SUPREME COURT OF INDIA

Gian Chand Brothers

Vs.

Rattan Lal @ Rattan Singh

C.A.No.130 of 2013

(K.S.Radhakrishnan and Dipak Misra JJ.)

08.01.2013

JUDGMENT

DIPAK MISRA, J.

1. Leave granted.

2. In this appeal, the assail is to the legal soundness of the judgment and decree dated 26.2.2009 in R.S.A. No. 1570 of 2008 passed by the learned single Judge of the High Court of Punjab and Haryana at Chandigarh whereby it overturned the decision of the learned Additional District Judge, Kurukshetra in Civil Appeal No. 96 of 2006 dated 12.03.2008 wherein the judgment and decree dated 20.07.2006 passed by the learned Additional Civil Judge (Sr. Division), Pehowa was partially modified.

3. The facts which are necessary to be stated are that the plaintiffs- appellants (hereinafter referred to as "plaintiffs") had initiated a civil action forming the subject matter of CS No. 337 of 2004 in the court of Additional Civil Judge (Sr. Division), Pehowa for recovery of a total sum of Rs.10,45,620/- along with pendente lite and future interest at @18% per annum. It was the case of the plaintiffs that plaintiff No. 1 is a registered partnership firm carrying the business of commission agent for sale and purchase of food grains in Shop No. 69, New Green Market at Anaj Mandi in Pehowa and plaintiff No. 2 is the partner of the said partnership firm. The plaintiff firm advances money to the agriculturists and charges commission on the sale price of the agricultural produce sold as determined by the market committee. For the aforesaid purpose, it has been maintaining the books of accounts in the regular course of business. The

respondent- defendant (hereinafter referred to as "the defendant") had been maintaining regular and long standing current account with the plaintiffs. The defendant had taken advance from time to time from the plaintiffs which he had promised to return at the shop of the plaintiffs. All the transactions between the parties were entered in the books of accounts which reflected that as on 30.4.2002, a sum of Rs.5,80,000/- stood in the name of the defendant towards outstanding balance and he had acknowledged the same under his signature in the corresponding account entry in the account books of the plaintiffs. The defendant neither returned the money nor brought any agricultural produce for sale to the shop of the plaintiffs till 27.5.2003. The plaintiffs served a legal notice on 26.2.2004 on the defendant to make good the payment and also made repeated requests requiring him to pay the dues, but all requests and demands went in vain and eventually, on 18.8.2004, he refused to comply with the request. Being put in such a situation, the plaintiffs were compelled to institute the suit on 19.8.2004 wherein they claimed Rs.9,72,670/- which included the total amount lent to the defendant at various times and Rs.72,950/- towards interest till the date of filing of the suit and further claimed pendente lite and future interest @ 18% per annum. Be it noted, the borrowings for the financial years 2002-2003 and 2003-2004 were reflected in the "rokar bahi".

4. A written statement was filed by the defendant which consisted of two parts, namely, preliminary objections and reply on merits. In the preliminary objections, it was stated that the suit was not maintainable; that the father of the defendant was a customer of the plaintiffs' firm but the defendant had nothing to do with the plaintiffs; that if there was any liability, it was of Kewal Krishan and not of the defendant; that the plaintiffs had no locus standi to file the suit and it was defective for non-joinder of parties; and that no cause of action arose against the defendant. As far as the merits are concerned, reference was made to every paragraph of the plaint and in oppugnation, it was stated that some of the averments were false. As far as the other averments were concerned, the defendant denied them due to lack of knowledge.

5. The learned trial Judge, on the basis of the pleadings, framed five issues. The principal issues that were really addressed on contest were whether the plaintiff was entitled to recover an amount of Rs.10,45,620/- along with interest pendente lite and future interest @ 18% per annum; that whether the suit of the plaintiff was not maintainable in the present form; that whether the plaintiff had no locus standi and cause of action to file and maintain the suit; and that whether the suit of the plaintiff was bad for non-joinder of necessary parties.

6. Be it noted, on behalf of the plaintiffs including the partner of the plaintiffs' firm, three witnesses were examined and 13 documents, namely, copy of ledger, bahi, copy of ledger of S.T./C.S.T., copy of Form-A, Form-C, copy of resolution dated 31.10.1993 and copy of the certificate dated 28.07.2005 were brought in the evidence and marked as exhibits. The defendant examined himself as DW-1 and did not produce any documentary evidence.

