IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA-1766-2010 [O&M]
Date of Decision : May 24th, 2016

Steel Authority of India and another
.... Appellants

Versus

Steel Strips Infrastructure Limited
.. Respondent

2. RSA-3912-2010 [O&M]

Steel Strips Infrastructures Limited
.... Appellant

Versus

Steel Authority of India and another
.. Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Sanjeev Sharma, Senior Advocate,
with Mr. Shekher Verma, Advocate,
for the appellants in RSA No. 1766 of 2010 and
for the respondents in RSA No.3912 of 2010.

Mr. Akshay Bhan, Senior Advocate,
with Mr. Santosh Sharma, Advocate,
for the respondent in RSA No. 1766 of 2010 and
for the appellant in RSA No.3912 of 2010.

SHEKHER DHAWAN, J.

Present Regular Second Appeals are directed against the judgment and decree dated 27.02.2010 passed by District Judge, Chandigarh, whereby judgment and decree dated 8.5.2009 passed by Civil Judge [Junior Division], Chandigarh were reversed and the suit for recovery filed by the plaintiff – Steel Strips Infrastructures Limited was decreed and the plaintiff was held entitled to interest @ 12% per annum on the principal amount from the date of institution till realization.

2. Second appeal, i.e. RSA No.3912 of 2010, has been filed by the plaintiff-Steel Strips Infrastructures Limited for modification of the judgment and decree of the Court of first Appeal whereby interest was allowed @ 12% per annum.

3. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance. For the facility of reference, facts are being taken from RSA No. 1766 of 2010 filed by the defendants.

4. Relevant facts of the case for the purpose of decision of this appeal; that the plaintiff filed a suit for recovery of the following amounts:-

	PRINCIPAL	INTEREST	TOTAL
Bank Guarantee	500000.00	1210520.55	1710520.00
Sales Tax	37461.21	84734.18	122195.39
-Del Orders	565006.76	907229.94	1472236.70
-Del Orders	198000.00	408802.19	606802.19
-Credit Notes	51027.55	76365.18	127392.75
-Debit Balance	399367.92	566175.70	965543.62
Rate Difference	12855	32162.15	45017.15
	1763718.44	**3285989.89**	**5049708.33**

on the averments that it had been purchasing steel Products like H.R.Coils, C.R. Coils etc. from the defendants since 1989 and one of the requirements of the defendants was that its customers was to furnish bank guarantee. Accordingly, the plaintiff furnished bank guarantee No.6/89 dated 31.01.1989 for Rs.5,00,000/- in favour fo the defendants, issued by the Punjab National Bank, Sector 17-B, Chandigarh. That defendants wrongfully got encashed the bank guarantee on 01.08.1989 and the bank informed the plaintiff about this only on 22.02.1999. Defendants were not entitled to invoke the bank guarantee and hence, they were liable to pay the amount thereof alongwith interest. It was further pleaded that the defendants charged sale tax @ 4% against bill No.3784 dated 31.03.1990/delivery order No.3608 dated 28.03.1990. Defendants were to charge sale tax @ 0.75% on furnishing of sale tax 'Form C' and the plaintiff supplied form No.352703 dated 03.05.1990 claiming a refund of Rs.99592.93 but defendants failed to refund Rs.37461.21 which the plaintiff company was entitled to recover alongwith interest.

5. The plaintiff further took the plea that it was lifting the material from the defendants against various delivery orders which were issued after making full payment of the amount. However, plaintiff sometime received material which was to less value than mentioned in the delivery order and the same is as follows:-

Sr. No.	D.O.NO.& Date	Amt. Deposited SSTL, raised by	Amt. Of Inv.	Amt. Refundable	Payable Amount	Net
1.	CHA/92/2205 July, 92	2398750.00	2132852.00	265898.00	-	265898.00
2.	CHA/92/2529 July, 92	2344370.00	2175514.00	168856.00	-	168856.00

