Before Shekher Dhawan, J

DARSHAN SINGH — *Appellant*

versus

BABU RAM SURINDER PAL COMMISSION AGENT— *Respondent*

RSA No. 6285 of 2014

March 17, 2015

Indian Evidence Act, 1872 — S.34 — Negotiable Instruments Act, 1881 — S.138 — Code of Civil Procedure, 1908 — S.34 — Limitation Act, 1963 — S.12 — Punjab Registration of Money Lender's Act, 1938 — S.5. — Suit for recovery of Loans — Evidentiary Value — Limitation period — Plaintiff firm had running account with defendant — Defendant borrowed a sum which was to be repaid along with interest — Defendant failed to make payment of principal amount and interest despite demand — Suit for recovery filed — Defendant denied fact that he ever borrowed sum — Held that, defendant put his signatures in accounts books as token of its correctness of borrowings — Same entries were endorsed by wife of defendant and one witness — Accounts books were subject to inspection by Income Tax and Sales Tax Authorities for assessment purpose — Court of First Instance rightly came to conclusion that simple denial on part of defendant could not be made basis to disprove evidence adduced by plaintiff which had evidentiary value — Further, sum was borrowed on 6.5.2004 and, hence, period of limitation was to start from 7.5.2004 and period of limitation expired on 6.5.2007 which was a holiday; thus suit filed on 7.5.2007 was well within period of limitation — There was no error on part of Court of first Appeal.

Held, that in the case in hand, plaintiff had come with a specific plea that the books of account are being regularly maintained in the ordinary course of business and the same are subject to inspection by Income Tax and Sales Tax Authorities for assessment purpose. The same has got evidentiary value as required under Section 34 of the Code of Civil Procedure. However, it is not the case of plaintiff that any complaint was filed under Section 138 treating the books of account to be negotiable instruments. Both the Courts below have returned the finding that defendant had borrowed a sum of ₹ 1,30,400/- on 6.5.2004 and defendant had put his signatures in the accounts books

in token on its correctness. The same entries were endorsed by the wife of defendant and witness Maghar Singh. Learned Court of First Instance had rightly come to the conclusion that simple denial on the part of the defendant cannot be made basis to disprove the oral and documentary evidence adduced by the plaintiff.

(Para 12)

Further held, that as regard to limitation period for filing the suit for recovery, learned Court of First Appeal had rightly come to the conclusion that a sum of ₹ 1,30,400/- was borrowed on 6.5.2007. The period of limitation was to start from 7.5.2004 in the case in hand and the period of limitation expired on 6.5.2007 which was a holiday. Thereafter, the suit was filed on 7.5.2004 and as such, the suit was well within the period of limitation and there is absolutely no illegality or error on the part of learned Court of First Appeal while coming to the said conclusion.

(Para 13)

Further held, that in view of the above discussion, the present appeal is without any merit and the same stands dismissed.

(Para 14)

Kanishk Lakhanpal, Advocate for Mr. Ranjan Lakhanpal,
Advocate for the appellant.

SHEKHER DHAWAN, J.

(1) Present regular second appeal has been filed against judgment and decree dated 23.08.2014, whereby, appeal filed against judgment and decree dated 19.03.2013, passed by Additional Civil Judge, (Senior Division), Malerkotla was accepted.

(2) For the sake of convenience, parties are being referred to as per their status before Courts below.

(3) Detailed facts of the case have already been recapitulated in the judgments of the Courts below. However, brief facts, for the purpose of decision of present appeal are that plaintiff-firm filed suit against defendant appellant for recovery of ₹2,00,816/- which includes ₹1,30,400/- as principal and ₹70,416/- as interest w.e.f. 06.05.2004 to 05.05.2007 @ 18% per annum. Plaintiff firm was having running account with defendant and appellant-defendant used to sell his crops at the shop of plaintiff. The entries in the accounts books i.e. *'ROKAR BAHI'* and ledger were being recorded in the ledger. The accounts

books are being produced before Sales Tax and Income Tax Authorities for assessment of tax. On 06.05.2004, defendant borrowed a sum of ₹1,30,400/- in cash which was to be repaid along with interest @ 18% per annum. Relevant entry was recorded in the accounts books of the firm and the same was signed by defendant in Punjabi. His wife Harbans Kaur along with Maghar Singh also signed the same as witnesses. Defendant failed to make the payment of principal amount and interest despite demand and as such, present suit for recovery before the Court of First Instance.

(4) Defendant contested the suit thereby denying all the averments of the plaint. Defendant denied the fact that he had ever borrowed a sum of ₹1,30,400/- or his wife and Maghar Singh ever signed relevant entries in the books of accounts of plaintiff. He sold his crops at the shop of plaintiff-firm up to *'HARRI 2004'*, and thereafter, he stopped selling his crops as the dealing of the plaintiff was not fair. He had secured all the accounts of the plaintiff-firm. However, plaintiff-firm had obtained signatures of defendant and his wife in the accounts books when he had received the payment of the crops.Just to take revenge, defendant had stopped selling his crops at his shop, plaintiff manipulated bogus entries and suit has been filed just to pressurize and harass the defendant. The entries in the accounts books are not admissible under Section 34 of the Evidence Act. The payment of more than ₹50,000/- could be made only through cheque or draft and that is not the case of plaintiff-firm. So plaintiff is not entitled to recover any amount on account of principal and interest and the suit deserves dismissal.

(5) On facts following issues are framed and settled by Court of First Instance and parties were put to trial:-

1) Whether defendant borrowed a sum of ₹1,30,400/-from the plaintiff on 06.05.2004 and an entry was made regarding the same in the account books of the plaintiff firm? OPP

2) Whether the plaintiff firm maintains the account books in due course of business? OPP

3) Whether the entry dated 06.05.2004 in the account book of the plaintiff firm is forged and fabricated one? OPD

4) Whether the suit is within limitation? OPP

5) Whether the plaintiff is entitled to recovery the suit amount from the defendant? OPP

6) Whether the plaintiff is entitled to recover any interest, if so, at what rate? OPP

7) Relief.

(6) Both the parties led their respective evidence and the learned Court of Fit Instance decided issue Nos.1, 2 and 3 in favour of the plaintiff that plaintiff has been able to prove that defendant Dahan Singh had obtained cash loan/advance of ₹1,30,400/- on 06.05.2004 from the plaintiff. But the suit was dismissed on the ground that the same was not filed within the period of limitation. However, while recording finding under issue Nos.4 to 6, Court of Fit Instance returned the finding that suit was not filed within period of limitation i.e. 3 year from 06.05.2004 and, consequently, the suit was dismissed.

(7) Plaintiff-firm filed appeal before Court of Additional District Judge, Sangrur and learned Court of First Appeal reveed the finding of Court of Fit Instance on the point of limitation while recording the finding that the suit has been filed within limitation period.

(8) Being aggrieved of passing of judgment and decree dated 23.08.2014 by Fit Appellate Court, defendant has come by way of present regular second appeal.

(9) At the time of arguments, Mr. Kanishk Lakhanpal, learned counsel for the appellant took the plea that the learned Court below wrongly recorded the finding as regard to advancement of loan and admissibility of entries in the books of accounts of plaintiff-firm. As per learned counsel for the appellant, plaintiff firm was not having any licence to carry on the money lending business as required under Punjab Registration of Money Lender's Act, 1938 (also Applicable to Haryana). Learned counsel for the appellant further took the plea that books of accounts as being maintained by plaintiff firm cannot be made basis for proceeding under Section 138 of Negotiable Instruments Act as well. On this point, learned counsel for the appellant has placed upon judgment of this Court in ***Nai Dass*** *versus* ***Surender***[1] and prayed that present appeal be accepted and judgment and decree dated 23.08.2014, passed by the Court of Fit Appeal be set aside.

