

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA NO. 3557 OF 2014 (O&M)
DECIDED ON : 19.03.2015**

Rajinder Kumar Mangla

...Appellant

versus

Rajinder Kumar Gupta

...Respondent

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Animesh Sharma, Advocate.

K. C. PURI, J.

CM NO. 8221 OF 2014

The application stands allowed and delay of 40 days in filing the appeal stands condoned for the reasons mentioned in the application.

MAIN CASE

Challenge in this appeal is to the judgment and decree dated 09.01.2014 passed by Shri Rajnish Garg, Additional District Judge, Patiala, vide which the appeal preferred by the defendant/appellant against the judgment and decree dated 17.07.2013 passed by Shri Sumit Ghai, Additional Civil Judge (Senior Division), Patiala, was dismissed.

Briefly stated, the plaintiff (hereinafter referred to as the respondent) filed a suit for recovery of ₹1,66,434/- with the allegations that plaintiff along with defendant now appellant Rajinder kumar Mangla and Vivek Gupta, who is nephew of the plaintiff, was running a partnership firm under the name and style of "M/s Mangla Ply World". A partnership in this regard was entered into vide partnership deed dated 07.01.2006. Subsequently, the said partnership deed was dissolved on 31.03.2007 and a dissolution deed dated 01.04.2007 was prepared between the parties. As per the said dissolution deed, the defendant/appellant took over all the assets and liabilities of the said partnership firm. On 01.04.2007 a sum of ₹1,44,099.72 was payable by the said partnership firm to the plaintiff. The said amount has been duly reflected and recorded in the account books of the said partnership firm and as such, the defendant/appellant was liable to pay the said amount but he has withheld the said amount with mala fide intention. As such, the plaintiff filed suit claiming recovery of ₹1,66,434.72 along with interest @ 18 % per annum.

Upon put to notice, the defendant/appellant appeared and filed written statement taking preliminary objection that suit is not maintainable; the suit has not been filed by the plaintiff with clean hands; suit is bad for non-joinder of necessary parties. It was further submitted that the plaintiff had no cause of action to file the suit as he has filed the suit as a counter blast to

pressurize the defendant/appellant. It was further pleaded that the defendant discharged his liability, as the plaintiff purchased the stock of ply wood worth ₹1,45,250/- from the defendant and the plaintiff was liable to refund the excess amount of ₹1150.28.

The plaintiff filed replication denying the contents of written statement and reiterating the averments taken in the plaint.

From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiff is entitled for decree of recovery of ₹1,66,434/- from the defendant, as prayed for ? OPP
- 1-A) Whether the plaintiff is entitled to claim interest on the amount of ₹1,44,099.72/-, if so, at what rate ? OPP
- 2) Whether the suit is not maintainable in the present form ? OPD
- 3) Whether the suit is bad for non-joinder of necessary parties ? OPD
- 4) Whether the plaintiff has not come to the court with clean hands and is not entitled for relief ? OPD
- 5) Whether plaintiff has no cause of action to file the present suit ? OPD

- 6) Whether the suit is false and frivolous and filed to pressurize the defendant ? OPD
- 7) Relief.

In order to prove his case, plaintiff himself stepped into the witness box as PW-1 and closed his evidence after tendering certain documents.

On the other hand, the defendant himself appeared as DW-1 and closed his evidence after tendering certain documents.

No evidence was led in rebuttal.

The learned trial court after appraisal of the evidence, returned the findings on Issue No.1 and 1-A in favour of the plaintiff and against the defendant. The all other issues were decided against the defendant and consequently, the suit of plaintiff was decreed for a sum of ₹1,44,099.72 along with interest @ 6% per annum from 01.04.2007 till the filing of suit.

Feeling dissatisfied with the above said judgment and decree dated 17.07.2013 passed by Additional Civil Judge (Senior Division), Patiala, the defendant preferred first appeal. The said appeal was dismissed vide judgment dated 09.01.2014 passed by Additional District Judge, Patiala.

