In the High Court of Judicature for the States of Punjab and Haryana, at Chandigarh

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RSA No. 546 of 2014(O&M)

Date of decision: 13.01.2015

Rajesh Kumar ..Appellant

Versus

Sagar Cloth House and another ..Respondents

Coram: **Hon'ble Mr. Justice Mahavir S. Chauhan**

Present: Mr. R.P.S.Ahluwalia, Advocate, for the appellant.

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

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Mahavir S.Chauhan, J.(Oral)

Rajesh Kumar, (hereinafter referred to as the appellant), claiming himself to be a cloth merchant and proprietor of Firm M/s. Mohan Lal Rajesh Kumar, filed Civil Suit No. 114/2.4.2003/3.6.2011 against Sagar Cloth House and its proprietor Suresh Kumar (hereinafter referred to as the respondents), for rendition of accounts by alleging that the respondents have been purchasing cloth on credit from him since the year 1999 vide various bills. At times the cloth was sent to them through transport and some times respondent No. 2 would takeit personally. Respondents would make payments against the bills. It was agreed between the parties that if the payment is not made within 15 days from the date of issue of the bill, and it was so printed on the bills also, the respondents would pay interest on the amount due at the rate of 24% p.a. from the date of purchase of the cloth (till payment of the due amount). Respondents paid Rs. 1000/- as last payment on 19.10.2002 and refused to make any payment thereafter inspite of repeated requests. According to case pleaded by the appellant, he has been regularly maintaining the accounts of his firm and a sum of Rs. 68,755/- was due as principal amount and a sum of Rs. 77,427/- as interest from the respondents.

02. Suit was contested by the respondents. They pleaded various preliminary objections, denied all the allegations of the plaint and stated that they had not placed any order for purchase of cloth from the appellant, suit for rendition of accounts was not maintainable and the appellant could file a suit for recovery only.

03. From the pleadings of the parties, learned Court of Civil Judge (Senior Division), Ambala (for short,"the trial Court") framed issues with regard to appellant's entitlement to rendition of accounts; maintainability of the suit; bar of limitation; objection regarding payment of proper court fee; and non-joinder and misjoinder of parties.

04. Both the sides adduced evidence in support of their respective claims. Learned trial Court on appraisal of evidence and after hearing the parties returned findings on issue Nos.1 and

2 hostile to appellant's plea and on issue Nos.3 and 5 hostile to the pleas put up on behalf of the respondents and ultimately vide judgment and decree dated 09.02.2012 dismissed appellant's suit with no order as to costs.

05. Civil Appeal No. 194-CA of 2012 brought by the appellant has also been dismissed by the learned Additional District Judge, Ambala (for short, the first appellate court) vide judgment and decree dated 11.02.2013.

06. To assail judgment and decree dated 11.02.2013, appellant has brought this Regular Second Appeal.

07. I have heard learned counsel for the appellant on merits even though the appeal is barred by time.

08. It is contended by learned counsel for the appellant that whenever there is a dispute with regard to amount due and interest payable thereon, a suit for rendition of account can be maintained and the respondents having failed to repay the amount due from them, the only remedy available to the appellant is by way of a suit for rendition of accounts. Learned counsel also argues that appellant's suit has been erroneously dismissed on the ground that he has failed to prove that parties to the suit are not partners. He also argues that the appellant has proved on record all the relevant documents to prove that the suit amount is due to him from the respondents, still the learned courts below have non suited him.

09. I regret my inability to subscribe to this view. Rule 16 of

Order XX of the Code of Civil Procedure, 1908 (CPC, for short) provides for a suit for rendition of accounts. It reads as under:

> "*In a suit for account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit*."

10. Rule 16 of Order XX, CPC, does not create or confer any substantive right to seek rendition of accounts in any particular type of cases, nor in all types of cases. It merely refers to a rule of procedure and would apply where there is an existing right to seek rendition of accounts having regard to the relationship between the parties. It is well settled that the right to claim rendition of accounts in an unusual form of relief granted only in certain specific cases and to be claimed when the relationship between the parties is such that the rendition of accounts is the only relief which will enable the plaintiff to satisfactorily assert his legal right. A suit for rendition of accounts can be maintained only if the person suing has a right to receive an account from the defendant. Such a right can either be created or recognized under a statute; or based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee, or claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. Such

person seeking account to satisfactorily assert his legal right. Such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him.

11. Hon'ble Supreme Court explained the scope of Rule 16 of Order XX, CPC, or say a suit for rendition of accounts, in ***Narandas Morardas Gajiwala v. SPAM Papammal, AIR 1967 SC 333***, and ruled as under:

> "*In our opinion, the statute is not exhaustive and the right of the agent to sue the principal for accounts is an equitable right arising under special circumstances and is not a statutory right. … Though an agent has no statutory right for an account from his principal, nevertheless there may be special circumstances rendering it equitable that the principal should account to the agent. Such a case may arise where all the accounts are in the possession of the principal and the agent does not possess accounts to enable him to determine his claim for commission against his principal. The right of the agent may also arise in an exceptional case where his remuneration depends on the extent of dealings which are not known to him or where he cannot be aware of the extent of the amount due to him unless the accounts of his principal are gone into*."

