IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-441-C-2014 in/and
RSA-192-2014 (O&M)
Date of Decision: June, 29, 2015

Harjinder Singh

......Appellant

Versus

M/s Devinder Nath Trading Co. and others

......Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.R.L.Sharma, Advocate
for the appellant.

....

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

....

NARESH KUMAR SANGHI, J.

CM-441-C-2014

Prayer in this application filed under Section 151, CPC, is for condonation of delay of 127 days in refiling the appeal.

After hearing the learned counsel for the applicant and going through the contents of the application, which is duly supported by an affidavit, delay of 127 days in refiling the appeal is condoned.

CM disposed of.

<u>RSA-192-2014</u>

The present appeal has been filed by Harjinder Singh son of Avtar Singh (plaintiff No.2) challenging the judgment and decree dated 18.03.2013 passed by learned Additional District Judge, Shaheed Bhagat Singh Nagar, whereby the appeal challenging the judgment and decree dated 07.08.2012 passed by learned Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar, was dismissed. The subject matter of the suit was for recovery of approximately ₹200/- only.

The brief facts of the case are that suit for rendition of accounts was filed by Avtar Singh and his son Harjinder Singh (wrongly mentioned as Harinder Singh) against M/s Devinder Nath Trading Company and its partners Devinder Nath Chopra and Ranjit Singh. It was averred that the plaintiffs were agriculturists. Defendant No.1 was a firm engaged in the business of commission agents at Dana Mandi, Rahon. Defendant Nos.2 and 3 were partners of defendant No.1. The plaintiffs were selling their agricultural produce at the shop of defendant No.1 for the last more than ten years. The defendants were maintaining books of account for their receipt and expenditure. The plaintiffs were credited amount in advance for the price of crops sold to defendant No.1. The plaintiffs were receiving money from the defendants as per their (plaintiffs) needs. The plaintiffs were selling their agricultural produce through the defendants, however, J-form or any receipt for the crop sold was never issued to them (plaintiffs). The defendants used to issue *katcha parchies* only. The plaintiffs had to recover a lot of money from them (defendants) but they were not aware of the actual figure as the defendants had failed to provide the statements of accounts.

Notice of the suit was issued to the defendants. They filed the written statement by taking the plea that the suit was bad for misjoinder and non-joinder of the necessary parties; M/s Devender Nath Trading Company at Rahon was not in existence; the firm being run by defendant Nos.2 and 3 was under the name and style of M/s Davinder Nath Ram Saroop, Commission Agent, Rahon; the suit was not maintainable; the plaintiffs were barred to file the suit on account of their act and conduct; the plaintiffs sold their agricultural products to other commission agents as well; the plaintiffs were taking loan on different dates from respondent No.1 for the last many years; the plaintiffs had not sold their last crop through them (defendants); the defendants were maintaining three *bahis* account; the plaintiffs were liable to pay ₹2,22,005.42 (Rupees two lacs twenty two thousand five and forty two paise) to the defendants; it was denied that the defendants were not issuing J-Form to the plaintiffs as and when the crop was sold to them (defendants) and it was also denied that *Katcha Parchies* were issued by the defendants to the plaintiffs.

Since no replication to the reply filed by the defendants was filed by the plaintiffs, therefore, from the pleadings available on record, the following issues were framed:-

> "1. Whether the plaintiff is entitled to recover the amount from the defendants by rendition of account? If so, to what extent? OPP
>
> 2. Whether suit of plaintiff is bad for mis-

joinder of necessary parties? OPD

3. Whether plaintiff is barred by his act and conduct to file this suit? OPD

4. Relief."

In order to prove their case, the plaintiffs examined Harjinder Singh as PW1 and also produced the receipts Exs.P2 to P5 and closed the evidence of the plaintiffs in affirmative. Davinder Nath Chopra, one of the partners of defendant No.1, stepped into witness box as DW1 and closed the evidence on behalf of the defendants. No evidence was led in rebuttal.

After hearing the learned counsel for the parties, learned trial Court dismissed the suit. Appeal filed before learned Additional District Judge, Shaheed Bhagat Singh Nagar was also dismissed and hence the present regular second appeal.

Perusal of the opening sheet would reveal that original claim, as per plaint, was `suit for recovery'. The value for the purpose of present appeal is approximately ₹200/- (Rupees two hundred only).

