

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

**SAO No.73 of 2014 (O&M)
Date of Decision: 04.09.2015**

M/s Rathi TMT Sariya Pvt. Ltd.,

....Appellant

Vs

JSL Limited

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Hemant Bassi, Advocate
for the appellants.

Mr. Rose Gupta, Advocate
for the respondent.

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

RAJ MOHAN SINGH, J.

[1]. Appellant has assailed judgment dated 23.08.2014 passed by Additional District Judge, Hisar vide which appeal against judgment and decree dated 23.04.2012 passed by Civil Judge (Sr. Divn.) Hisar has been accepted and the case has been remanded back to the trial Court for fresh decision after affording opportunity to both the parties to lead evidence.

[2]. The suit for recovery of Rs.25,51,700/- along with interest was filed by plaintiff/respondent-JSL Limited against the appellant. In the suit, defendant -appellant was proceeded *ex parte* vide order

dated 23.10.2010. Plaintiff/respondent examined one Sh. R.P. Jindal as PW-1 by tendering his affidavit in examination-in-chief and getting the documents exhibited Exs.P-1 to P-10. On the basis of aforesaid *ex parte* evidence, the suit of the plaintiff/respondent was decreed along with cost. Decree for recovery of Rs.25,51,700/- along with interest @ 6% per annum from the date of filing of the suit till actual realisation was passed vide judgment and decree dated 23.04.2012.

[3]. Defendant/appellant went in appeal against the aforesaid judgment and decree of the trial Court. In appeal it has been found that the affidavit Ex.PW-1/A tendered by Sh. R.P. Jindal as PW-1 was not even signed by the executant/deponent. During pendency of appeal an effort was made by the plaintiff/respondent to seek permission for signing the affidavit Ex.PW-1/A by Sh. R.P. Jindal. In this way the facts narrated in the affidavit Ex.Ex.PW-1/A could not be proved by the plaintiff in its evidence. The affidavit was shown to have been attested by Oath Commissioner without there being any signature of the deponent.

[4]. Permission was not accorded by the lower appellate Court. The Court set aside the judgment and decree of the trial Court dated 23.04.2012 being unsustainable in law. At the same time the lower appellate Court instead of dismissing the suit, remanded the case back to the trial Court for deciding the same afresh after inviting written statement from defendant/appellant and after affording adequate opportunities to both the sides to lead evidence. The

defendant-appellant has come in the present appeal against remand of the case to the trial Court for fresh decision.

[5]. Learned counsel for the appellant states that there was no occasion for the lower appellate Court to remand this case as there was no evidence before the trial Court much less even examination-in-chief of PW-1 Sh. R.P. Jindal because affidavit submitted on record remained unexecuted for want of signature of the deponent. Therefore, all the documents tendered on the basis of such affidavit have no evidentiary value in the eyes of law, rather they cannot be presumed to be tendered in evidence at all.

[6]. Learned counsel relied upon **Ashwinkumar K. Patel v. Upendra J. Patel, 1992(2) RCR (Civil) 256** to contend that remand cannot be ordered in routine under Order 41 Rule 23 CPC, merely because reasoning of the trial Court were considered to be wrong. Remand orders lead to unnecessary delay and prejudice to the parties. When material was available before the lower appellate Court, the Court should have decided the case on merits either to accept the appeal or to reject the same.

[7]. It is a settled principle of law that plaintiff has to stand on its own legs even if defendant was proceeded *ex parte*. Plaintiff was well within its competence and jurisdiction to lead evidence. In the event of failure on the part of the plaintiff to lead evidence, the suit has to be dismissed even if there is no opposition on the part of the defendant.

[8]. In the instant case, the only evidence led by the plaintiff was in the form of affidavit of PW-1 (Ex.PW-1/A) which remained unexecuted for want of signature of the deponent. The documents got exhibited in such examination-in-chief have no evidentiary value as they cannot be treated to be led in evidence. In the absence of affidavit Ex.PW-1/A, case of the plaintiff will be of no evidence and only irresistible conclusion is that the suit is bound to be dismissed. It is relevant to state here that evidence of the plaintiff was closed 23.11.2010 on the basis of his own statement.

[9]. In **2006(9) SCC 166, Kattukandi Edathil Krishan & another v. Kattukandi Edathil Valsan & others**, the Apex Court held that the appellate Court should have considered the available evidence on record by disposal of the appeal either after confirmation of the trial Court decree or reversal therefrom.

[10]. Tendering of unsigned affidavit Ex.PW-1/A by PW-1 in examination-in-chief which was even duly attested by the Oath Commissioner is a fraudulent act. Fraud vitiates all solemn acts. Such an act should be treated to be nullity and a person whose plea is based on falsehood has to be thrown out summarily at any stage of litigation. Plaintiff by tendering unsigned affidavit of deponent virtually gained advantage on the basis of trial Court decree. Such an act amounts to fraud on the Court as well as on the appellant and cannot be endorsed by the Court at any stage of litigation.

[11]. Lower appellate Court by ordering remand of the case to

trial Court has virtually filled lacuna in the plaintiff's case. Once the decree of the trial Court was set aside there was no occasion for the lower appellate Court to observe that appeal is a continuation of original proceedings and the defendant has joined the proceedings of the case. Filing of appeal against the judgment and decree of the trial Court after being proceeded against *ex parte* by the trial Court cannot be termed to be joining of proceedings of the suit in any manner. No other reason has been given by the lower appellate Court for making the remand of the case.

[12]. It is not a case of decision by the trial Court on a preliminary issue, rather the trial Court judgment and decree was based on merits on the basis of *ex parte* evidence of the plaintiff. Giving of reasons is one of the fundamentals of good administration. Failure to give reasons amounts to denial of justice. The emphasis on recording reasons is that if the decision reveals "*inscrutable face of the sphinx*", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Therefore, giving of sound reasoning is an indispensable part of the judicial system. Affected party must know why the decision has gone against him. Therefore, one of the salutary requirement is that the reasons should be spelled out adequately and in speaking manner.

[13]. In view of the reasons as mentioned above, I am of the considered view that the lower appellate Court has acceded its

jurisdiction in ordering remand of the case. Therefore, this appeal is accepted. Impugned judgment dated 23.08.2014 passed by Additional District Judge, Hisar is set aside. Consequently, the civil suit No.453-C of 2009 titled JSL Limited v. M/s Rathee TMT Sariya Private Limited is dismissed.

September 04, 2015

Atik

**(RAJ MOHAN SINGH)
JUDGE**