

In the High Court of Punjab and Haryana at Chandigarh

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CM No.10531-C of 2014
and
R.S.A. No.4544 of 2014 (O&M)

.....

Date of decision:9.4.2015

M/s Shiv Shankar Rice Mills

.....Appellant

v.

Chiman Lal

.....Respondent

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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

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Inderjit Singh, J.

CM No.10531-C of 2014:

For the reasons mentioned in the civil miscellaneous application, the delay of 71 days in re-filing the appeal is condoned.

The civil miscellaneous application stands disposed of.

R.S.A. No.4544 of 2014 (O&M):

This regular second appeal has been filed by the appellant-defendant against Chiman Lal-respondent/plaintiff aggrieved against the impugned judgment and decree dated 26.7.2010 passed by the learned Civil Judge (Senior Division), Karnal, vide which the suit filed by Chiman Lal-plaintiff/respondent has been partly decreed for recovery of ₹78,085.84/- along with interest @6% per annum from the date when the said amount

became outstanding i.e. 31.3.2005 till its realization and against the impugned judgment and decree dated 19.2.2014 passed by learned Additional District Judge, Karnal, vide which the appeal filed by the defendant has been dismissed.

At the time of arguments, learned counsel for the appellant argued that no amount was pending for payment by the defendant at the time of filing of the suit. The whole amount has already been paid by the defendant. He argued that the Courts below have wrongly not relied upon the documents Ex.D.1 to D.8 regarding payment and have misread the evidence.

I have heard leaned counsel for the appellant and have gone through the records of the lower Courts.

A perusal of the record shows that the case of the plaintiff was that he is running the business of Commission Agency at Grain Market, Nilokheri, District Karnal, under the name and style of M/s Chiman Lal Anil Kumar being its sole proprietor. The defendant-firm is a partnership concern and Bishamber Lal is one of its partners, which has been running a rice sheller and was having business dealings with the plaintiff as the defendant firm used to purchase paddy from the plaintiff from time to time on credit and also making payments.

As per the facts of the case, last payment was made on 1.11.2004 through cheque and after adjusting the account on 31.3.2005, ₹78,085.03 remained due.

The case of the defendant in the written statement is that the suit is not within limitation. He admitted the dealings between the plaintiff

and the defendant. It is stated that some times cash payments had been made to the plaintiff without obtaining his signatures at all. These payments are reflected in the account books of the parties, which have been maintained. It is also the case of the defendant that the details as given in the plaint regarding outstanding amount is wrong and averments of the interest are also wrong. It is also stated that there is no outstanding amount against the defendant qua the plaintiff firm till date and if there is any such entry in the account books of the plaintiff showing the liability of the defendant to the tune of ₹78,085.03, as has been claimed, are totally false and baseless.

Both the Courts below after appreciating the evidence reached to the conclusion on the basis of entries made in the account books that an amount of ₹78,085.03 were still payable by the defendant. The defendant relied upon the documents Exs.D.1 to D.8, but these receipts are not signed by the plaintiff. These documents without signatures of the plaintiff is of no value to prove that the payment of these amounts mentioned in Exs.D.1 to D.8 are paid by the defendant to the plaintiff. Otherwise also, there is no reason as to why the defendant has not obtained the signatures of the plaintiff after making payments on these documents. So, these documents are the documents in ones own favour and the Courts below have correctly not relied upon these documents for the purpose of proving the payments made by the defendant to the plaintiff. The findings of fact given by the Courts below are concurrent and as per evidence and law and the findings of both the Court below do not require any interference from this Court and the

same being correct are upheld. No question of law, much less any substantial question of law arises in the present regular second appeal.

Finding no merit in the present regular second appeal, the same is dismissed.

April 9, 2015.

(Inderjit Singh)
Judge

hsp