IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1654 of 2013 (O&M)
Date of decision : 17.7.2015

Durga Charan ... Appellant

versus

Ghansyam Mittal ... Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. A. A. Pathak, Advocate, for the appellant.

Rajesh Bindal, J.

The plaintiff has challenged the judgment and decree of the learned Lower Appellate Court whereby that of the trial court was reversed and the suit for recovery filed by the appellant, was dismissed.

In the case in hand, the appellant, who is working as a contractor, filed the suit for recovery of ₹ 2,72,000/- along with interest, which he advanced for supply of bricks. It was alleged that neither the bricks were supplied nor the amount was returned. The suit was decreed by the learned Court below for recovery of ₹ 2,72,000/- along with interest. However, the judgment and decree of the trial Court was reversed in appeal filed by the respondent.

Learned counsel for the appellant submitted that receipt of amount, which was paid by cheque dated 14.6.2000 to the respondent, is not in dispute. It was paid as advance for supply of bricks for a project of construction, the contract for which was taken by the appellant. As neither the bricks were supplied nor despite repeated demands the amount was returned, the suit was filed for recovery. The submission is that the findings recorded by the learned Lower Appellate Court that the respondent had supplied the bricks to the appellant are perverse as the evidence led was not convincing. There is no receipt of any invoice or any other document produced by the respondent showing receipt of bricks by the appellant.

These were merely entries in the books of accounts of the respondent. The witness produced by the respondent could not state anything about the destination of the bricks supplied or the truck number. The appellant had a contract for construction in the campus of Kurukshetra University. If the bricks had been supplied in Kurukshetra University, there must have been entry at the gate, but no evidence was led to prove the same. Explaining the delay in filing the suit, learned counsel for the appellant submitted that no doubt the suit was filed at the fag end when the limitation was to expire, however, it was for the reason that the efforts were being made to settle the matter through other brick kiln owners. However, he could not refer to any material on record in support thereof.

After hearing learned counsel for the appellant, I do not find any merit in the present appeal. The findings recorded by the learned Lower Appellate Court cannot be said to be perverse in any manner whatsoever.

In the case in hand, the admitted case of the appellant is that ₹ 2,72,000/- were advanced to the respondent on 14.6.2000 for supply of bricks. The suit was filed on 11.6.2003, just three days prior to the expiry of period of limitation. There is no good reason as to why the appellant waited for three years to claim the amount from the respondent when the advance was given for supply of bricks for execution of a contract in June, 2000 only and as the case set up by the appellant is that the respondent failed to supply the bricks. There is no ledger account produced by the appellant on record showing the account of the respondent. Only the payment by cheque as alleged advance is sought to be claimed as the amount due. The stand of the respondent is that the bricks were duly supplied from June, 2000 to 27.8.2000. In support, he had produced the copies of his bills. On some of the bills, even vehicle numbers have also been mentioned. He had also produced his stock register showing reduction in his stock when the bricks were supplied to the appellant.

The learned Lower Appellate Court has noticed that register was duly certified by the District Food and Supply Controller as manufacturing of the bricks are to be accounted for. Copies of cash book and ledgers have also been produced on record by the respondent showing entry in his books of accounts regarding the amount on account of sale of bricks to the appellant. Despite this evidence being produced on record by the respondent, the appellant did not produce any evidence even in rebuttal by producing his ledger account showing that in his books of account there is no entry regarding receipt of bricks or that the amount is still shown to be recoverable from the respondent. It has been held by the learned Lower Appellate Court that books of accounts had been maintained by the respondent in his due course of business for which he was filing his statutory returns. Merely because, according to the appellant, the respondent had not been able to prove the destination of the bricks will not be sufficient to reject his books of accounts which contain the entries regarding sale of bricks made three years prior to the filing of the suit. It has further come on record in the cross-examination of the appellant that there was a dispute regarding payment of money by the appellant with Kirti Bhatta Kiln Company for which litigation was pending. The owner of Kirti Bhatta Kiln Company was related to the respondent.

For the reasons mentioned above, I do not find that the findings recorded by the learned Lower Appellate Court are perverse. No substantial question of law arises. The appeal is accordingly dismissed.

17.7.2015 (Rajesh Bindal)
vs Judge