Still feeling aggrieved with the judgment and decree dated 17.07.2013 passed by ACJ (SD), Patiala and judgment and decree dated 09.01.2014 passed by ADJ, Patiala, the defendant has preferred the instant regular second appeal.

The appellant in para no. V of the grounds of appeal has mentioned that following questions of law have arisen in the instant appeal :-

- 1) Whether suit is maintainable in view of arbitration clause No.14 in the agreement for partnership between the parties ?
- 2) Whether the court below justified in rejecting application under Section 8 of Arbitration & Conciliation Act, 1996, for referring dispute to the arbitrator ? And that appellate court not considering the same for the reason that same has not been challenged earlier ?
- 3) Whether judgment of the court below is bad in law for non-framing issues on pleading and w.s in view of order 14 of CPC ?
- 4) Whether the appellate court denied fair and reasonable opportunity to appellant in rejecting application under Order 41 Rule 27 of CPC for permission to file additional document and evidence ?
- 5) Whether the appellate court failed to exercise jurisdiction in deciding the appeal as final facts finding court in view of Section 101 of CPC ?
- 6) Whether evidence of appellant is correctly appreciated and whether the court below has arrived at proper conclusion ?

I have heard learned counsel for the appellant and have gone through the file carefully.

Learned counsel for the appellant has submitted that application under Order 41 Rule 27 CPC for permission to lead additional evidence was filed before the trial court and the same was decided on the same day i.e 09.01.2014.

I have carefully considered the said submission but do not find any force in the same.

Learned counsel for the appellant has failed to convince this court that in case the application for leading additional evidence is allowed, in that case, the case of appellant will improve in any manner. Even the details of the application have not been mentioned by the appellant.

Learned counsel for the appellant has further submitted that both the courts below have misread and misinterpreted the evidence by ignoring the documentary and oral evidence that goods worth ₹1,45,250/- were supplied to the plaintiff through different bills.

I have carefully considered the said submission but do not find any force in the same.

There is concurrent finding of fact recorded by both the courts below that the defendant/appellant has failed to prove that the goods were supplied to the plaintiff. That being a finding of fact cannot be agitated in the regular second appeal. There is no misreading and misinterpreting the evidence. The bills are in

serial numbers and are of different dates. Both the courts below have rightly held that those bills have been manipulated just to avoid legal liability. Even during the course of arguments, the liability to pay ₹1,44,099.72 has not been disputed but the only ground was that the said liability has been discharged by selling the goods referred to above. Since the defendant/appellant has failed to prove the supply of those goods to the plaintiff and as such, the suit has been rightly decreed.

Learned counsel for the appellant has further submitted that there is arbitration clause and the matter has not been referred to the Arbitrator and as such, the civil suit is not maintainable.

I have carefully considered the said submission but do not find any force in the same.

No specific plea has been taken in the pleadings that there is arbitration clause. Moreover, after trial by both the courts below, the said objection is not maintainable.

The next contention of learned counsel for the appellant is that the partnership firm has not been arrayed as party and as such, the suit is not maintainable.

I have carefully considered the said submission but do not find any force in the same.

The partnership firm was dissolved and after dissolving the said firm, the defendant/appellant has taken over the firm and he agreed to pay ₹1,44,099.72 but he has not paid the said

amount.

Learned counsel for the appellant has submitted that the other partners have not been arrayed as party and as such, the suit is liable to be dismissed.

I have carefully considered the said submission but do not find any force in the same.

It is admitted case of the parties that the firm has been taken over by the defendant/appellant alone and he agreed to pay the said amount. So, the suit cannot be said to be barred. There is nothing on file to show that proper issues have not been framed.

So, in view of the above discussion, I have no hesitation in holding that the substantial questions of law much less the substantial questions of law raised by the appellant in para V of the grounds of appeal, do not exist. Consequently, the appeal is without any merit and the same stands dismissed.

MARCH 19, 2015
shalini

(K. C. PURI)
JUDGE