(10) As in this case, both the Courts below have already appreciated the oral as well as documentary evidence available on file, it is a simplicitor case of appreciation of evidence whether defendant had taken a loan/advance from plaintiff firm and the same was to be

[1] 2015 (1) RCR (Civil) 108

repaid along with interest or not. The findings of facts have been recorded by both the Courts below after appreciating the evidence available on file. There is absolutely no substantial question of law involved in this case and as such, the present regular second appeal is not maintainable.

(11) ***In Santosh Hazari*** *versus* ***Purushottam Tiwai (Dead) by LRs.***[2]**,** Hon'ble Supreme Court observed that if from the judgment and memorandum of second appeal, it is made out that a substantial question of law is involved between the parties, the Court is under a statutory obligation to give an opportunity to the appellant to frame such a question for the consideration of the Court.

(12) I have gone through the above referred judgment of this Court in case Nai Dass *versus* Surender *(supra)* and of the view that the facts of the case in hand are entirely distinguishable. In the case in hand, plaintiff had come with a specific plea that the books of accounts are being regularly maintained in the ordinary coue of business and the same are subject to inspection by Income Tax and Sales Tax Authorities for assessment purpose. The same has got evidentiary value as required under Section 34 of the Code of Civil Procedure. However, it is not the case of plaintiff that any complaint was filed under Section 138 treating the books of accounts to be negotiable instruments. Both the Courts below have returned the finding that defendant had borrowed a sum of ₹1,30,400/- on 06.05.2004 and defendant had put his signatures in the accounts books in token on its correctness. The same entries were endoed by the wife of defendant and witness Maghar Singh. Learned Court of Fit Instance had rightly come to the conclusion that simple denial on the part of the defendant cannot be made basis to disprove the oral and documentary evidence adduced by the plaintiff.

(13) As regard to limitation period for filing the suit for recovery, learned Court of Fit Appeal had rightly come to the conclusion that a sum of ₹1,30,400/-was borrowed on 06.05.2004. The period of limitation was to start from 07.05.2004 in the case in hand and the period of limitation expired on 06.05.2007 which was a holiday. Thereafter, the suit was filed on 07.05.2007 and as such, the suit was well within the period of limitation and there is absolutely no illegality or error on the part of learned Court of Fit Appeal while coming to the said conclusion.

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[2] 2001 (2) JT 407

(14) In view of the above discussion, the present appeal is without any merit and the same stands dismissed.

M.Jain

Before Kuldip Singh, J

UNION OF INDIA — *Appellant*

versus

KRISHNA DEVI AND OTHERS —*Respondents*

FAO No. 4444 of 2014

March 30, 2015

Railways Act, 1989 — Ss.123 & 124-A — Train accident — Compensation — Strict liability — Deceased tried to board a train — Since there was lot of rush in train, he slipped from train and fell between platform and train and died — Railway Claims Tribunal awarded compensation — Railways argued that act of deceased would not fall within definition of 'untoward incident' and receiving injury while trying to board a train, which was at slow speed amounted to 'self inflicted injury' — Held, that, though injury in present case was out of rash act of deceased as he was trying to board a train which had started moving, Section 124A lays down strict liability or no fault liability in case of railway accidents — Hence, if a case comes within purview of Section 124A, it is wholly irrelevant as to who was at fault — Deceased was a bona fide passenger and act of slipping from train and falling between platform and train would fall within definition of 'untoward incident' — Compensation was correctly awarded to claimants.

Held, that section 124-A of the Railway Act contained a *non obstante* clause laying down that 'notwithstanding' anything contained in any other law, the railway is liable to pay compensation to such an extent as may be prescribed and to that extent only for loss occasioned by death or injury to a passenger as a result such 'untoward incident'.

(Para 8)

Further held, that The Hon'ble Apex Court examined the case law on the point and after perusal of Sections 129 and 124-A of the Railway Act, observed as under:

> *"16. The accident in which Smt. Abja died is clearly not covered by the proviso to section124A. The accident did occur*