12. Dealing with the right of a contractor to maintain a suit for rendition of accounts, Hon'ble Supreme Court in **K.C. Skaria v. Govt. of State of Kerala & Anr., AIR 2006 SC 811**, held as under:

> "*Let us now examine whether a contractor engaged to execute a particular work can file a suit for accounts against the employer in regard to payment for the work done. Such a right is not created or recognized by any statute. The*

independent contractor is not an agent of the employer. Nor is the employer in the position of a trustee with reference to the independent contractor. Can the claim be supported in equity by stating that where the relationship is such that rendition of accounts is the only relief which will enable the contractor to satisfactorily assert his legal right? A contractor who is engaged to execute a work, is expected to maintain his own accounts. At all events, there is no bar for a contractor to keep an account of the work done. Even where the contract between the employer and the independent contractor may provide for payment on the basis of measurements to be recorded by the employer, nothing prevents the contractor from measuring the work done by him and then suing for the value of the work done. The contractor may also demand joint-measurements to determine the quantum of work done. If the employer for some reason does not co-operate or prevents the contractor from taking physical measurements, the contractor can seek appropriate legal remedy which will enable him to take measurements or to secure the information from the measurement book in the custody of the employer. Therefore, either the fact that the measurement book is maintained by the employer, or the fact that the contractor does not possess the exact measurements, will not entitle the contractor to file a suit for rendition of accounts against the employer."

13. In ***K.C. Skaria v. Govt. of State of Kerala & Anr.*** (supra) Hon'ble Supreme Court further observed as under:

"*It is now well-settled that the right to claim rendition of accounts is an unusual form of relief granted only in certain specific cases and to be claimed when the relationship between the parties is such that the rendition of accounts is the only relief which will enable the plaintiff to satisfactorily assert his legal right [vide* ***Jowahar Singh v. Haria Mal (1989) 60 PR 1899, followed in Gulam Qutab-ud-din-Khan v. Mian Faiz Bakhsh (AIR 1925 Lahore 100), State of Jammu & Kashmir v. L. Tota Ram (AIR 1971 J&K 71), Triloki Nath Dhar***

> ***v. Dharmarth Council (AIR 1975 J&K 76)***]. *The right to seek rendition of accounts is recognized in law in administration suits for accounts of any property and for its administration, suits by a partner of a firm for dissolution of the partnership firm and accounts, suits by beneficiary against trustee/s, suits by a member of the joint family against the Karta for partition and accounts, suits by co-sharer against other co-sharer/s who has/have received the profits of a common property, suits by principal against an agent, and suits by a minor against a person who has received the funds of the minor.*"

14. It was ultimately held in ***K.C. Skaria v. Govt. of State of Kerala & Anr.*** (supra) as under:

> "*To summarise, a suit for rendition of accounts can be maintained only if a person suing has right to receive an account from the defendant. Such a right can either be (a) created or recognized under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee, or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his legal right. Such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him, as that will open the floodgates for converting several types of money claims into suits for accounts, to avoid payment of court fee at the time of institution.*"

15. Reverting to the case in hand, it is found that the learned trial court has returned a very firm finding that the appellant has failed to prove relationship of seller and purchaser between him and the respondents or that the respondents ever placed any order with him for purchase of cloth or that there has been an agreement between the parties to pay interest on the

respondent No.2) are in the name of Sagar Silk Store but appellant has failed to prove that Sagar Silk Store and Sagar Cloth House (respondent No. 1) are one and the same firm owned and run by respondent No. 2; and in Exhibits P105 to P107, copies of Form-F, submitted for registration of the firm under Section 13 of Haryana Shops and Commercial Establishments Act, 1958 Rajesh Kumar Jain, respondent No. 2, is not shown to be proprietor or partner of the Firm, M/s. Mohan Lal Rajesh Kumar. Appelllant's suit cannot succeed for another reason. A very specific plea of the appellant is that he has been selling cloth to the respondents against bills. He has even calculated the amount statedly due from the respondents. Appellant's case does not satisfy the requirements necessary for maintaining a suit for rendition of accounts as enumerated by the Hon'ble Supreme Court in ***K.C. Skaria v. Govt. of State of Kerala & Anr.*** (supra). The appellant, by designating the suit as a suit for rendition of accounts, has, in fact, attempted to evade payment of court fee. Such an effort deserves to be and is strongly deprecated.

16. Let alone a substantial question of law, this regular second appeal does not involve any question of law.

17. In view of the above, I am not inclined to interfere with the concurrent findings recorded by the Courts below. The appeal, therefore, fails and is dismissed.

18. It is needless to reiterate that proper remedy for the

appellant was to file a suit for recovery and this judgment shall not preclude him from bringing such a suit, if otherwise permissible in law, including the law of limitation.

19. Miscellaneous Applications, if any, are rendered infructuous and are disposed of as such.

January 13, 2015 (MAHAVIR S.CHAUHAN)
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