

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2592 of 2015 (O&M)
Date of Decision.19.12.2015

The Kanya Kumari District Cooperative Spinning Mills Limited
.....Appellant
Vs.
M/s Mahabir Cotton Factory
.....Respondent

Present: Mr. Roopak Bansal, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 570 days in filing and 83 days in refiling the appeal is condoned.
2. In a suit for recovery of amount by the plaintiff for goods supplied, the plea in defence was that the liability stood discharged by the defendant making supplies to three persons namely M/s Sri Uma and company, M/s Laxmi Agency and M/s Kannan Surgicals. Yet another payment was said to have been made directly to one Karuppaiah, a broker and agent of the plaintiff. The plaintiff denied that he had authorized the defendant to make any payments to any other person and further denied that any of those payments made by the defendant could constitute a valid discharge for the liability of the defendant to the plaintiff. The defendant produced all documents relating to supplies made to the companies and relied on his own *bahi* entries that showed that the defendant credited to itself the supplies effected to the various other companies as going for discharge of the liability due by the defendant to the plaintiff. Unless the

defendant was able to show a written authority allowing for the defendant to supply to other companies to constitute a discharge for the plaintiff or he had examined any of the persons to whom goods were supplied to show that they were making the payments to the defendant under instructions from the plaintiff, a plea of discharge cannot succeed. The two Courts below have declined to entertain the plea and restricted the plaintiff's claim itself only to portion of the suit claim to conform to the demand as made in the notice issued prior to the institution of the suit. I will find no error in the approach made by the Courts below and I will find nothing substantial as a point for intervention in the second appeal.

3. The defendant may take independently any action against any of the persons to whom the goods were supplied and from whom monies are due by suit or adopting a third party procedure contemplated under Order VIIIA CPC. If the defendant feels demnified by the decree obtained by the plaintiff and in such action the defendant will be at liberty to point out that the starting point of limitation would arise only from the time when the plaintiff secured a decree and when the liability was actually fastened and when they paid the money to the plaintiff. These observations are merely provisional and it cannot take away any plea that the respective persons to whom goods are said to have been supplied to plead for such contentions not true or that there is no liability to pay money to the defendant.

4. The second appeal is dismissed but with the above observations.

(K. KANNAN)
JUDGE

December 19, 2015
Pankaj*