act, l899 (Act 2 of 1889). The respondent denied execution of the last balance entry and pleaded that nothing was due to the applicant. The trial Court framed an issue, placing the burden of proof on the applicant, whether the last balance entry or the bond was for consideration. It was in these circumstances that the applicant was obliged to give pre of not only the last balance entry but also of the earlier three entries. So he had to pay stamp duty on all the four as on a bond and that with penalty. It was the co3t thus incurred by him that was allowed to him by the trial Court, but disallowed by the appellate Court.

4. The parties belong to Sunam which is in the former Pepsu area. There was in force in Pepsu on and from July 21, 1956, the Pepsu Money Lenders Act, 1956 (Pepsu Act 8 of 1956), of which, so far as the present case is concerned, section 3 in substance is a reproduction of section 3 of Punjab Act 1 of 1930, with minor omissions and alterations, of which note need not be taken here because those have no bearing on the facts of this case. Punjab Act 1 of 1930 was extended to the former Pepsu area by the Punjab Money Lending and Debtors Protection Laws (Extension and Amendment) Act, 1980 (Punjab Act, 44 of 1960), with effect from December 30, 1960. Section 3 of this last mentioned Act inserted section 4-A in

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Punjab Act 1 of 1930, but made that section operative from December 30, 1960, except in the case of a fresh transaction in respect of an earlier loan which transaction is made after that date. In the present case the last balance entry is of June 3, 1951 and hence after that date, and so the new section 4-A would be attracted, bat benefit of sub-section (1) of that section has not been available to the respondent because after December 30, 1960, no repayment was made by him as a debtor. The combined effect of section 3 of Pepsu Act 8 of 1956 and of section 6 of Punjab Act 1 of 1930 is that so far as the present case is concerned, the substantive part of the provisions of section 3 of the first Act down to December 30, 1960, and of the second Act from that date to the date of the suit applies to the facts and circumstances of this case.

5. For facility of appreciation of the argument of the Learned Counsel for the applicant reference is going to be made only to section 3 of Punjab Act 1 of 1930, The argument of the Learned Counsel for the applicant is that there are two clauses (a) and (b) in sub-section (1) of section 3 of Punjab Act 1 of 1930. According to clause (b) of section 4 of that Act costs are to be disallowed for non-compliance with clause (a) of sub-section (1) of section 3, and interest is to be disallowed according to clause (c) of section 4 for non compliance with clause (b) of sub-section (1) of section 3. The Learned Counsel points out that when the trial Court disallowed interest claimed by the applicant that was for noncompliance of clause (b) of sub section (1) of section 3 because six monthly statement of account was not sent by the applicant to the respondent and hence in view of clause (c) of section 4, he was not entitled to claim interest, he having admitted that he was a registered money lender The Learned Counsel presses that at no stage did it come in question that there was no compliance by the applicant of clause (a) of sub section (1) of section 3, and that the trial Court never gave any such finding So clause (b) of section 4 could not be applied to the case. Without applying that provision to the case the appellate Court could not disallow costs to the applicant. Clause (a), with Explanation (ii), of sub-section (1) of section o reads-

3 (1) A creditor shall in order to comply with the provisions of this Act-(a) regularly record and maintain an account for each debtor separately of all transactions relating to any loan advanced to that debtor, in such manner as the State Government may prescribe;

(b) * * *

Explanation. -(i)

Explanation.-(ii) the prescribed accounts shall be so kept that items due by way of interest shall be shown as separate and distinct from the principal sum, and separate totals of principal and interest shall be maintained. The creditor shall not in the absence of agreement, include the interest or any portion of it in the principal sum and the principal and interest shall be separately shown in the opening balance of each new six monthly account ...

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and there follow two provisos but those are not material here In section 3 of Pepsu Act 8 of 1956. for the fast-mentioned words in Explanation (ii)--''interest shall be separately shown in the opening balance of each new six-monthly account''-the words that appear are, interest shall be separately shown in the opening balance of each new annual accounts''-, and while this part of the Pepsu Act covers the first three documents, Punjab Act 1 of 1930 covers clearly the last-mentioned document which was the basis of the claim of the applicant In pursuance of the power u/s 6 of Punjab Act 1 of 1930, Regulation of Accounts Rules were issued on December 12, 1930, and rule 3 says that the account prescribed by clause (a) of sub section (1) of section 3 of the Act shall be maintained in the form shown in the Schedule attached to these rules. The rules are reproduced at page 1534 of Shamair Chand''s Punjab Acts, 1935 Edition, and the Schedule giving the form appears at page 1536 of the same book. So what all these provisions require is (a) that a creditor shall maintain a regular separate account of his debtor, (b) that he shall maintain the same in the prescribed form and (c) that in the prescribed form he shall show calculation of interest separately and will not mix that up with the amount of the principal in any way. The Learned Counsel for the applicant says that in the plaint the applicant clearly said that he had filed the copies of the accounts with the plaint. Those copies he says are on the file. At the trial he said that the copies were available. This is about all the evidence given by the applicant on this aspect of the matter. While from those copies of the accounts it can be made out that separate account of the respondent was maintained by the applicant and it may further be said that its regularity has not been seriously questioned, but the other two conditions, as above have not been shown to have been fulfilled by him. He has not said so. The copies of the accounts filed do not conform to the form under the rules and the item of interest has not been shown as separate and distinct from the principal sum as required by Explanation (ii) to sub-section (1) of section 3. So it is obvious that there has been no compliance of clause (a) of sub section (1) of section 3 of either Pepsu Act 8 of 1956 or of Punjab Act 1 of 1930. This being the actual state of facts, the next question is, has the trial Court given any finding on this ? The finding of the trial Court has already been reproduced above and it has clearly said two things, one, that the applicant did not regularly send the accounts, and, second, that he has not produced the copies of the periodical accounts. It is the second part which covers the finding with regard to clause (a) of sub-section (1) of section 3, though the learned Judge makes no reference in his judgment to this particular provision. The learned Judge in appeal has then come to the conclusion that there has been no compliance with clause (a) of sub-section (i) of section 3 and, therefore, he has disallowed costs to the applicant under clause (b) of section 4 of the Act. Since it has now been found that as a matter of fact the applicant did not comply with clause (a) of sub-section (1) of section 3, no possible exception can be taken to the conclusion of the appellate Court that the. applicant is not entitled to costs in the suit in view of clause (b) of section 4. So this argument cannot be accepted.

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6. The Learned Counsel for the applicant then urges that, in any case, even if there has been non-compliance of clause (a) of sub-section (1) of section 3, thereby attracting clause (b) of section 4 and thus disentitling the applicant to claim costs in the suit, his claim still should have been considered by the appellate Court in so far as he has been compelled to incur costs to prove the four documents Exhibits P. A to D, because he was compelled to prove consideration of the last balance entry, Exhibit P.A. The Learned Counsel for the respondent has referred to the written statement filed by the respondent and points out that the respondent never in so many words denied consideration for that document. But what he did was that he denied the very execution of the document and the trial Court proceeded immediately on that for obviously there was denial of the consideration for the document as implied in the general denial by the respondent of the execution of that document. It was in these circumstances that the applicant was obliged to give pro A of the three earlier balance entries. None of the four entries was stamped. So he was obliged to pay stamp on those documents as on a bond and then to pay penalty to have the same admitted into evidence. The Learned Counsel for the applicant in this respect relied on section 44 of Act 2 of 1899, which sections says -

44. (1) When any duty or penalty has been paid u/s 35, section 37. section 40 on section 41, by any person in respect of an instrument, and, by agreement or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

(2) For the purpose of such recovery any certificate granted in respect of such instrument under this Act shall be conclusive evidence of the matters therein certified.

(3) Such amount may, if the Court thinks fit, be included in any order as to costs in any suit or proceeding to.which such persons are parties and in which such instrument has been tendered in evidence. If the Court does not include the amount in such order, no further proceedings for the recovery of the amount shall be maintainable." Now, where a party is compelled while giving evidence to pay duty or penalty on a document which it proves, it has a right to be reimbursed from the person woose liability it was to bear the expenses of the stamp on that document. This is sub section (1) of section 44. It would indicate that he may recover such an amount by a separate action. But where such a matter arises during the course of litigation between the parties, such independent action is excluded by the provisions of sub-section (3) under the provisions of sub-section (3) of section 44 then it is for the Court deciding the matter to include such costs in the costs of the proceeding. The Learned Counsel then refers to section 29 of this very Act which in clause (a) of it lists the documents of the type in which the stamp duty is the liability of the executant

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and in that list there is entry 15 referring to ''bond''. The Learned Counsel relies only on this entry and no other entry in this clause. He says that the four balance entires answer the description of a bond and thus it was the duty of the executants of those bonds to bear liability for the stamp so that when sections 29 and 44 are read together the respondent h"s a liability to pay not only the stamp duty but also the penalty on those documents which the applicant was compelled to pay during the hearing of the suit. The term ''bond'' is defined in section 2(5) of Act 2 of 1889 and for the present purpose it is clause (b) (f) that sub-section which is material and which reads-''bond'' includes -...(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another. and on this case all the four entries are attested by a witness Norata Ram. However, leaving out the first documents, Exhibt P.B., whereby the loan was raised in the remaining three balance entries including the last balance entry which was the basis of the suit, the repayment under each entry was not only of money but also by delivery of a buffalo, equivalent to a certain amount, and by delivery of certain amount of cotton in one of the cases. So those three balance entries are not instruments whereby the respondent obliged himself to pay money only to the applicant, but he obliged himself to pay money partly and to discharge the debt partly by either giving a buffalo or some cotton. It is obvious that clause (b) of section 2(5) of Act 2 of 1899 will not be attracted to those three documents. The Learned Counsel for the applicant then contends that although in those three documents part of the debt was to be discharged not by payment of money but as it was to be discharged by giving something equivalent to some money, therefore, clause (b) of section 2(5) of Act 2 of 1890 is still attracted. This argument cannot prevail because where the discharge of debt is to be by giving something else instead of money, as in clause (c) of section 2(5), it is specifically provided in this very sub-section. In the last resort the Learned Counsel for the applicant says that in any case the first bond, Exhibit P.B., has no such infirmity and the stamp duty and the penalty paid on that document according to sections 29 and 44 of Act 2 of 1899 must be borne by the respondent. But then so far as the present litigation is concerned, he has to bear those amounts as costs in the litigation, and, since the applicant is disentitled u/s 4(b) of Punjab Act 1 of 1930 to any costs whatsoever, he cannot have such costs either.

7. This revision application thus fails and is dismissed with costs. Counsel''s fee being Rs. 50/-.

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