7. The learned trial Judge, considering the evidence on record, came to hold that the plaintiffs had been able to establish that the firm was engaged in the business of a commission agent which lends money to the agriculturists; that the business transaction with the plaintiff's firm had not been denied by the defendant; that the bahi entries had been produced on record by the plaintiffs to show that the amount was advanced to the defendant and the said entries had the stamp and signatures of the defendant; that the plea of the defendant that his signatures on the bahi entries were fraudulently obtained had not been substantiated; that the transactions in dispute were numerous and extended over a number of years and there was no reason not to lend credence to the genuineness of the books of accounts; that the plaintiffs had the locus standi to file the suit and the cause of action had arisen to initiate a civil action and that the plea that the suit was defective for non-joinder of parties had really not been pressed. Being of this view, the learned trial Judge opined that the plaintiffs were entitled to recover the amount of Rs.10,45,620/- along with pendente lite and future interest @ 6% per annum and, accordingly, decreed the suit.

8. Grieved by the aforesaid judgment and decree, the defendant preferred a Civil Appeal wherein it was contended that when the signatures in the books of accounts were denied, it was obligatory on the part of the plaintiffs to get the same examined by a handwriting expert; that the signatures in the books of accounts had been forged by the plaintiffs; that certain entries did not bear the signatures of the defendant; that the plaintiffs had failed to show why such a huge amount had been advanced to the defendant; and that the learned trial Judge had fallen into error by decreeing the suit of the plaintiffs.

9. The first appellate court, considering the contentions raised before it, came to hold that the plaintiffs had placed reliance on the ledger entries which were maintained in the regular course of business; that from Exhibit P-2, it was vivid that a sum of Rs.5,80,000/- was taken in cash by the defendant and it had his signatures and that the aspect of forgery has not been pleaded and, in any case, had not been proven at all; and that except two entries, namely, Exh. P-4 and P-9, the defendant had signed in all the entries which were maintained in the regular course

of business; that the written statement was absolutely evasive and no plea of forgery being taken, the challenge that the signatures were obtained fraudulently or by any other method or undue relationship did not warrant consideration and, in any case, the onus did lie on the defendant which was not discharged.

10. On the aforesaid base, it opined that the plaintiffs were entitled to recover the amount excluding the sums covered under those two entries along with proportionate interest and, accordingly, partly allowed the appeal and modified the judgment and decree of the learned trial Judge.

11. Being dissatisfied, the defendant preferred second appeal and the learned single Judge framed four substantial questions of law, namely,

> (i) whether a suit for recovery could be decreed when the pleadings and evidence led by the plaintiffs were at substantial variance;
>
> (ii) whether the plaintiffs could be said to have established its case, particularly when the defendant had denied the factum of borrowing any sum and the signatures on the cash book and no evidence including document/finger print expert was led by the plaintiffs to establish the signatures of the defendant in the account books;
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> (iii) whether it was obligatory on the part of the plaintiff to prove the alleged signatures of the defendant in the cash book when they had been disputed; and
>
> (iv) whether the admission of the defendant could be assumed in the absence of clear and unambiguous admission of the party to the litigation.

12. The High Court referred to paragraphs 6 and 7 of the plaint and Exhibits P-1, P-2, P-3, P-7, P-9 and P-10 and noticed the variance of the amounts mentioned therein and further opined that when the signatures had been denied, the onus was on the plaintiffs to examine a handwriting expert to establish the veracity of the signatures to bring home the plea set up by the plaintiffs in the plaint. It also ruled that the courts below had fallen into error in holding that the onus to prove the falsity was on the defendant. Analyzing the documents and evidence, the learned single Judge came to hold that the averments as pleaded in the plaint and the evidence in support thereof were at variance with each other and the evidence did not substantiate the claim and the onus to prove the accounts and rokar bahi having

not been discharged, the judgments of the fora below were unsustainable. Hence, the present appeal.

13. We have heard Mr. Gautam Narayan, learned counsel for the appellants. Despite service of notice, there has been no appearance on behalf of the respondent.

14. On a careful reading of the judgment, it is noticeable that the High Court has observed that the findings returned by the courts below are perverse and, accordingly, jurisdiction under Section 100 of the Code of Civil Procedure could be exercised. The perversity has been noticed on two counts, namely, incorrect placing of onus on the defendant to prove that the signatures had been forged more so when there was denial of the same and second, the variance in the pleadings and the evidence as regards the amounts in question were not appositely taken note of. Thus, we are required to see whether the approach of the learned single Judge in annulling the judgments of the courts below is correct on the aforesaid grounds which, according to him, reflect perversity of approach.

