IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4481 of 2010 (O & M)
Date of Decision:16.02.2015

Central Traders, NIT Faridabad

....appellant

Versus

M/s Anurag Iron and Steel Co., Faridabad

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

1.Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Kul Bhushan Sharma, Advocate
for the appellant

Mr.Lokesh Sinhal, Advocate
for the respondent

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ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 30.08.2008. Appeal preferred against the said decree failed and was dismissed on 03.03.2010. This is how, plaintiff is before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiff, a decree for recovery of ₹1,51,404.90 ps. was prayed for, i.e. a sum of ₹ 1,08,146.50 ps. towards the principal amount and ₹ 43,258.40 ps.

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by way of interest @ 24% per annum from 29.10.1998 to June 2000. And future interest @ 24% per annum from the date of institution of the suit till its realisation. It was averred that the defendant had a running credit account in the account books maintained by the plaintiff and against their confirmed and valid orders, plaintiff supplied the defendant aluminium bearing scraps 44 bags i.e. 1966 Kgs. 300 gms. @ ₹ 55/- per kg., vide Bill No. 413 dated 29.10.1998, worth ₹ 1,08,146.50 ps. It was maintained that the defendant had acknowledged the liability qua payment of the said amount in their sales tax returns. Despite repeated requests by the plaintiff, on several occasions, defendant failed to make the payment. So much so, a legal notice dated 12.05.2000, was also served upon the defendant, in this regard, but to no avail. Thus, the suit.

In defence, it was pleaded, inter alia, that defendant did not have any running credit account in the account books maintained by the plaintiff. It was denied that pursuant to any confirmed order, plaintiff had supplied the alleged goods to the defendant. Thus, Bill No. 413, dated 29.10.1998, was a forged and fabricated document. Further, it was also denied that the defendant had acknowledged its liability in its sales tax returns. And, in case, plaintiff had shown any such entry in its sales tax returns, the same was false and was only an attempt to involve the defendant in the present litigation. As no goods, for the amount being claimed, were ever purchased by the defendant, thus, the question of any liability or payment to the plaintiff was wholly misconceived. Accordingly, the defendant prayed for dismissal of the suit.

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On a consideration of the matter in issue and the evidence on record, the courts below found that the document submitted by the defendant in sales tax department was proved by Kashmiri Lal (PW1), Inspector, Excise and Taxation Department, Faridabad and the entry of purchase, vide voucher No.413 amounting to ₹ 1,08,146.50 ps. was also proved. Cutting in Form ST 33 part-1 was apparent, which somehow indicates that this entry may relate to Bill No. 413 dated 29.10.1998, as claimed by the plaintiff, however, it was observed that the sales tax record (Ex.PW1/1) and Ex.DY, was only meant for tax purposes. But the said documents nowhere showed that the goods that were purportedly sold by the plaintiff were ever received by the defendant. Still further, in the year 1998, a tax exemption was available against filing of ST Form No.12A, but, in the entry against Bill No. 413 dated 29.10.1998, no such exemption was reflected, as the relevant column was left blank and this fact was admitted by Kashmiri Lal (PW1). Although, plaintiff claimed to have filed the sales tax return, but nothing was brought on record to prove that any return was actually filed and consequently, any tax was paid. As, had there been any sale, the plaintiff must have paid some tax also. But since no tax was paid, it could be presumed that there was actually no sale of goods i.e.aluminium bearing scraps. So much so,only a photocopy of the bill (Ex.PW2/6) was produced,and the original document was never brought on record. Thus,plaintiff failed to prove the Bill No.413 dated 29.10.1998. No evidence was led by the plaintiff to show that any order was placed by the defendant to supply the goods that were purported to have

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been sold by the plaintiff. Further, even if it was presumed that it was pursuant to an oral order, the goods were despatched, still plaintiff was required to prove that the goods were delivered and received by the defendant. No such receipt qua delivery of goods was brought on record. Vipin Dhingra (PW3), testified in his cross examination that there was no written purchase orders. He also conceded that there was no evidence to prove the delivery of goods to the defendant. He further stated that the bill in question (Ex.PW2/6) did not bear the signatures of the defendant. He only pleaded oral acceptance that was meaningless in law. No doubt, the plaintiff in support of his claim had examined Amar Pal Singh (PW2), record keeper, Office of Excise and Taxation Department, Faridabad, to prove the transaction of Bill No. 413 dated 29.10.1998 and the order dated 12.12.2002 (Ex.PW2/2) that was alleged to have been passed by Smt. Asmita Chaudhary, Assessing Authority. But his testimony was not read into as the said witness was never produced for the purpose of cross examination. Still further, plaintiff never stepped into witness box in support of its claim. Vipin Dhingra (PW3), Manager and power of attorney holder, could, at the most, depose qua the facts that were in his knowledge. This was never his version that the bill (Ex.PW2/6), though not admissible, was issued by him in his handwriting. He also could not explain as to who issued the said bill. Plaintiff, though, claimed to have a running credit account of the defendant, but failed to prove the necessary account books that could be said to have been maintained in the regular course of business. Had it been so, the plaintiff must have shown this in his