Section 102 of the Code of Civil Procedure, 1908, reads as under:-

> *"**102. No second appeal in certain cases.**- No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees."*

In the present case, a suit for recovery of approximately ₹200/- (Rupees two hundred only) was filed by the plaintiffs. Further, the subject matter of the present regular second appeal is approximately ₹200/- (Rupees two hundred only). As per **Haryana Dairy Development Cooperative Federation Limited v. Jagdish Lal, (2014) 3 SCC 156**, Hon'ble the Supreme Court held as under:-

> *"1. In spite of the fact that Parliament has amended the Code of Civil Procedure, 1908 altering the provisions of Section 102 CPC providing that money recovery suit involving less than ₹25,000/- shall not be entertained in the second appeal, we are being burdened with cases where the litigation cost may be hundred times more than the amount involved. It has become the definite attitude of the officials not to take any responsibility even for petty issues and would waste public money approaching this Court. The Government departments would spend any amount on litigation instead of paying petty amount to the other*

party.

2. In the instant case, an amount of ₹8,724/- is to be paid to the respondent employee as reimbursement of his medical claim and the petitioner, Haryana Dairy Development Cooperative Federation Limited treating the litigation as luxury must have spent the amount already by filing this petition more than the total amount involved herein.

3. Many a time this Court has felt unhappy about the time of the Court being taken for days together by petty matters. (The Constitution Bench judgment in Sukhdev Singh Vs. Bhagatram Sardar Singh Raghuvanshi, AIR 1975 SC 1331).

4. In Kadra Pahadiya and Others Vs. State of Bihar, AIR 1997 SC 3750, this Court observed that:

> *" If the load of such petty cases is taken out of the regular Courts, those Courts would have time to deal with more serious crimes rather than have their time consumed by such petty cases."*

5. The Law Commission of India in its 145th Report has observed that what further agitates is the number of pending litigation relating to trivial matters or petty claims, some of which have been hanging for *more than fifteen years. It hardly needs mention that in many such cases money spent on litigation is far in excess of the stakes involved, besides wasting valuable time and energy of the parties concerned as well as the Court.*

6. We direct that the expenses of the litigation shall be incurred by the Managing Director personally who has signed affidavit in support of the petition and it shall not be taken from the Federation. A copy of the order be sent to the learned Chief Secretary of the State of Haryana as well as to the Managing Director.

7. The special leave petition is dismissed. In view of the above, question of law, if any is kept open."

Similarly, this Court in the matter of **Gurudawara Singh Sabha v. Uttar Haryana Bijli Vitran Nigam Limited and another (RSA-4972-2012, decided on 21.05.2014)** held as under:-

" Plaintiff-appellant filed a suit for declaration to the effect that the demand of ₹17,357/- raised by the respondent as arrears of electricity consumption charges is bad, illegal and not binding upon his rights seeking further consequential relief of permanent injunction restraining the defendant-respondents to

disconnect the electricity connection from its premises.

The suit was contested by the defendant-respondents on the ground that demand was raised legally for the outstanding amount against the appellant.

Both the Courts below on appreciation of evidence recorded a concurrent finding against the appellant holding that demand of ₹17,357/- as arrears of electricity consumption charges was based on the record i.e. audit report etc.

Challenging the aforesaid judgments and decrees of the Courts below, learned counsel for the appellant has vehemently argued that the impugned judgments and decrees of the Courts below are liable to be set aside as both the Courts below have ignored the fact that before raising the demand, no notice was issued to the appellant and thus, he was condemned unheard.

Be that as it may, keeping in view the meagre amount involved in the suit itself and keeping in view the provisions of Section 102 CPC, this Court is not inclined to interfere in the impugned judgments and decrees of the Courts below observing that substantial questions of law, as raised, do not arise.

At this stage, it is also useful to refer to the observations of Hon'ble the Supreme Court in the case of Haryana Dairy Development Cooperative Federation

Limited vs. Jagdish Lal (2014) 3 SCC 156 wherein the fact has been noticed that superior Courts are burdened and choked with unnecessary litigation on petty issues.

Dismissed."

In view of the above, the present regular second appeal for recovery of approximately ₹200/- (Rupees two hundred only) is not maintainable.

Even otherwise, the findings recorded by both the Courts below holding that no case for rendition of accounts was made out are well based. The findings on facts cannot be set aside in the present regular second appeal unless some substantial question of law is raised. Perusal of the material available on record would clearly made out that no substantial question of law is involved in the present regular second appeal except that the present appeal is not maintainable in view of Section 102, CPC.

Dismissed.

June 29, 2015 **(NARESH KUMAR SANGHI)**
meenu **JUDGE**