

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

RSA No. 1591 of 2015
Date of decision : November 2, 2015

M/s Radha Krishan Flour Mills Pvt.Ltd.and others

..... Appellants

Versus

Rashmi Gupta and others

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Yogesh Goyal, Advocate
for the appellants.

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

Amit Rawal, J (oral).
CM No. 4432-C of 2015

This is an application under Section 5 of Limitation Act seeking condonation of delay in filing the appeal.

For the reasons stated in the application, which is duly supported by an affidavit, delay of 431 days in filing the appeal is condoned.

The application stands disposed of.

CM No.4431-C of 2015

This is an application under Order 44 Rule 1 CPC seeking permission to file the appeal as an indigent person and exemption from fixing the court fee.

Similar prayer was also made before the lower

appellate court and the same was granted.

In view of the above, the application is allowed as prayed for.

CM No. 13810-C of 2015

The application is allowed.

Annexure P-1 taken on record.

RSA No. 1591 of 2015(O&M)

The challenge in the present appeal is to the concurrent finding of fact. The suit filed by the respondent-plaintiff for a recovery of ₹12 lacs along with interest @ 6% per annum has been decreed.

Mr. Yogesh Goyal, learned counsel appearing on behalf of the appellants-defendants submits that as per the agreement to sell dated 5.11.2001 (Annexure P-1) attached with Miscellaneous application, the amount to be recovered was against the Company and not against defendant Nos. 2 to 4 whereas the decree has been passed against all. In essence, all the defendants have been held to return the sum received by them from the plaintiff, though, the relief of declaration was declined. Both the courts below did not notice the aforementioned fact. The liability has been fastened jointly and severally, thus, there is illegality and perversity, much less substantial question of law arise for adjudication by this Court.

I have heard learned counsel for the appellant and appraised the paper book.

It would be apt to reproduce the terms and conditions of the agreement to sell:-

“That, Pawan Sharma, Vinod Sharma sons of Om Parkash & Anita Sharma wife of Prem Kumar resident of Bank Street Nabha, Tehsil Nabha.

That we are owner and shareholder of our Firm M/s Radha Krishan Flour Mills Private Ltd., Focal Point, Nabha and this Firm has been registered under Fir No. 16-sic-dated 19.7.1995 and is owner-in-possession of the property vide Lease Deed Vasika No. 147 dated 23.4.1996 and this property is bearing No.B-11, Focal Point, Nabha, which contains Building, Machinery, Electricity Connection, Tampo and Two Motors of 15/15 Horse Power for the purpose of Flour Mill work and whole machinery and building connections are properly fitted, meaning thereby above Flour Mills is in working condition and have deal for the Building and whole machinery of the above firm for Rs.60,00,000/- (Sixty lakh), out of that ½ share will be our and ½ share of Smt. Rashmi Gupta wife of Inderjeet Gupta son of Ram Chandi resident of Heera Mehal Nabha and Sadhna Verma wife of Rajesh Kumar son of Hukam Chand resident of Pandusar, Nabha, Tehsil Nabha and sum of Rs.10,00,000/- (Ten Lakh) has been paid to us by Smt. Rashmi Gupta and Sadhna Verma to run the business through cheque and this amount will be used only to run the business and with this amount business will be brought into the running position and will not pay any interest on this amount and will not charge any rent for the building and out of above fixed amount, Smt. Rashmi Gupta and Sadhna Verma will pay us a sum of Rs. 30,00,000/-

(Thirty lakh) till 4.11.2004 and after payment of the above said amount Smt. Rashmi Gupta and Sadhna Verma becomes the owner-in-possession to the extent of ½ share of the Building, Machinery, Connection, Tempo, Licence etc. If Smt. Rashmi Gupta and Sadhna Verma will not pay the above said amount of Rs. 30,00,000/-(Thirty lakh) then in those circumstances, they will be shareholder to the extent of share as per the sum of Rs. 10,00,000/-(Ten lakh) but they will have no concern with the Building, Machinery and if there is any loan on the above building and machinery of any type, we are bound and responsible to pay back the same, or Smt. Rashmi Gupta etc. may make the payment of loan and can take share from the above cost, on which we will have no objection and upon payment of ½ share, Smt. Rashmi Gupta & Sadhna Verma can get the documents of ownership of building and machinery signed from us, we will have no objection to the same. Any profit or loss incurred from the business, we all are responsible as per amount given by us towards our share and both the parties are equally shareholder for the profit and loss from the above business and Wasika, license in connection to the above firm if any, copy of same will be given to Smt. Rashmi Gupta and Sadhna Verma and we are fully responsible for any dealing/transaction took place in connection to the above property prior to today.

*This has been reduced into writing so that it may remain proof and may use if need arisen.
Place: Nabha, Dated 5.11.2001*

<i>Witness</i>	<i>Parties to the agreement</i>	<i>Witness</i>
1. Manmohan Lal Sood son of Om Parkash resident of Bank Street Nabha Sd/- 5.11.201	Sd/- Pawan Sharma Sd/- Vinod Sharma Sd/- Anita Sharma (shareholders) in favour of Sd/-Rashmi Gupta Sd/- Sadhna Verma	2.Kaidarnath son of Sh. Harbans Lal resident of Nevi Basti Bank Street, Nabha Sd/- 5.11.2001

Sd/-
5.11.2001”

From the perusal of Annexure P-1, it is evident that the agreement has been signed between the individuals inasmuch as, there is no reference of passing of the resolution by the Company authorizing Pawan Sharma, Vinod Sharma and Anita Sharma to sign the agreement on behalf of the appellant. The terms and conditions of the agreement envisage that the respondent-plaintiff would invest a sum of ₹60 lacs. However, attorney had invested a sum of ₹10 lacs and the signatories to the agreement i..e defendant Nos. 2 to 4 had bound themselves to pay back the same as the said payment was taken as a loan.

The courts below found that the agreement has been admitted through the testimony of the attesting witnesses, much less no contrary evidence on behalf of the defendant has been lead to belie the genuinity and authenticity of the agreement.

I do not intend to differ with the finding rendered by both the courts below which is based on appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgment and decree of the appellate court.

No substantial question of law arise for

determination by this Court.

In view of what has been observed above, the appeal is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

November 2 , 2015
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