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3.	CHA/92/2555 July, 92	154768825.00	1547688.00	137.00	-	137.00
4.	CHA/92/2637 Aug, 92	1100900.00	1067948.00	32952.00	-	32952.00
5.	CHA/92/2670 Aug, 92	252000.00	248517.00	3483.00	-	3483.00
6.	CHA/92/3001 Aug, 92	1348743.31	1347487.00	1256.31	-	1256.31
7.	CHA/92/3109 Sep, 92	328500.00	322115.00	6385.00	-	6385.00
8.	CHA/92/3139 Sep, 92	295700.00	295810.00	-	110.00	-110.00
9.	CHA/92/3286 Sep, 92	1226901.31	1246559.25	-	19657.94	-19657.94
10	CHA/92/3343 Sep, 92	281100.00	280386.00	714.00		714.00
11.	CHA/92/3344 Sep, 92	416200.00	411700.00	4500.00		4500.00
12.	CHA/92/3449 Sep, 92	1294747.00	1028292.00	226455.00	-	226455.00
13.	CHA/92/3503 Sep, 92	629284.00	528359.00	100925.00		100925.00
14.	CHA/92/3536 Sep, 92	321900.00	320850.00	1050.00	-	1050.00
15.	CHA/92/3753 Sep, 92	388200.00	372868.00	5332.00	-	5332.00
16.	CHA/92/3754 Oct, 92	1123635.00	1124366.00	-	731.00	-731.00
17.	CHA/92/3756 Oct, 92	525500.00	428585.00	96915.00	-	969156.00
18.	CHA/92/3756 Oct, 92	1541475.00	1834321.00	-	292846.00	-292846.00
				914858.31	313344.94	601513.37

Amount refundable to plaintiff. **601513.37**

Less: Amount debited by defendant against following delivery order:

Without giving detail to plaintiff:

-DO/CHA/913032 3700.00

-DO/CHA/91/5145 11952.00

-DO/CHA/91/5403 10408.45

-DO/CHA/91/5403 9189.05

-DO/CHA/91/3001 1256.31 **36,506.61**

Net amount payable to the defendant 565006.76

6. It was further pleaded that the defendants have shown a sum of Rs.565006.76 in the account books as payable to the plaintiff, but did not refund the said amount which the plaintiff is entitled to recover alongwith the interest. It was further pleaded that plaintiff paid Rs.7 lacs against delivery order No.4731 dated 25.01.1991 and defendants sent material worth Rs.384299.19 leaving a sum of Rs.315700.81. Defendants refunded Rs.117700.81 leaving a balance of Rs.198000.00 which the defendant again did not pay any plaintiff is entitled to recover the same.

7. Defendants also issued credit note No.5 dated 07.06.1993 for Rs.51027.55 as the rates of material sent by defendants against delivery order No.93/346 dated 05.05.1993 was inadvertently charged excess but did not pay the said amount. Defendants also debited Rs.399367.92 against various delivery orders which were as follows:-

Particulars	**Defendant Voucher No.**	**Debited Amount (Rs.)**
D.O. NO. CHA/91/3032	JV/CHA/92/1221	3700.00
D.O. NO. CHA/91/5245	JV/CHA/92/1234	11952.00
D.O. NO. CHA/91/05403	JV/CHA/92/1235	10408.45
D.O. NO. CHA/91/05403	JV/CHA/92/1237	9189.05
D.O. NO. CHA/92/3001	JV/CHA/1810	1256.31
D.O. NO. 4928/93.23.03.94	-	9017.00
D.O. NO. 2485/95	JV/CHA/93/894	6184.00
4857/92	JV/CHA/93/893	94462.00
5569/92	JV/CHA/93/893	37498.00
D.O. NO. 5852/92	JV/CHA/93/1136	14820.00
D.O. NO. 6145/92	JV/CHA/93/946	33658.00
D.O. NO. 6145/92	JV/CHA/93/947	1520.00
D.O. NO. 3809/92	JV/CHA/93/2659	54627.00
D.O. NO. 3837/92	JV/CHA/93/2762	64153.00
Amt. Debited by SAIL on account of Instt. D.O. No.6403/92 JV/CHA/3/943		15513.00
		399367.92

8. It was also averred that the defendants did not intimate any

reason for debiting the said amount and the plaintiff is entitled to recover the amount from the defendants. Defendants have also issued credit note No.146 dated 31.03.1989 for Rs.4837.20 and credit No.147 dated 31.03.1989 for Rs.8017.80 total amounting to Rs.12855/-. but did not pay the amount. It was further claimed that the plaintiff is entitled to recover all the amounts along with interest @ 24% per annum which the defendants Company filed to deposit despite repeated requests.

