(2008) 12 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Gulzar Singh APPELLANT

Vs

Ramesh Kumar RESPONDENT

Date of Decision : 01-12-2008

Acts Referred:
Punjab Regulation of Accounts Act, 1930 — Section 3

Citation : (2009) 153 PLR 315 : (2009) 2 RCR(Civil) 493

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—CM No. 7226-C of 2008

For the reasons recorded in the application, delay of 42 days in refilling the appeal, is condoned. CM stands disposed of.

R.S.A. No. 2465 of 2008.

This is defendant''s second appeal challenging the judgment and decrees of the Courts below whereby suit for recovery of Rs. 2 lacs alongwith interest at the rate of 12% per annum from the date of execution of pronote till filing of the suit and at the same rate till decision of the suit by the trial Court and at the rate of 6% per annum till its realization, has been decreed.

2. As per averments made in the plaint, the defendant took a loan of Rs. 2 lacs from the plaintiff and on 25.4.2002 executed a pronote and receipt in favour of the plaintiff by putting his thumb impression on it in the presence of marginal witnesses who attested the receipt and rate of interest was fixed at the rate of 1.5% per month. It is further stated that the defendant has not paid anything in spite of repeated requests. Hence the present suit.

3. Notice of the suit was given to the defendant-appellant who appeared and filed written statement taking various legal objections. On merits, it was stated that the defendant used to sell his crop through the plaintiff-firm. The defendant is an

illiterate person. At the time of selling the produce, the plaintiff used to obtain his thumb impressions on blank papers. The defendant also sold Haari crop on 19.04.2002 and at the time of selling the produce, if the plaintiff has obtained his thumb impression on an empty pronote, he might have prepared the pronote in question on the basis of said thumb impressions and the defendant is not bound by it. The defendant has already filed a suit for rendition of accounts against the plaintiff and present suit is a counter-blast of the said suit by preparing forged and fabricated pronote and receipt. It was further stated that the defendant never obtained a sum of Rs. 2 lacs as alleged. Execution of the pronote and receipt of the plaintiff was also denied. Thus, dismissal of the suit was prayed for.

4. After hearing learned Counsel for the parties and going through the evidence on record, the trial Court decreed the suit of the plaintiff-respondent with costs for recovery of Rs. 2 lacs along with interest @ 1.5% per month, from the date of execution of pronote and receipt, till that day. Further, plaintiff was entitled to claim future interest @ 6% per annum, on principal amount only, from that day till actual realization of entire decretal amount.

5. Feeling aggrieved from the aforesaid judgment and decree of the trial Court, the defendant filed an appeal. The Lower Appellate Court partly allowed the appeal vide impugned judgment and decree dated 19.10.2007 and the rate of the interest was modified to the extent of 1.5% per month from the date of execution of pronote till filing of the suit and at the same rate till decision of the suit by the learned trial Court i.e. up till 11.09.2006 and future interest @ 6% per annum from the date of decision of the trial Court till its realization.

6. Still not satisfied, the defendant has filed present appeal, in this Court.

7. Learned Counsel for the appellant has vehemently argued that the Courts below have erred at law while decreeing the suit of the plaintiff as the plaintiff-respondent has not complied with the provisions of Sections 3 and 4 of the Punjab Regulation of Accounts Act, 1930 as according to these provisions the plaintiff-respondent was required to furnish a copy of the statement of Accounts of the plaintiff and u/s 4 of this Act in any suit relating to loan the Court shall before deciding the claim on the merits frame and decide the issue "whether the creditor has complied with the provisions of Clause (a) and (b) of Sub-section (1) of Section 3". Since the aforesaid provisions have not been complied with, the judgment and decree of the courts below are liable to be set aside.

8. The contention raised by the learned Counsel for the appellant is without any merit. Neither any such plea was raised by the appellant in his written statement nor any such issue was claimed. From the pleadings and evidence produced by the appellant on record, it is clearly established that the appellant has raised no such plea that the plaintiff has not furnished him any Statement of Accounts as required u/s 3 of the Punjab Regulation of Accounts Act, 1930. Since the appellant has no claimed any issue before the trial Court that the plaintiff-respondent has failed to comply with the provisions of Section 3 of the aforesaid

Act, therefore, the question as raised by the learned Counsel for the appellant cannot be decided in the absence of factual basis laid down in the civil suit. Since, neither such plea was raised, nor there is any evidence to prove such plea, the argument of the learned Counsel for the appellant is liable to be rejected. No other point has been urged.

9. For the reasons recorded above, I find no merit in this appeal.

10. No substantial question of law arises.

Dismissed.