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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 16.12.2016

1.

RSA-1359-2012 (O&M)

M/s Fine Fabrics through its Proprietor Amit Gaur and another

... Appellants

Versus

Mrs. Meenakshi Saxena and another

... Respondents

2.

RSA-4588-2012 (O&M)

Meenakshi Saxena and another

... Appellants

Versus

M/s Fine Fabrics through its proprietor Amit Gaur and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Mahavir Sandhu, Advocate
for the appellant(s) in RSA-1359-2012 and
for the respondent(s) in RSA-4588-2012.

Mr. Rajesh Narang, Advocate
for the respondent(s) in RSA-1359-2012 and
for the appellant(s) in RSA-4588-2012.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals one bearing

RSA No.1359 of 2012 titled as **“M/s Fine Fabrics through its Proprietor**

Amit Gaur and another V/s Meenakshi Saxena and another”, whereby the

Civil Suit bearing No.357 of 2008 titled as **“M/s Fine Fabrics through its**

Proprietor Amit Gaur and another V/s M/s M.S. Creations through its

Proprietors Meenakshi Saxena and another” (hereinafter called 'second suit') seeking recovery of ₹ 5,01,264/- has been decreed by the trial Court, but the lower Appellate Court has reversed the same, whereas the other appeal bearing RSA No.4588 of 2012 titled as “Meenakshi Saxena and another V/s M/s Fine Fabrics through its proprietor Amit Gaur and another” whereby the Civil Suit bearing No.355 of 2005 titled as “Mrs. Meenakshi Saxena and another V/s M/s Fine Fabrics through its proprietor Amit Gaur” (hereinafter called 'first suit') seeking recovery of ₹ 15,00,000/-, has been dismissed by both the Courts below.

Mr. Mahavir Sandhu, learned counsel appearing on behalf of the appellant(s) in RSA-1359-2012 and for the respondent(s) in RSA-4588-2012, submits that the suit for recovery was based upon the documentary evidence i.e. Ex.P-1 to Ex.P-11 i.e. Bill Nos.51 to 57 upto 31.10.2002, whereby the aforementioned amount was outstanding, much less, payable by the defendant(s) in respect of the goods supplied. The trial Court on the preponderance of the evidence decreed the suit, but the lower Appellate Court non-suited the appellant(s) on the ground that author of the Bill was not examined, much less, the statement of accounts did not come on record. Umpteen number of documentary evidence has been placed on record to establish the case which has escaped the notice of the lower Appellate Court, thus, there is gross illegality and perversity.

Mr. Rajesh Narang, learned counsel appearing on behalf of the for the respondent(s) in RSA-1359-2012 and for the appellant(s) in RSA-4588-2012, submits that along with the appeal, one application bearing CM-14451-C-2016 under Order 41 Rule 27 read with Section 65 CPC seeking

leave of this Court to place on record the copy of the original Bills (Ex.P-7) to prove the outstanding amount as before the Courts below, only the photocopies of the Bills were placed on record. No leave of the Court below for placing on record was sought. In case an opportunity is granted, the respondent(s) shall be able to prove his case, failing which, a serious prejudice would be caused.

I have heard the learned counsel for the parties and appraised the paper book and of the view that both the parties have been very negligent and tardy in pursuing the case and not placing on record the statement of accounts. For proving the case, the statement of accounts duly signed by the accountant at the helm of the office of the Firm, is required to be proved as per the provisions of Section 34 of the Indian Evidence Act. Having failed to do so, I am of the view that the findings rendered by the lower Appellate Court in the second suit are sustainable.

Requirement of the provisions of Order 7 Rule 17 of the Code of Civil Procedure i.e. production of the document is conspicuously absent. Having failed to do so, I am of view that the both the parties have not discharged the onus as enshrined under Section 101 of the Indian Evidence Act. Production of original document is an essential compliance for succeeding in a suit for recovery. It would be too late in a day to allow the plaintiff in a first suit for producing the bills in original, in the absence of the compliance of Order 7 Rule 17 CPC tantamounting to putting the clock back. The appeal of the year 2012, though the earlier application filed was found to be defective and second application of similar nature was dismissed.

I am in agreement with the findings rendered by the Courts

below particularly the lower Appellate Court in RSA 1359 of 2012 that the plaintiff has not been able to discharge the onus. Had the *rokar bahis* or books been produced on record, it would have definitely carried a presumption of truth under Section 34 of the Indian Evidence Act.

For the foregoing reasons, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below in RSA No.4588 of 2012 and that of lower Appellate Court in RSA No.1359 of 2012 as the same are based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration. The second appeals are dismissed.

16.12.2016
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

✓

Whether Reportable Yes/ No