15. First, we shall deal with the onus to prove in such a case. The plaintiffs, in paragraphs 4 and 5 of the plaint, have categorically asseverated that the defendant used to avail advance money from the plaintiffs with the promise to bring his agriculture produce for sale at their shop and the said amount had been duly entered in the books of accounts which the defendant had acknowledged under his signatures in the corresponding entries. The Accountant of the firm, PW-1, has proved various entries and they have been marked as exhibits. There had been no objection when the signatures were stated to be that of the defendant. It is admitted by him that Exh. P-9 did not bear the signature of the defendant. It is worthy to note that nothing has been put to him in the cross-examination about the signatures. The partner of the firm, PW-2, has testified the signatures in the entries. He has clearly stated that he was able to identify the signatures. The defendant had examined himself as DW-1 and had only stated that he had no dealings with the plaintiffs but his father was a customer of the firm. He had disputed to have signed any entries. In the cross-examination, he has admitted his signatures on the written statement and stated that he did not remember whether at the time of purchase, his signatures were taken or not.

16. As noticed earlier, the High Court has held that the fora below erroneously placed the onus on the defendant to disprove his signatures. On a careful scrutiny of the evidence, it is manifest that the signatures are proven by the witnesses and they have been marked as exhibits without any objection. It is interesting to note

that in paragraphs 6 and 7 of the plaint, it was averred that the defendant had given the acknowledgement of amount under his signature in the corresponding entry in the books of accounts. While replying to the same, the defendant has said that the arguments in para 6 of the plaint are wrong and denied in view of the preliminary objections. It is apt to note that the preliminary objections pertained to bald denial of liability, lack of locus standi to file the suit, non- joinder of parties and lack of cause of action. Thus, there was no plea whatsoever as regards the denial of signature or any kind of forgery or fraud. The High Court, as we find, has observed that the plaintiffs should have examined a handwriting expert. The plaintiffs had asserted that there was an acknowledgement under the signatures of the defendant. There was no denial by the defendant about the signatures; and further, the acknowledgements had been proven without objection. Only in the examination-in-chief, the defendant had disputed the signature and in the cross-examination he has mercurially deposed that he does not remember to have signed at the time of any purchase.

17. It is well settled principle of law that a person who asserts a particular fact is required to affirmatively establish it. In Anil Rishi v. Gurbaksh Singh[1], it has been held that the burden of proving the facts rests on the party who substantially asserts the affirmative issues and not the party who denies it and the said principle may not be universal in its application and there may be an exception thereto. The purpose of referring to the same is that if the plaintiff asserts that the defendant had acknowledged the signature, it is obligatory on his part to substantiate the same. But the question would be what would be the consequence in a situation where the signatures are proven and there is an evasive reply in the written statement and what should be construed as substantiating the assertion made by the plaintiff.

18. In Krishna Mohan Kul v. Pratima Maity and others[2], it has been ruled thus: -

> "When fraud, misrepresentation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation."

19. In Shashi Kumar Banerjee and others v. Subodh Kumar Bannerjee since deceased and after him his legal representatives and others[3], a Constitution Bench of this Court, while dealing with a mode of proof of a will under the Indian Succession Act, observed that where the caveator alleges undue influence, fraud and coercion, the onus is on him to prove the same.

20. In A. Raghavamma and another v. A. Chenchamma and another[4], while making a distinction between burden of proof and onus of proof, a three-Judge Bench opined thus: -

> "There is an essential distinction between burden of proof and onus of proof: burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence."

21. The present case is not one such case where the plaintiffs have chosen not to adduce any evidence. They have examined witnesses, proven entries in the books of accounts and also proven the acknowledgements duly signed by the defendant. The defendant, on the contrary, except making a bald denial of the averments, had not stated anything else. That apart, nothing was put to the witnesses in the cross-examination when the documents were exhibited. He only came with a spacious plea in his evidence which was not pleaded. Thus, we have no hesitation in holding that the High Court has fallen into error in holding that it was obligatory on the part of the plaintiffs to examine the handwriting expert to prove the signatures. The finding that the plaintiffs had failed to discharge the burden is absolutely misconceived in the facts of the case.

22. The said aspect can be looked from another angle. Rules 3, 4 and 5 of Order VIII form an integral code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. It is obligatory on the part of the defendant to specifically deal with each allegation in the plaint and when the defendant denies any such fact, he must not do so evasively but answer the point of substance. It is clearly postulated therein that it shall not be sufficient for a defendant to deny generally the grounds alleged by the plaintiffs but he must be specific with each allegation of fact (see Badat and Co., Bombay v. East India Trading Co.[5]).