9. Defendants admitted the fact regarding dealings between the parties but controverted all other averments and pleaded that bank guarantee was furnished in pursuance of scheme known as 'Time Bound Supply Scheme' and the plaintiff committed various defaults incurring liability of Rs.526740.60 by 12.07.1989 and was issued a notice to pay the amount and when failed, defendants rightly invoked the bank guarantee. That plaintiff did not deposit the sale tax Form 'C' within the stipulated period and defendants deposited the sale tax with the Sale Tax Department and no amount is recoverable from them. The claim of the plaintiff was rejected by the defendants vide its letter dated 17.03.1993. It is denied that a sum of Rs.565006.76 is to be refunded by the defendants. It also denied its liability to pay Rs.198000.00, Rs.51027.55 or other amounts as find mentioned in the plaint. That the plaintiff is not entitled to recover interest @ 24% per annum. More so, a plea was taken that the suit is barred by time.

10. On the pleadings of the parties, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the

parties, the Court of first instance returned the findings against the plaintiff and resultantly dismissed the suit of the plaintiff. The Court of first Appeal reversed the said findings and decreed the suit of the plaintiff for recovery of 29,26,728.12 [Rs.1726257.23 as Principal amount and Rs.12,00,470.89 ps. as interest thereon]. Against the said judgment and decree dated 27.02.2010, both the above detailed appeals have been filed.

11. Mr. Sanjeev Sharma, learned senior counsel for the appellants submitted that bank guarantee of Rs.5,00,000/- was given and the same was encashed long back on 1.8.1989 as the plaintiff committed default and thereafter the suit was filed on 8.9.1999. Otherwise, the said claim is time barred because the cause of action for the first time had arisen in the year 1989.

12. Learned counsel for the appellants – Steel Authority of India also submitted that the payments were made to the plaintiff as duly recorded in the account books. There was no open running account in the account books of the defendants and this fact has been rightly recorded by the Court of first instance, but the Court of first Appeal reversed the said finding without there being any supporting material. More so, each financial transaction was an independent transaction. It has come in the statement of M.L.Goel, PW-3 that vide letter dated 22.2.1989 [Ex.P3] bank guarantee was encashed and the same was well within the knowledge of the plaintiff-company. The said witness also admitted that each and every delivery order is independent transaction and was recorded in separate account books. The said books of accounts are audited by the Government auditors regularly. Even this fact was recorded in the bank

accounts of the plaintiff company, but the plaintiff company intentionally did not produce the statement of bank accounts for the relevant period and that way, suit could be filed by 1995 whereas, the present suit was filed much beyond the period of limitation.

13. Learned senior counsel for the appellants while arguing on the point of limitation took the plea that if at all, the contention of the respondents are taken to be correct [though denied outrightly], the last entry is of March, 1996 whereas the suit was filed on 8.9.1999. That way, the suit was still beyond the period of limitation of three years. The Court of first Appeal has completely ignored this fact while setting aside the judgment and decree passed by the Court of first instance and the present appeal be accepted.

14. Mr. Akshay Bhan, learned senior counsel representing Steel Strips Infrastructures Limited [plaintiff] submitted that the entries in the books of accounts are not disputed in any way because all the transactions were being carried out by payment of cheques only. There was absolutely no default in dealings of the appellant-company and at any point of time, no such order was passed by the defendants that there was any such default. This fact has been admitted by the witnesses examined even by the defendants.

15. While arguing on the point of limitation, learned senior counsel for the respondent-Company submitted that there was running account in the books of account and in cases of running account, period of limitation is to start to run from the date when account is closed or final balance is stuck off. That way, the present suit was filed within the period of limitation

and the Court of first Appeal has already considered this fact while passing judgment and decree dated 27.02.2010 and the appeal filed by the appellants is without any merit and the same be dismissed.

16. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the entire oral and documentary evidence has already been scanned by both the Courts below. The Court of first Appeal has rightly come to the conclusion that the bank guarantee [Ex. P2] dated 31.1.1989 for Rs.5,00,000/- was wrongly encashed. Undisputedly, the bank guarantee was given by the plaintiff under the scheme known as 'Time Bound Supply Scheme" with the object of securing the interest of the defendants to the extent that the plaintiff may not commit any default regarding lifting of material. The Court of first Appeal has rightly taken the view that it had come in the statement of DW-1, Ranjit Singh that there was no order of competent person for encashment of bank guarantee and forfeiture of the said amount as there was no such default. The liability to pay the amount of bank guarantee and encashment thereof would arise only if the defendants, at any stage, prove that there was certain default on the part of the plaintiff under the time bound supply scheme, but as per statement of DW-1, no such order has been passed. Meaning thereby, that the defendants were not entitled to recover the said amount. The Court of first Appeal has rightly taken the view that it was for the defendants to prove that how and why the bank guarantee was encashed, but there was no supporting material or evidence brought on the file and thus, the defendants were not entitled to encashment of bank guarantee and the

plaintiff had a right to claim the said amount of Rs.5,00,000/-.

17. As regards to the claim of recovery of Rs.5,65,006.76, that is based on the fact that the plaintiff used to lift material against various delivery orders after making full payment and some times, the material received was of less value. The relevant entries were being recorded in the account books, which were regularly maintained in the course of business. Ranjit Singh, DW-1 had admitted that a sum of Rs.5,65,006.75 ps. was lying with the defendants against delivery order No.CHA/92/039996 and the said amount was duly recorded in the ledger Ex.P19. That amount has not been proved to have been paid to the plaintiff against any documentary evidence. The Court of first Appeal after scrutinizing the judgment and decree passed by the Court of first instance and while appreciating the entire oral and documentary evidence available on the file, rightly recorded the finding that the plaintiff was entitled to Rs.29,26,728.12 ps [Rs.17,26,257.23 as Principal amount and Rs.12,00,470.89 ps. as interest thereon] alongwith interest at the rate of 12% per annum.

18. As regards the plea of limitation period, the Court of first Appeal has rightly taken a view that the parties were having running account and the last transaction had taken place in May, 1998 when a sum of Rs.3,80,300/- was paid by the plaintiff and as per Article 1 of the Limitation Act, 1963, the suit was within the period of limitation as the same was filed in September, 1999. Similar matter was before Hon`ble Division Bench of this Court in **Central Distillery & Chemical Works Ltd. Vs. Gurbharatjeet Singh, 1993 AIR [Punjab] 25,** wherein view was taken

that in a suit for recovery under Section 34 of the Code of Civil Procedure, 1908, if the parties are having running business account with credit facility, Article 14 of the Limitation Act shall apply. The Division Bench observed as under:-

> ".. It is further clear that the appellant had been supplying material regularly to the respondents for which certain payments were made at different intervals of time, but some amount was always due to the appellant from the respondents. It is only when the outstanding amount kept piling up that the appellant was forced to institute the suit for recovery of its dues..."

19. Applying the same principles of law to the present set of facts, the Court of first Appeal has already taken a view that the suit has been filed within period of limitation.

20. As regards to RSA No. 3912 of 2010, learned senior counsel for the appellant took the plea that the Court of first Appeal has awarded interest at the rate of 12% per annum whereas it was a case of commercial transaction between the parties. More so, the defendants used to charge interest @ 18% to 27% per annum on the transactions and the plaintiff has already made the payment at the said rate of interest, as is evidence from Ex. PX1 to PX5, wherein same rate of interest of 18% to 27% per annum was charged. So, the appellant-company is entitled to interest at the rate of 24% per annum.

21. Learned senior counsel for the respondents submitted that the Court below has already awarded interest more than the bank rate of interest and there is absolutely no ground for further enhancement of rate of interest and the appeal filed by the plaintiff-appellant deserves to be dismissed.

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22. Having considered the submissions made by learned counsel for the parties, this Court is of the view that RSA No. 3912 of 2010 has already awarded reasonable rate of interest keeping in view the prevailing market rate of interest at the relevant time and there is no reason to upset the findings recorded by the Court of first Appeal.

23. In view of the above, both the Regular Second Appeals RSA No. 1766 of 2010 and RSA NO. 3912 OF 2010 stand dismissed.

(SHEKHER DHAWAN)
JUDGE

May 24th, 2016
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