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account books in the year 1999-2000 and 2000-2001, but, what was brought on record by the plaintiff was an entry in his account pertaining to the defendant for the period 01.04.1998 to 31.03.1999 and the amount of sale was shown to be Rs.1,08,146.50 and sales tax was shown to have been paid. However, again, plaintiff failed to prove that he ever paid any tax on the sale of goods amounting to ₹ 1,08,146.50 ps. Though, Amar Pal Singh (PW2), proved the copy of the ledger account (Ex.PW2/7), but the said witness completely failed to substantiate that the said account statement was a true copy from the books of account, regularly maintained by the plaintiff in the regular course of business. Plaintiff failed to examine the person who had purportedly made those entries in the account books of the plaintiff. That being so, it was concluded that from the evidence brought on record, plaintiff failed to prove that he had ever sold the goods worth ₹ 1,08,146.50 ps. to the defendant against credit. Consequently, the suit and, thereafter, even the appeal preferred against the said decree by the plaintiff was dismissed.

I have heard learned counsel for the parties and perused the records.

Learned counsel for the appellant simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration. No other argument was advanced. All what he has urged is that from the document Ex.PW1/1 and Ex.DY, it was proved that the plaintiff had actually supplied the goods to the defendant, pursuant to Bill No. 413 dated 29.10.1998.

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Per contra, learned counsel for the respondent submits that nothing was brought on record to prove that any such transaction was actually entered into between the parties. No evidence qua delivery of goods and its receipt by the defendant was ever led. And the documents that were being relied upon by the plaintiff, did not prove the said position.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

The first appellate Court, on an analysis of the document Ex.PW1/1 and Ex.DY, concluded that the said record was relevant for tax purposes and these documents did not even remotely show that the goods in question were actually sold and delivered to the defendant. As is made out from the records, in the year 1998, a tax exemption could be availed of against filing of Form No.ST-12A, but the entry against Bill No.413 dated 29.10.1998, in Ex.PW1/1, does not reflect any such tax exemption as the relevant column was left blank. The fact that was even conceded by Kashmiri Lal (PW1). Insofar as the entry incorporated in the document Ex.DY, there were apparent cuttings over the alleged entry and it could not be shown as to how it could be connected with Bill No. 413 dated 29.10.1998, vide which the goods were allegedly sold to the defendant. Ex facie, plaintiff never paid any tax qua the goods that were purportedly sold to the defendant. That being so, it could be safely presumed that there indeed was no sale of goods i.e.aluminium bearing scraps. As,

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had there been any sale, plaintiff most naturally would have paid sales tax too. Concededly, no order in writing was ever placed by the defendant upon the plaintiff to supply the aluminium bearing scraps. Claim of the plaintiff was precisely formed upon Bill No. 413 dated 29.10.1998 (Ex.PW2/6), but only a photocopy thereof was brought on record and the original was never proved. Plaintiff failed to lead any evidence to show that the goods in question were ever despatched to the defendant. In fact, no specific pleadings in this regard were set out in the plaint either. Likewise, nothing was brought on record to show that the defendant ever received any such goods. The bill (Ex.PW2/6) was neither signed by the defendant nor by his any authorised agent. In fact, bill (Ex.PW2/6) was a loose document and nothing was brought on record by the plaintiff to prove that it actually formed part of the bill book that was maintained by the plaintiff in due and regular course of business. Concededly, Amar Pal Singh-PW2, record keeper Office of Excise and Taxation, Faridabad, was never produced for the purpose of cross examination and thus, his testimony was rightly not looked into by the courts below. Vipin Dhingra-PW3, was concededly the Manager and power of attorney holder and thus, could only depose qua the facts those were in his knowledge. He conceded that the bill (Ex.PW2/6), was not issued by him in his handwriting. He also conceded that he had no knowledge as to who actually issued the said bill. He even conceded that defendant never acknowledged the receipt of the goods. Nothing was brought on record to show that defendant had a running credit account in the account books maintained by the plaintiff in the

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regular course of business. That being so, plaintiff apparently failed to prove that he indeed sold the aluminium bearing scraps to the defendant pursuant to Bill No. 413 dated 29.10.1998. Resultantly, the only and the inevitable conclusion could be the dismissal of the suit of the plaintiff.

Learned counsel for the appellant could not point out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

16.02.2015 **(ARUN PALLI)**
neenu **JUDGE**

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