

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

R.S.A No.5318 of 2012

Date of decision : 03.05.2016

M/s Marwar Carpets International & another

..... Appellants-defendants

Versus

M/s Goela Industries

..... Respondent-plaintiff

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Sandeep Kotla, Advocate
for the appellants.

Mr. S.S.Virk, Advocate
for the respondent.

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

DARSHAN SINGH,J

The present appeal has been preferred by the appellant-defendant against the judgment and decree dated 14.08.2012 passed by the learned District Judge, Panipat, vide which the appeal filed by the appellant against the judgment and decree dated 03.02.2011 passed by the learned Additional Civil Judge (Senior Division), Panipat, has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.
3. Plaintiff-respondent has filed the suit for recovery of Rs.

4,63,437/- along with interest at the rate of 24 % per annum on the grounds *inter alia* that plaintiff-concern has supplied CMC solutions/Rubber Solution to the appellants-defendants firm on different dates vide different invoice numbers total worth Rs. 4,63,437/- including the cartage and VAT. The payment of the said amount has not been made in-spite of demands. Hence, the suit.

4. Appellants-defendants contested the suit on the grounds *inter alia* that the plaintiff concern in collusion with the employees of the appellants-defendants firm has forged the invoice no. 735 dated 25.07.2005 and the defendants were not liable to pay said amount of Rs. 55191/- regarding said invoice. It is further pleaded that when the said fraud was discovered, appellants-defendants called their employees namely Anil Rawal Storekeeper, Avinash Binding Master, Parmod Kumar Security Guard and Gurpal Singh Store clerk/Gatekeeper and the plaintiff in their office. This fact was admitted by their employees in the presence of Surender Kumar Goel, the husband of the proprietor of the plaintiff-concern. It was further discovered that similar bill/invoice no. 734 of Rs.55191/- was also the forged document and no goods against the said bill/invoice were received by the appellants-defendants. Surinder Kumar Goel has also admitted this fact on telephone in conversation with Deepak, which was recorded in compact disc. Ultimately, Surender Kumar Goel had agreed that he will not claim any amount in respect of bills/invoices nos. 642, 671, 682, 683, 694, 715, 726, 734 and 735 and invoices of M/s S.K. Traders bearing no. 3931, 3938 and 3968 and the matter was settled. It was pleaded that therefore, the plaintiff concern

have no right to file the suit against the appellant-defendant and is estopped from claiming any amount in respect of the aforesaid bills. With these pleas, the appellants-defendants pleaded for dismissal of the suit.

5. Plaintiff-respondent filed the replication controverting the pleas raised in the written statement. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to recovery of Rs. 4,63,437/-? OPP
2. Whether the plaintiff is estopped from filing the present suit due to its own act and conduct? OPD
3. Whether the suit is not maintainable? OPD
4. Relief

6. On appreciating the material on record and the contentions raised by learned counsel for the parties, the learned trial Court decreed the suit filed by the plaintiff-respondent with costs and the plaintiff was also held entitled for 12 % simple interest per annum on the unpaid bills after one month of their respective dates, till the realization, vide impugned judgment and decree dated 03.02.2011.

7. Aggrieved with the aforesaid judgment and decree, appellants-defendants preferred the appeal, which was dismissed by the learned District Judge, Panipat, vide impugned judgment and decree dated 14.08.2012. Hence this Regular Second Appeal by the appellant-defendant.

8. I have heard Mr. Sandeep Kotla, Advocate, learned counsel for the appellants-defendants, Mr. S.S.Virk, Advocate, learned counsel for the respondent and have meticulously gone through the paper book.

9. Initiating the arguments, learned counsel for the appellants

contended that the plaintiff-respondent has forged the invoice nos. 734 and 735 Ex.P-3 and Ex.P-2 respectively issued on 25.07.2005, which were for the same quantity and the same amount. No goods were supplied against these invoices to the appellants-defendants on 25.07.2005. He further contended that from the statement of DW-1 Mukhtiar Singh, Senior Manager, M/s Marwar Carpets International, it is proved that the plaintiff-respondent concern has fabricated the false invoices Ex.P-2 and Ex.P-3 in collusion with the employees of the appellants-defendants. This fact is also established from the writings given by the employees of the appellants-defendants, who were in collusion with Surender Kumar Goel, the husband of the proprietor of the plaintiff-concern. Even, Surender Kumar Goel has admitted his fraud and apologized in writing vide writing mark D-1. He contended that issuing of two invoices of the same quantity and the same amount indicates that these invoices were forged. Therefore, learned counsel for the appellants contended that the learned Courts below had committed serious illegality in decreeing the suit filed by the plaintiff-respondent.

