In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2520 of 2016 (O&M)

Date of Decision: 26.05.2016

M/s Ramson Remedies

... Appellant(s)

Versus

Punjab State Power Corporation Limited

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Sharad Mehra, Advocate
for the appellant(s).

Shekher Dhawan, J.

Present regular second appeal, filed by the plaintiff, against concurrent findings of facts having been recorded by both the Courts below in a suit for permanent injunction.

For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

Relevant facts of the case that plaintiff had filed suit for permanent injunction restraining the defendant from disconnecting its electric supply having electric connection No. MS07/0241. The suit was filed by M/s Ramson Remedies through its partner Ravi Kumar against the demand of ₹ 2,38,924/-, which was due to M/s Sethi Industries and not towards the plaintiff. The electric connection No. MS01/050 was in the name of M/s Sethi Industries, who had surrendered the said connection. Thereafter, defendant issued notice and some official from the department came to the premises of the plaintiff asking them to pay ₹ 2,38,924/- within 15 days, failing which the electric connection would be disconnected. However, the plaintiff is not entitled to make the said payment. Oral requests made to the defendant were of no use and as such necessity of the suit.

Defendant contested the suit *inter alia* taking the plea that plaintiff has submitted a letter to the defendant-Board that if there was any due towards the firm i.e. M/s Sethi Industries, the same will be paid by plaintiff. The electric connection No. MS01/050 was transferred from M/s Sethi Industries and new electric connection No. MS01/0241 was issued in the name of Ram Sarup. At the time of getting electric connection, Ram Sarup, father of partners of M/s Ramson Remedies, submitted an affidavit that in case of any amount due, he would be liable to pay the same to the defendant. Hence, demand of ₹ 2,38,924/- was quite legal and valid and prayed that suit deserves dismissal.

On these facts, the Court of first instance settled the issues and parties were asked to lead their respective evidence. After recording of the evidence and appreciation thereof, the Court of first instance dismissed the suit and appeal was dismissed by first Appellate Court.

Learned counsel for the appellant submitted that admittedly, earlier, property was owned by M/s Sethi Industries and thereafter, the same was purchased by the petitioner firm and new electric connection was taken. But still defendant raised demand against the plaintiff without there being any basis.

Learned counsel for the appellant also submitted that it is settled law that Electricity Board cannot recover the bill from subsequent purchaser of the property. On this point, reliance was placed upon the judgment of the Orissa High Court in ***Ajay Kumar Agrawal v. O.S.F.C. and Others 2007 AIR (Orissa) 37***.

Learned counsel for the appellant also submitted that as plaintiff had got the earlier electric connection disconnected after purchase of the property, there is no liability on its part and the demand of ₹ 2,38,924/- raised by the defendant in this regard was illegal and without any justification. On this point, reliance was placed upon the judgment rendered by the Hon'ble Apex Court in ***Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd. and Others 2005(1) RCR(Civil) 627***, H***aryana State Electricity Board v. M/s Hanuman Rice Mills Dhanauri & Others 2010 AIR (SC) 3835***, and view taken by the Full Bench of Gujarat High Court in ***Sanjay Balavantrai Desi and 2 v. Dakshin Gujarat Vij Company Ltd. And 3 2013(3) RCR (Civil) 181*** and Division Bench of this Court in ***Rayat Educational and Research Trust v. Punjab State Electricity Board and Another 2004(2) RCR (Civil) 603***.

Having considered the submissions made by learned counsel for the appellant and appraisal of the record of the case and grounds of appeal, this Court is of the considered view that present regular second appeal is against concurrent findings of facts having been recorded by the Courts below, whereby findings have been recorded that on the basis of affidavit, plaintiff had undertaken to pay the bill amount, if any due towards M/s Sethi Industries and as such defendant was entitled to recover the amount. The said findings of fact do not call for any interference by way of present regular second appeal. The facts of the instant case are distinguishable from the facts of the judgments rendered by the Hon'ble Apex Court in cases ***Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd.***, H***aryana State Electricity Board v. M/s Hanuman Rice Mills Dhanauri*** *(supra)* and views taken by the Full Bench of Gujarat High Court in ***Sanjay Balavantrai Desi v. Dakshin Gujarat Vij Company Ltd.****(supra)* and Division Bench of this Court in ***Rayat Educational and Research Trust v. Punjab State Electricity Board*** *(supra)*.

Another important aspect involved in this case that the first Appellate Court has rightly observed that present suit was filed by M/s Ramson Remedies, which is an unregistered firm and it cannot institute any legal proceedings on behalf of the firm. For ready reference, Section 69 of the Indian Partnership Act, 1932 reads as under:-

"EFFECT OF NON-REGISTRATION.

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on a behalf of any persons suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm :

Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of the firm or to realise the property of the firm.

(2) No suit to enforce a right arising from a contract shall be

instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

Hence, the first Appellate Court has rightly observed that as per Section 69 of the Indian Partnership Act, the suit, having been filed by unregistered firm, cannot be instituted by it against any party.

In view of above, present regular second appeal having been filed against the concurrent findings of facts and there being no substantial question of law involved in this case.

In ***Deity Pattabhiramaswami v. S. Hanymayya and Others AIR 1959 SC 57***, the Hon'ble Apex Court observed that the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of findings of fact. In ***Commissioner, Hindu Religious & Charitable Endowment v. P. Shanmugama & Others JT 2005(1) SC 201*** and ***Biswanath Ghosh (Dead) by LRs and Others v. Gobinda Ghosh alias Gobindha Chandra Ghosh & Others AIR 2014 SC 1582***, the Hon'ble Apex Court has taken a view that second appeal cannot be entertained if there is no substantial question of law involved therein.

Accordingly, present appeal is not maintainable as per the provisions of Section 100 of the Code of Civil Procedure, 1908 and the same stands dismissed.

(Shekher Dhawan)
Judge

May 26, 2016
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