IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No.2727 of 2009(O&M)
Date of Decision: 14.10.2015.

Narinder Vij ....Appellant

VERSUS

Rita Jairath ....Respondent.

***

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Satish Singla, Advocate for
Mr. Prateek Mahajan, Advocate for the appellant.

Mr. A.S. Gill, Advocate for the respondent.

***

SNEH PRASHAR, J.

1. Assailing the judgment and decree dated 21.04.2009 passed by Learned Additional District Judge, Jalandhar, dismissing the appeal preferred by Narinder Vij-appellant/defendant, the instant regular second appeal was filed.

2. The facts that emerge from the record are as under:

Respondent/plaintiff-Rita Jairath (hereinafter referred to as plaintiff) filed a suit for recovery of an amount of Rs. 6,50,000/- from the appellant-defendant(hereinafter referred to as defendant) who is the sole proprietor of M/s Sunflag Knitwears Industrial Area, Jalandhar City. As per her pleadings the defendant was well known to her family. Her elder son Vanish Jairath had completed his education and was in search of a job. In the first week of August, 1996 the defendant himself offered to appoint Vanish Jairath as a sole distributor of his products provided she (plaintiff) deposited Rs. 5 lacs as security with him. He promised that the amount of security shall carry interest @ 15% per annum till business relations between them continued. Plaintiff pleaded that believing the representation of the defendant, she issued two cheques dated 10.08.1996 and 16.08.1996 for Rs.1,50,000/- and Rs.3,50,000/- respectively which were got duly encashed by the defendant.

The plaintiff further pleaded that despite deposit of Rs. 5 lacs as security by her with the defendant he did not appoint her son as sole distributor of his products. Whenever she approached him he put of the matter on one pretext or the other. Ultimately she served legal notice dated 04.02.1997 on him asking him to refund the amount of Rs.5 lacs with interest. The defendant did not respond to the notice but endorsed a copy of letter dated 28.03.1997 addressed to Mukesh Sehgal, brother of the plaintiff wherein he had raised a claim for supply of H Form by Mukesh Sehgal with regard to some transaction between him(defendant) and Mukesh Sehgal. Submitting that she had no concern with the dealings, if any, between Mukesh Sehgal and the defendant and that the defendant had no right to withhold her payment of Rs. 5 lacs, the plaintiff sought recovery of the amount paid by her with interest.

3. The defendant contested the suit, in the written statement filed by him he denied that he had ever suggested the plaintiff to appoint her son as a sole distributor of his products. According to him Mukesh Sehgal, real brother of the plaintiff, was having business dealings with him. An amount of Rs. 5 lacs paid by the plaintiff was deposited in the account of M/s Samvy Exports International Noida. After adjustment of an amount of Rs. 4,32,940/- outstanding in the account of M/s Samvy Exports, there is a credit of Rs.67060/- available in the account of the said firm.

4. Plaintiff filed replication controverting the objections raised by the defendant and reasserted her claim as putforth in the plaint. Issues were settled by learned trial Court. Both the parties adduced ocular as well as documentary evidence in support of their rival contentions.

5. Finding the claim of the plaintiff to be proved learned trial Court passed a decree for recovery of an amount of Rs. 5 lacs alongwith interest @ 9% per annum from 17.08.1996 till the realization of the decretal amount, in favour of the plaintiff vide judgment and decree dated 19.07.2007.

Feeling aggrieved by the judgment and decree dated 19.07.2007 passed by learned trial Court the defendant preferred an appeal which was dismissed by learned first appellate Court vide judgment dated 21.04.2009. Being still unsatisfied the defendant came up with this Regular Second Appeal.

6. Submissions made by Mr. Satish Singla, Advocate, learned counsel representing the appellant and Mr. A.S. Gill, learned counsel representing the respondent have been heard and the record has been perused.

7. Before going into the contentious issue it is important to note that the payment of Rs. 5 lacs by the plaintiff to the defendant vide two cheques dated 10.08.1996 and 16.08.1996 for Rs.1,50,000/- and Rs.3,50,000/- respectively was not denied by the defendant. The dispute between the parties is with regard to the cause for which the said amount was paid. According to the plaintiff the defendant had promised to appoint her son as sole distributor of his products, provided she deposited Rs. 5 lacs as security. The said amount of Rs. 5 lacs was to carry interest @ of 15%

per annum till the business relations continued between the defendant and her son. Accordingly, she issued two cheques amounting to Rs. 5 lacs drawn on State Bank of India, old Railway Road, Jalandhar which were got encashed by the defendant.

On the other hand the defendant alleged that the two cheques issued by the plaintiff were deposited in the account of M/s Samvy exports International, Noida, a firm of Mukesh Sehgal (plaintiff's brother) who was the sole proprietor. The amount outstanding in the account of the said firm was Rs.4,32,940/-. After adjustment of the said outstanding amount a credit of Rs.67060/- is available in the account of that firm.

8. Learned counsel for the defendant argued that Ex.D1/A is the letter written by Mukesh Sehgal to his sister-plaintiff from Singapore which proves that he had to pay a huge amount to the defendant. It was after receipt of the said letter and in response to the legal notice Ex.D1/B given by the defendant to M/s Samvy Exports that the plaintiff gave two cheques amounting to Rs. 5 lacs to the defendant to clear the debt of her brother-Mukesh Sehgal. Both the cheques were deposited in the account of M/s Samvy Exports. After adjustment of the due amount the remaining amount is still available in the account of M/s Samvy Exports.

9. There appears to be no force in the argument of learned counsel for the defendant. It may be true that the defendant was having some business dealings with Mukesh Sehgal, real brother of the plaintiff and as proved by him by producing ledger from 1995-96 onwards M/s Samvy Exports International, of which Mukesh Sehgal was the proprietor, had liability of payment of huge amount to the defendant, but no evidence could be led by the defendant to prove that plaintiff-Rita Jairath had any

connection with M/s Samvy Exports International or the business run by the said firm. Rather, in his cross-examination defendant-Narinder Vij admitted that he was having no business dealings with Rita Jairath or her husband. He even expressed ignorance whether M/s Samvy Exports is a proprietorship or a partnership concern but admitted that neither the plaintiff nor her husband is owner or partner of the said firm and it is owned by Mukesh Sehgal. He also admitted candidly that neither plaintiff-Rita Jairath had never approached him as Guarantor of her brother-Mukesh Sehgal nor she had ever given any undertaking to him in writing to pay the amount due against her brother.

It is further important to note that the sale representative of the defendant firm DW-3 Rajneesh Mehta deposed during his statement that the plaintiff had never placed any order with his firm nor any material was ever supplied to her. He also admitted that since no goods were supplied to the plaintiff there was nothing due against her in any account maintained by the defendant firm. Very fairly he admitted that the defendant firm could claim money from only the person to whom it had supplied the material.

10. As regards the letter Ex. DW1/A that too is of no help to the defendant as it neither creates any liability of the plaintiff nor extends any right to the defendant to claim the money due against Mukesh Sehgal from the plaintiff. The contents of the letter simply indicate that the scriber would clear all account of Narinder Vij (defendant) on his arrival. No doubt in the notice dated 09.04.1996 Ex. DW1/B given by the defendant to M/s Samvy Exports it was mentioned that a sum of Rs. 7,05,650/- had accumulated towards the said Export house but there was not a word to spell out that plaintiff-Rita Jairath had any link with the amount due against M/s Samvy

Exports or she had ever stood Guarantor to assure repayment of the due amount. There remains no doubt that the plaintiff-Rita Jairath was not under any liability to pay Rs. 5 lacs to the defendant firm. She also never owned the laibility of M/s Samvy Exports International run by her brother Mukesh Sehgal.

11. Since the cause narrated by the defendant for issuance of two cheques amounting to Rs. 5 lacs by the plaintiff could not be proved by him and it was established that the plaintiff had no liability of payment of any amount to the defendant, there is no reason why the deposition of the plaintiff should not be believed that the defendant had offered to appoint her son as a sole distributor of his products and as demanded by him the plaintiff had issued two cheques of Rs. 5 lacs for deposit as security. The question of the defendant having performed his part of the promise does not arise when in the present suit he all together denied that there was any such transaction between him and the plaintiff. In other words it is clear that because the defendant failed to appoint the son of the plaintiff as distributor, the plaintiff demanded back the amount of security paid by her and as he failed to return the amount the plaintiff was forced to file the present suit for recovery.

11. The arguments of learned counsel for the defendant that a decree for recovery could not be passed simply because of weakness in the evidence of the defendant, is not tenable. The plaintiff claimed recovery of the amount she had paid to the defendant by means of two cheques dated 10.08.1996 and 16.08.1996 for Rs.1,50,000/- and Rs.3,50,000/- respectively. The cheques were issued by the plaintiff in her individual capacity. The defendant admitted that he had got cheques encashed. As per

his own version he utilized the cheques to satisfy the liability of brother of the plaintiff towards him where as neither the money was paid for the said purpose nor he had any right to use the amount for the same. It was not his case that the plaintiff had any liability towards him. As such, the plaintiff has a right to recover the said amount from him.

12. Last but not the least learned counsel for the defendant argued that the suit for recovery by the plaintiff was not maintainable because there was no breach of contract between the plaintiff and the defendant. Even if for the sake of arguments it is accepted that the defendant had promised to appoint the son of the plaintiff as sole distributor of his products and had failed to do so. It was a promise with the son of the plaintiff which had allegedly been violated and only he could initiate a legal action in that regard.

Here again the argument of learned counsel for the defendant is of no merit. Section 2(d) of the Indian Contract act defines consideration to be an act done by the promisee or any other person at the desire of the promisor. In other hands, in the instant case, Narinder Vij is a promisor while Reeta Jairath is promisee. Even if her son Vanish Jairath is treated as the promisee, yet the act done by any person at the desire of the promisor constitutes a valid consideration entitling a promisee as well as that other person to sue for recovery of the consideration if the contract fails. In the instant case the money was paid by the plaintiff by issuing cheques from her own account.

Accordingly, both Rita Jairath and her son Vanish Jairath had equal legal right to recover the amount paid in lieu of the promise. In other words Rita Jairath had the locus standi to sue the defendant for recovery.

Thus, there being no perversity or illegality in the concurrent findings of learned trial Court and the appeal being devoid of merit is hereby dismissed.

(SNEH PRASHAR)
JUDGE

14.10.2015
rashmi