10. On the other hand, learned counsel for the plaintiff-respondent contended that this fact is not disputed that the appellants-defendants firm had business transactions with the plaintiff-respondent. The plaintiff has been supplying rubber adhesive chemicals and CMC solutions to the defendants. He further contended that the plea raised by defendants-appellants that the invoices Ex.P-2 and Ex.P-3 were forged in collusion with the employees of the appellants is not established. The writings Ex.D-1 to D-4 are only the photocopies and have not been

proved in accordance with law and mark D-1 is also only a marked document. He contended that from the documentary as well as oral evidence adduced by the plaintiff, it is established that the goods were supplied to the appellants-defendants vide different invoices against which no payment has been made by defendants-appellants. Thus, he contended that the plaintiff-respondent has rightly been held entitled to recover the suit amount from the appellants-defendants.

11. I have duly considered the aforesaid contentions.

12. This fact has not been disputed by the appellant-defendant that they were having the business transactions with the plaintiff-respondent. In the written statement, the appellant-defendant has raised the dispute only with respect to the invoices nos.734 and 735 Ex.P-3 and Ex.P-2 respectively. It has been pleaded that no goods mentioned in these invoices were supplied to the appellant-defendant by the plaintiff-respondent and has forged these invoices in collusion with the employees of the appellant-defendant. In order to establish the plea that the bills/invoices nos. 734 and 735 were forged, the appellants have relied upon the writings Ex.D-1 to Ex.D-4 alleged to be executed by the employees of the defendant, the writing mark D-1 allegedly executed by Surender Kumar Goel admitting his fault and the statement of DW-1 Mukhtiar Singh, Accounts Sr. Manager of the appellants. Admittedly, DW-1 is not the signatory to the documents Ex.D-1 to Ex.D-4. These are only the photostat copies. The originals thereof have not been produced. The employees, who have scribed these writings have not been examined. As already mentioned DW-1 is neither the signatory nor the scribe of

these writings. Thus, the writing Ex.D-1 to Ex.D-4 are not proved in accordance with law. Mere marking of exhibit on these documents will not dispense with the formal proof. To support this view, reference can be made to case **Karnail Singh Vs. M/s Kalra Brothers, Sirsa 2009(2) R.C.R (Civil) 380** and **Sait Tarajee Khimchand Vs. Yelamarti Satyam AIR 1971, Supreme Court 1865**. Similarly, the writing mark D-1 allegedly executed by Surender Kumar Goel is only a mark document. The original thereof has not been produced in evidence. No evidence has been led to establish that this document bears the signatures/writing of Surender Kumar Goel. Appellants have obtained the specimen signatures/writing of Surender Kumar Goel, but no evidence was led by the appellants to establish that the original of mark D-1 is in the hands of Surender Kumar Goel and bears his signatures. So, the writing mark D-1 is not proved to have been executed by Surender Kumar Goel. It is only a photocopy, so the same also cannot be taken into consideration. Appellants-defendants have alleged that the conversation of Surender Kumar Goel and Deepak was recorded in compact disc, wherein Surender Kumar Goel has admitted his fault and had made the request not to report the matter to the police and make it public as it will harm their reputation in the society. But, no such compact disc has been produced in the Court.

13. Mere this fact that the invoice nos. 734 and 735 have been issued on the same date is no ground to render those invoices doubtful. Moreover, PW-1 Surender Kumar Goel has explained that the total consignment could not be loaded in a single mule cart, therefore two separate invoices were prepared and delivered on the same date. The

invoices nos. 734 and 735 Ex.P-2 and Ex.P-3 are proved from the evidence adduced by the plaintiff. Then, the burden had shifted upon the appellants to establish that they had not received the delivery of the goods mentioned therein and the delivery receipts were got signed by the plaintiff in collusion with the employees of the appellants-defendants. The appellants-defendants have not produced their record to show that they have not received any consignment from the plaintiff-respondent on 25.07.2005. Thus, the appellants-defendants have failed to substantiate the plea raised by them.

14. Thus, there is no escape from the conclusion that the plaintiff-respondent has supplied the goods to the appellants-defendants vide bills/invoices Ex.P-2 to Ex.P-9 total worth Rs. 4,63,437/- for which no payment has been made by the appellants-defendants and the plaintiff-respondent has rightly been held entitled to receive the aforesaid amount by the learned Courts below.

15. Thus, I have no reason to differ with the concurrent findings recorded by the learned Courts below.

16. Consequently, no question of law, much less, the substantial question of law arises in the present appeal.

17. Therefore, the present appeal being devoid of merits, is hereby dismissed with no orders as to costs.

May 03, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**