

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4720 of 2015 (O&M)
Date of Decision : 09.10.2015

M/s Samriti Food Industries

....Appellant

Versus

Gulshan Ahuja

....Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Saurabh Arora, Advocate
for the appellant.

Surinder Gupta, J. (Oral)

Heard.

This is appeal against judgment dated 23.09.2014 passed by Additional District Judge, Ambala whereby the judgment and decree passed by the Court of Civil Judge (Junior Division), Ambala dated 16.08.2012, was set aside and the suit filed by plaintiff-Gulshan Ahuja for recovery of ₹ 1 lac with *pendente lite* and future interest was decreed.

Plaintiff-respondent filed the suit seeking recovery of ₹ 1 lac for the project of laying line for 11 KVA group industries feeder from 220 KVA Sub Station, Tepla to the door step of defendant-M/s Samriti Food Industries. The settled amount for this project was ₹ 2,66,000/- out of which defendant-appellant paid two installments of ₹ 88,000/- each.

On failure of defendant-appellant to pay the outstanding amount, a notice dated 27.01.2007 was sent, in reply to which, defendant-appellant took the plea that suit amount had been paid to Rakesh Goel of M/s Tridev Pulp Industries.

The Court of Civil Judge (Junior Division), Ambala dismissed the suit with the observations that the plaintiff-respondent had not been able to prove that there was any agreement between the parties and the suit was not maintainable.

Ist Appellate Court set aside the findings of the lower Court and observed that the agreement was admitted and payment of two installments under the agreement by way of cheques of ₹ 88,000/- each was also admitted. The onus was on the defendant-appellant to prove that he had made payment to the plaintiff-respondent through Rakesh Goel but he failed to discharge the onus.

Learned counsel for the appellant has argued that the plaintiff-respondent had not impleaded Rakesh Goel as party in the suit despite information given to him by the defendant-appellant in reply to the notice that the payment of balance amount under the contract had been made to said Rakesh Goel.

The plaintiff-respondent had not alleged about any contract with Rakesh Goel anywhere in the suit or that Rakesh Goel was party to the contract with defendant. It is the defendant-appellant who had taken the plea that the payment of outstanding amount was made to Rakesh Goel but failed to prove this plea. The onus was heavily on the defendant-appellant to prove the plea taken by him in the reply to notice and also in the written statement. Rakesh Goel in no manner was necessary party to the suit. The arguments advanced by learned counsel for the appellant in this regard, as such, has no force.

On perusal of judgment of Ist Appellate Court, I find no legal or factual infirmity therein calling for interference. No question of law, what to talk to substantial question of law requiring determination, arises in this appeal, which has no merit.

Dismissed.

October 09, 2015
jk

(SURINDER GUPTA)
JUDGE