

(2010) 11 P&H CK 0348

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1941 of 2010

Jawala Singh and Others

APPELLANT

Vs

Kashmiri Lal Parvinder Kumar -
Commission Agents

RESPONDENT

Date of Decision: Nov. 12, 2010

Acts Referred:

- Limitation Act, 1963 - Article 1, 19

Citation: (2011) 162 PLR 224

Hon'ble Judges: L. N. Mittal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

L. N. Mittal, J.

Defendants Jawala Singh and his two sons having remained unsuccessful in both the courts below have filed the instant second appeal.

2. Respondent Plaintiff - a Commission Agent filed suit against Defendants-Appellants for recovery of Rs. 1,36,335/-alleging that the Defendants, as farmers, used to sell their agricultural produce at the shop of the Plaintiff and they used to borrow amounts from the Plaintiff. On 12.07.2001, Defendant No. 1 borrowed Rs. 1,03,000/-from the Plaintiff and signed entry in the account books of the Plaintiff. Subsequently, Defendants borrowed some small amounts on different dates by signing bahi entries and lastly, Defendant No. 2 borrowed Rs. 430/-on 03.01.2002. Defendant No. 1 also deposited various amounts on different dates from 09.05.2002 till 15.05.2004. Ultimately, principal amount of Rs. 51,335/-remained due from the Defendants to the Plaintiff. In addition thereto, Plaintiff claimed Rs. 85,000/-as interest till filing of the suit @ 24% per annum. The Plaintiff accordingly filed suit for recovery of Rs. 1,36,335/-with further interest @ 24% per annum from the date of filing of suit till recovery.

3. Defendants controverted the plaint allegations. They denied having visited the shop of the Plaintiff or having opened any account with the Plaintiff. Allegations regarding borrowing of amounts and depositing of some amounts, as pleaded by the Plaintiff, were also controverted. It was alleged that Defendants never borrowed any amount from the Plaintiff nor deposited any amount with the Plaintiff and no amount is due from the Defendants to the Plaintiff. Various other pleas were also raised including the plea of bar of limitation.

4. Learned Additional Civil Judge (Senior Division), Dabwali, vide judgment and decree dated 26.11.2009, decreed the Plaintiff's suit for recovery of principal amount of Rs. 51,335/-with interest thereon @ 6% per annum from the date of institution of suit till recovery. First appeal preferred by Defendant No. 1 alone has been dismissed by learned Additional District Judge, Fast Track Court, Sirsa, vide judgment and decree dated 19.04.2010. Feeling aggrieved, all the three Defendants have filed the instant second appeal.

5. I have heard learned Counsel for the parties and perused the case file.

6. Learned Counsel for the Appellants contended that the suit is barred by limitation as according to Plaintiff's version, last amount was borrowed by Defendant No. 2 on 03.01.2002, whereas the suit was filed on 19.08.2005 i.e. after expiry of limitation period of three years.

7. Learned Counsel for the Appellants relied on various judgments namely [Kesharichand Jaisukhal Vs. The Shillong Banking Corporation](#), [The Hindustan Forest Company Vs. Lal Chand and Others](#), [Roshan Lal Kuthiala and Another Vs. Raja Rana Yogendra Chandra and Others](#), Amar Company v. Radhey Mal Ram Lal reported as (2009) PLR 606, Kanchipati Ramunaidu v. Sri Srinivas Cloth Emporium reported as 1996 (2) CCC 562 (A.P.) and [Simplex Manufacturing Company \(Private\) Ltd. Vs. The Hindustan Tools Mfg. Co. Ltd. \(In Liquidation\)](#), to contend that it was not open, mutual and current account between the parties and therefore, the limitation period would not commence from the last transaction.

8. On the other hand, counsel for Plaintiff-Respondent, relying on a judgment of this Court in the case of Lehri Singh v. Sawan Traders (India) reported as 2009 (4) RCR 379, contended that limitation period would start from the last payment made by Defendants and therefore, the suit is within limitation.

9. I have carefully considered the rival contentions. Even taking the plaint allegations to be at face value, the suit is not within limitation. As noticed herein above, Defendant No. 1 allegedly borrowed Rs. 1,03,000/-from the Plaintiff on 12.07.2001. Thereafter, only small amounts were borrowed from time to time till 03.01.2002, as detailed in paragraph 4 of the plaint. No amount was advanced thereafter by Plaintiff to the Defendants. On the other hand, thereafter, only some payments were made by the Defendants on different dates from 09.05.2002 till 15.05.2004. It is thus manifest from the averments made in paragraph 4 of the plaint regarding all

the transactions between the parties that the account in question was not open, mutual and current account between the parties. For an account to be open, mutual and current account between the parties, there have to be reciprocal obligations - sometimes credit being in favour of one party and at other times credit being in favour of the other party. It should not be one way traffic for an account to be open, mutual and current. In the instant case, however, the Defendants were never creditors. The Defendants were always debtors. The Plaintiff advanced various amounts to the Defendants, who only made part payment thereof and always some amount remained due from the Defendants to the Plaintiff. Consequently, by no stretch of imagination, account between the parties can be said to be open, mutual and current account within the meaning of Article 1 of the Schedule to the Limitation Act, 1963. Consequently, judgment in the case of Lehri Singh (supra), relied on by learned Counsel for the Respondent, is not applicable. On the contrary, in view of various judgments relied on by counsel for the Appellants, as noticed herein before, in the instant case, account between the parties was not mutual, open and current and therefore, Article 1 of the Schedule to the Limitation Act, 1963 is not applicable to the instant case. The limitation period of three years, therefore, commenced from the dates of advancement of loans. As noticed herein above, substantial principal amount claimed by the Plaintiff had been advanced on 12.07.2001 and the suit was filed on 19.08.2005 i.e. after more than four years, whereas the limitation period was three years only. Even the last amount of loan was taken by Defendant No. 2 on 03.01.2002 and the suit was filed more than 03 years and 07 months thereafter. Thus, the suit is clearly barred by limitation.

10. It may be mentioned that while making part payments, Defendants did not sign the entries regarding the said payments, although they had signed the entries while borrowing the amounts from the Plaintiff. Consequently, benefit of Section 19 of the Limitation Act, 1963 is also not available to the Plaintiff in the instant case.

11. Following substantial question of law arises for determination in the instant second appeal:

Whether suit is barred by limitation and finding of the courts below to the contrary is perverse and illegal and unsustainable ?

12. For the reasons already recorded, it is held that the suit is patently barred by limitation and the finding of the courts below to the contrary is legally unsustainable being perverse and illegal. Substantial question of law framed herein above is accordingly answered in favour of the Appellants.

13. As a necessary upshot of the discussion aforesaid, the instant second appeal is allowed. Judgments and decrees of the courts below are set aside and suit filed by the Plaintiff-Respondent stands dismissed. The parties are, however, left to suffer their respective costs throughout.