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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-365-2021 (O&M)

Date of Decision : 27.09.2024

M/s Jain Packers & Anr

... Appellant(s)

Versus

M/s Satyam Industries Pvt. Ltd. & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Lakshay Bajaj, Advocate for the appellants.

Mr. Ashwani Talwar, Advocate for the respondents.

ALKA SARIN, J. (Oral)

1. The present regular second appeal has been preferred by the plaintiff-appellants challenging the judgment and decree dated 08.02.2021 passed by the First Appellate Court reversing the judgment and decree dated 06.09.2018 passed by the Trial Court.

2. Brief facts relevant to the present *lis* are that M/s Jain Packers through its proprietor - Sanjay Jain - filed the present suit impleading M/s Jain Packers through its proprietor - Sanjay Jain, and Mr. Sanjay Jain, Proprietor of M/s Jain Packers as plaintiff Nos.1 and 2, respectively. It was the case set up that defendant-respondent Nos.2 and 3 were the directors of defendant-respondent No.1 - M/s Satyam Industries Pvt. Ltd. - and the plaintiff No.2 - Sanjay Jain - was running his business in the name and style of M/s Jain Packers at Jattal Road, Panipat, District Panipat. The plaintiff-appellants were dealing in the business of HDPE fabrics and they maintained regular accounts

in the usual course of business. The plaintiff-appellant No.2 was responsible for dealings of plaintiff-appellant No.1 individually and also on behalf of plaintiff-appellant No.1. Defendant-respondent Nos.2 and 3 being directors of defendant-respondent No.1 visited the shop of the plaintiff-appellants and purchased HDPE fabrics on 01.07.2012 worth Rs.2,14,081/-. It was further averred that the defendant-respondents had previous business transactions with the plaintiff-appellants for the past several years. The defendant-respondents were purchasing on credit basis and making payments later. It was further averred that defendant-respondent Nos.2 and 3 made payment on behalf of defendant-respondent No.1 by cheque for a sum of Rs.2,11,337/- on 01.07.2012 for a total outstanding amount of Rs.2,14,081/- and a sum of Rs. 2,334/- remained as balance amount. Thereafter, vide Bill No.713 dated 12.07.2012 defendant-respondent Nos.2 and 3 further purchased HDPE fabrics for Rs.2,17,684/- and total amount due against the defendant-respondents became Rs.2,20,028/- as on 12.07.2012. It was agreed between the parties that the interest would be charged @ 24% per annum on the bill remaining unpaid after 15 days from the date of delivery. The plaintiff-appellants are stated to have demanded the said amount with interest from the defendant-respondents several times but the same was not paid. A legal notice in this regard was sent on 23.06.2014. However, since the payment was not made, hence, the suit. The defendant-respondents herein filed a joint written statement controverting the claim of the plaintiff-appellants as raised in the plaint. On merits the defendant-respondents admitted that defendant-respondent Nos.2 and 3 were directors of defendant-respondent No.1. The

defendant-respondents, however, denied ever visiting the shop of the plaintiff-appellants and also denied making any purchase of HDPE fabrics from the plaintiff-appellants on 01.07.2012 or subsequently vide bill No.713 dated 12.07.2012. The defendant-respondents also denied making any payment of Rs.2,14,081/- on 01.07.2012 and also the existence of an agreement regarding the rate of interest on unpaid bills. No rejoinder was filed.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to a decree for recovery of Rs.2,20,028/- as prayed for in the head note of the plaint ? OPP
2. Whether the plaintiff has not come before the court with clean hands and has suppressed and concealed the true and material facts from this Court ? OPD
3. Relief.

4. The Trial Court decreed the suit vide judgment and decree dated 06.09.2018. Aggrieved by the same an appeal was preferred by the defendant-respondents. The First Appellate Court vide judgment and decree dated 08.02.2021 allowed the appeal and dismissed the suit holding that plaintiff-appellant No.2 had claimed himself to be sole proprietor of plaintiff-appellant No.1 and the evidence led by the plaintiff-appellants was also to the same effect however the documentary evidence produced on the file everywhere records the plaintiff-appellants as HUF be it in the application for importer

exporter certificate numbers (Ex.PW4/A and Ex.PW4/B), Pan Card or other account documents. It was further noticed that during the pendency of the suit an application for amendment was filed before the Trial Court which was dismissed vide order dated 26.09.2017 and against the said order a revision petition was preferred being CR-7524-2017 which was also dismissed vide order dated 31.05.2018. The said order attained finality inasmuch as the same was not challenged further by the plaintiff-appellants herein. It was further held by the First Appellate Court that no transaction had taken place between M/s Jain Packers Proprietorship Firm through its sole proprietor Sanjay Jain or with Sanjay Jain in his personal capacity. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellants would contend that only on the basis of hyper-technicalities the suit has been dismissed and that justice should prevail even though the pleadings do not support the case. It is further the contention of the learned counsel that all the evidence is in favour of the plaintiff-appellants.

6. *Per contra*, the learned counsel for the defendant-respondents would contend that not a single document was placed on the record showing any transaction between M/s Jain Packers Proprietorship Firm through its sole proprietor Sanjay Jain and that all the evidence led related to the HUF and that in the absence of any transaction between the parties, the suit has rightly been dismissed by the First Appellate Court.

7. I have heard the learned counsel for the parties.

8. In the present case the categorical case of the plaintiff-appellants

was that M/s Jain Packers Proprietorship Firm had sold HDPE fabrics to the defendant-respondents and some payments had been made against bills, however, certain payments remained. During the course of the evidence, various bills were produced on the record. However, not a single bill pertained to M/s Jain Packers Proprietorship Firm. Infact, the learned counsel for the plaintiff-appellants candidly admittedly that there is no firm by the name of M/s Jain Packers Proprietorship Firm. During the pendency of the proceedings an application for amendment was also filed for changing the name of plaintiff-appellant No.2 which application was dismissed by the Trial Court vide order dated 26.09.2017. Aggrieved by the same, a revision petition was preferred before this Court being CR-7524-2017 which was also dismissed vide order dated 31.05.2018. The said order attained finality inasmuch as the same was not challenged by the plaintiff-appellants.

9. The argument of the learned counsel for the plaintiff-appellants that justice should prevail irrespective of the pleadings deserves to be rejected. It is trite that in civil law no amount of evidence can be looked into in the absence of pleadings. In the present case the pleading itself was that the fabric had been purchased from the proprietorship firm whereas no such proprietorship firm actually is in existence. It is unbelievable that plaintiff-appellant No.2 did not know that the firm was not a proprietorship firm but an HUF firm. It has come on the record by way of evidence led by the plaintiff-appellants that Pan Card was also in the name of the HUF firm so was the importer exporter certificate as well as other account documents. In the absence of any transaction having taken place between M/s Jain Packers

Proprietorship Firm and the defendant-respondents, no fault can be found with the judgment and decree passed by the First Appellate Court.

10. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

27.09.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO