

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.1236 of 2012(O&M)

Date of Decision:-15.11.2013

M/s Saini Rice & General Mills through its Partners.

.....Appellants.

Versus

M/s Namberdar Traders Commission Agents through its partners.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. GPS Bal, Advocate for the appellants.

Mr. M.S. Longia, Advocate for the respondents.

JASWANT SINGH, J.

CM No.3297-C of 2012

This is an application seeking exemption for making good the court fees by granting of three months time to the appellants.

As per the application, it has been averred that due to bad financial circumstances, the Court fees cannot be paid at present and therefore, three months time be granted to the applicants. The present appeal was initially filed on 29.02.2012 and after certain objections were raised by the registry, the same was refilled again on 7.3.2012. From 7.3.2012 till today the said application has not been decided. In these

circumstances, and especially in view of the fact that more than one year and nine months have passed since the filing of the said application and still the counsel has not made good the court fees, the said application is rejected and it is directed that the applicant shall make good the court fees within two months from the receipt of the order and in case of failure to comply with the said order, the court fees be recovered from him by the Authorities concerned in a similar manner in which land revenue is recovered.

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Although the court fees is yet to be paid still, the appeal was heard on merits so that ends of justice are met, if the appellants are able to make out a case for themselves.

Defendants/appellants are in second appeal through its partners against the concurrent findings returned by the courts below, whereby the suit filed by the respondent/plaintiff for recovery with interest of amount of Rs.12,42,226.78/- along with future interest of 18% per annum was decreed for Rs.8,13,149.45/- along with interest @ 12% per annum w.e.f. 5.11.2000 to 8.10.2003 as well as future pendente lite interest till realization by the learned Civil Judge(Sr. Divn.), Rupnagar vide its judgment and decree dated 20.12.2010 and the appeal preferred by the appellants was dismissed with costs by the learned Additional District Judge(Fast Track Court), Rupnagar vide its judgment and decree dated 01.12.2011.

As per the case set out by the plaintiff, defendant/appellant had purchased paddy from October 2000 to November 2000 to the tune of

Rs.8,13,149.45/- and he said amount was shown by the plaintiff firm in its income tax returns as well as other documents.

Upon notice, defendant firm had denied that any amount was left to be paid and it was stated that the entire amount has already been paid and the documents showing outstanding amount are forged. It was further stated that the amount was paid between 4.3.2002 to 24.03.2004.

From the pleadings of the parties issues were framed. Both sides lead their evidence in support of their respective claims and after appreciating their evidence learned trial Court decreed the suit and findings thereof were affirmed by the learned lower Appellate Court. Hence the present second appeal.

I have heard learned Counsel for the parties and have also gone through the case file carefully with their able assistance.

Learned Counsel for the appellant has argued that after filing of the suit, the entire payments have been made and receipts were duly executed and proved by the report of handwriting expert DW-2 Inderjit Singh, who had categorically stated that receipts contained the signatures of one of the partners of the plaintiff firm, who is also the plaintiff.

On the other hand, learned Counsel for the respondent has argued that the courts below have rightly discarded the evidence of the handwriting expert and have held that no amount stood paid by the defendants and thus no interference is warranted by this Court in the findings returned by the Courts below.

After hearing learned Counsel for the parties and having gone through the case file carefully with their able assistance, this Court

is of the considered view that the present second appeal is devoid of any merit and the same deserves to be dismissed.

It is evident from the record that no doubt DW-2 Inderjit Singh had given a report that the receipts Ex.D-1 to D-46 bears the signatures of Swaran Singh but there is no corroborating evidence led by the defendant which could say that whether these documents were signed by Swaran Singh acknowledging the amount paid by the defendant-appellant(firm). Furthermore, perusal of the file reveals that the defendants/appellants have not been able to show any ledger/cash books regarding the payment of Rs.8,13,149.39/- given by them to the plaintiff firm, although the fact of maintenance of a ledger and cash book has been admitted by the defendant/appellant(firm). Furthermore, a perusal of testimony of DW-1 Bahadur Singh would show that he has no knowledge about the liquid flow of money of the defendant/appellant firm and neither, he is the author nor a witness to the receipts Ex.D-1 to Ex.D-46. The author of these documents is DW-4 Jaswant Singh, who strangely enough, only tendered his examination in chief and did not turn up for his cross examination. Thus, his testimony cannot be read into evidence for any purpose whatsoever. In view of this overwhelming evidence against the defendant/appellant, report of the handwriting expert solely cannot be relied upon by this Court at the time of deciding of the matter because the entire evidence has to be appreciated and it is matter of common knowledge that general handwriting experts tow the line of the party that engages it.

In view of the above, finding no question of law, much less

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substantial question of law arising for determination in the present second appeal, the same is hereby dismissed.

**(JASWANT SINGH)
JUDGE**

November 15, 2013
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