23. Rule 4 stipulates that a defendant must not evasively answer the point of substance. It is alleged that if he receives a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received, and that if an allegation is made with diverse circumstances, it shall not be sufficient to

deny it along with those circumstances. Rule 5 deals with specific denial and clearly lays down that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted against him.

24. We have referred to the aforesaid Rules of pleading only to highlight that in the written statement, there was absolutely evasive denial. We are not proceeding to state whether there was admission or not, but where there is total evasive denial and an attempt has been made to make out a case in adducing the evidence that he was not aware whether the signatures were taken or not, it is not permissible. In this context, we may profitably refer to a two-Judge Bench decision inSushil Kumar v. Rakesh Kumar[6] wherein, while dealing with the pleadings of election case, this Court has held thus: -

> "73. In our opinion, the approach of the High Court was not correct. It failed to apply the legal principles as contained in Order 8 Rule 3 and 5 of the Code of Civil Procedure. The High Court had also not analysed the evidence adduced on behalf of the appellant in this behalf in detail but merely rejected the same summarily stating that vague statements had been made by some witnesses. Once it is held that the statements made in paragraph 18 of the election petition have not been specifically denied or disputed in the written statement, the allegations made therein would be deemed to have been admitted, and, thus, no evidence contrary thereto or inconsistent therewith could have been permitted to be laid."

25. We may state with profit that in the said case, reliance was placed on Badat and Co. v. East India Trading Co. (supra).

26. Scrutinized thus, the irresistible conclusion would be that the defendants could not have been permitted to lead any evidence when nothing was stated in the pleadings. The courts below had correctly rested the burden of proof on the defendant but the High Court, in an erroneous impression, has overturned the said finding.

27. Another aspect which impressed the High Court was the variance in the pleadings in the plaint and the evidence adduced by the plaintiffs. To appreciate the said conclusion, we have keenly perused paragraphs 6 and 7 of the plaint and the evidence brought on record. It is noticeable that there is some variance but, as we perceive, we find that the variance is absolutely very little. In fact, there is one variation, i.e., at one time, it is mentioned as Rs.6,64,670 whereas in the pleading,

it has been stated as Rs.6,24,670 and there is some difference with regard to the date. In our considered view, such a variance does not remotely cause prejudice to the defendant. That apart, it does not take him by any kind of surprise. In Celina Coelho Pereira (Ms) and others v. Ulhas Mahabaleshwar Kholkar and others[7], the High Court had non-suited the landlord on the ground that he had not pleaded that the business of the firm was conducted by its partners, but by two other persons and that the tenant had parted with the premises by sub-letting them to the said two persons under the garb of deed of partnership by constituting a bogus firm. This Court observed that there is substantial pleading to that effect. The true test, the two-Judge Bench observed, was whether the other side has been taken by surprise or prejudice has been caused to him. In all circumstances, it cannot be said that because of variance between pleading and proof, the rule of secundum allegata et probate would be strictly applicable. In the present case, we are inclined to hold that it cannot be said that the evidence is not in line with the pleading and in total variance with it or there is virtual contradiction. Thus, the finding returned by the High Court on this score is unacceptable.

28. The next aspect which requires to be addressed is whether the books of accounts could have been rejected by the High Court on the ground that the entries had not been proven due to dispute of signatures solely on the foundation that the plaintiff had not examined the handwriting expert when there was a denial of the signature. We have already dealt with the factum of signature, the pleading and the substance in the evidence. The plaintiff No. 2, his accountant and other witness have categorically stated that the books of accounts have been maintained in the regular course of business. The same has not been disputed by the defendant. In such a circumstance, we may profitably reproduce a few lines from Commissioner of Income Tax, Delhi v. Woodward Governor India Private Limited[8]: -

> "One more principle needs to be kept in mind. Accounts regularly maintained in the course of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable."

29. Applying the said principle to the pleadings and the evidence on record, we find no reason that the books of accounts maintained by the plaintiff firm in the regular course of business should have been rejected without any kind of rebuttal or discarded without any reason.

30. In view of the aforesaid analysis, we conclude and hold that the High Court has erroneously recorded that the findings returned by the courts below are perverse and warranted interference and, therefore, the judgment rendered by it is legally

unsustainable and, accordingly, we allow the appeal, set aside the judgment of the High Court and restore that of the courts below. In the facts and circumstances of the case, there shall be no order as to costs.

[1] (2006) 5 SCC 558
[2] (2004) 9 SCC 468
[3] AIR 1964 SC 529
[4] AIR 1964 SC 136
[5] AIR 1964 SC 538
[6] (2003) 8 SCC 673
[7] (2010) 1 SCC 217
[8] (2009) 13 SCC 1