IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.27 of 2013 (O&M)
Date of decision : 06.05.2016

Pushpa Bedi

...Appellant

Versus

M/s Bedi Engineers

...Respondent

2. RSA No.5432 of 2012 (O&M)
Date of decision : 06.05.2016

M/s Bedi Engineers

...Appellant

Versus

Pushpa Bedi

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Viren Jain, Advocate for the appellant
(In RSA No.27 of 2013) and
for the respondent (In RSA No.5432 of 2012)

Mr. Vikas Mohan Gupta, Advocate for the appellant
(In RSA No.5432 of 2012) &
for the respondent (In RSA No.27 of 2013)

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.5432 of 2012 titled as M/s Bedi Engineers Vs. Pushpa Bedi and RSA No.27 of 2013 titled as Pushpa Bedi Vs. M/s Bedi Engineers.

The appellant-defendant is aggrieved of the concurrent findings of fact, whereby suit for recovery of ₹77,453.32/- (principle amount of ₹46,812.81/- and ₹30,640.51/- as interest at the rate of 18%) has been decreed.

Mr. Viren Jain, learned counsel appearing on behalf of the appellant submits that as per the dissolution deed dated 19.03.1997 Ex.P4 and as per Clauses 2 and 5, all the trading account, Profit and Loss Account, Balance Sheet, Personal Account of both the parties were prepared and checked and found correct by both the parties and in lieu of its correctness both the parties signed all the accounts statements and keeping in view the aforementioned fact, Clause No.5 envisage as there was debit balance in the said capital account of other outgoing party i.e. appellant-defendant namely Pushpa Bedi had promised to pay back the aforementioned amount lying in the debit in her capital account. Plaintiff failed to prove on record the documents written in Clause 2 except self-serving balance sheet which has been just tendered but not proved. The income tax returns having filed by Sudesh Bedi one of the partner of the plaintiff firm did not bear the signatures of the appellant nor the income tax returns contains the said document which has been reflected in Clause 2. During the cross-examination of the plaintiff's witnesses, question was put for bringing the evidence and the matter was adjourned and ultimately witness produced the account Statement. PW2 in reply to question put in cross-examination stated that the Accounts book do not bear the signature of any of the partner as the same was not required and she did not know withdrawal of the amount of the firm after signing the voucher or documents i.e. Ex.D1 to Ex.D9 and copy of the ledger of the firm. He further submits that adverse inference was liable to be drawn as the plaintiff has withheld the best piece of evidence to substantiate their claim and thus urges this Court for affirming of the following substantial questions of law as the aforementioned fact cannot be noticed by the Courts below:-

1. Whether the judgment and decree of the courts below suffers from illegality and perversity?
2. Whether adverse inference was liable to be drawn in case respondent-plaintiff do not produce the documents contained in Clause 2 of the Dissolution Deed?

Mr. Vikas Mohan Gupta, learned counsel appearing on behalf of the respondent-plaintiff submits that Ex.D1 to Ex.D9 are documents produced in the cross-examination of the plaintiff and thus they are of the defendants and as per the said ledger, balance has been shown for which the recovery has been sought. Ledgers are not required to be signed. Witness from Income Tax Department endorsed the statement of account showing the balance and thus corroborative evidence had been brought on record in order to seek the recovery. Once ledger sheet showing the appellant to be a partner, suit at the instance of the partnership firm is maintainable, in essence, it has locus standi and thus urges this Court to affirm the findings rendered by both the Courts below.

Mr. Viren Jain, in rebuttal submits that having failed to prove the debit balance of the firm, partnership firm did not have locus standi to file the suit.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and substance in the plea of Mr. Jain. For the sake of brevity, Clause 2 and 5 are extracted hereinbelow:-

> *"2. That the trading account, profit and Loss Account, Balance Sheet and personal Accounts of both the parties have been prepared and checked and found correct by both the parties and in lieu of its correctness both the parties have signed all the accounts statements.*
>
> *5. That there is debit balance in the capital account of the other outgoing party Smt. Pushpa Bedi and she has promised to pay back the amount as standing as debit in her capital account to the continuing party as mutually agreed between both the parties."*

It is conceded position on record that documentary evidence in Clause No.2 has not been brought or proved. The ledger sheet brought in the cross-examination of the witnesses do not prove the case. For the sake of brevity, cross-examination of the respondent-PW2 is extracted hereinbelow:-

> *"The a/c books from the year 1992-93 to 1999-2000 has been brought by me as directed by this court. The a/c books do not bear the signatures of any of the partner as the same is not required. I do not know if the partners used to withdraw the amount from the firm after signing any voucher or document. Since I was not maintaining accounts, I do not know how the same has been made. I do not know the name of the person in whose hands the entries in the accounts books have been made. Ex.D1 to Ex.D9 are the copies of ledger from the year 1992-93 to 1999-00 of the firm M/s Bedi Engineers. The entries in the account books Ex.D1 to Ex.D9 have been made in different heads."*

The ledger statements are also the loose sheet, copies of which are not lying in arranged/bound manner. Account statement and income tax returns, filed along are self-serving documents of the respondent-plaintiff, I am of the view that inference under Section 114 of the Indian Evidence Act is liable to be drawn for withholding best evidence.

In view of the aforementioned fact, judgment and decree of both the Courts below are not sustainable and are hereby set aside.

Regular Second Appeal No.27 of 2013, stands allowed. Substantial Questions of law as noticed above are answered in favour of appellant-defendant and against respondent-plaintiff.

As regards the claim of interest regarding the pendente lite, I am of the view that once respondent-plaintiff has failed to claim the decretal amount, no interest can be granted.

Regular Second Appeal No.5432 of 2012, resultantly is dismissed.

06.05.2016 **(AMIT RAWAL)**
pawan **JUDGE**