

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

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Regular Second Appeal No.2522 of 2015 (O&M)
Date of Decision: May 10, 2016

M/s Gupta Enterprises, Karnal and another

...Appellants

Versus

Dharam Pal Gupta (deceased) through his LRs and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pankaj Bali, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.5397-C of 2016

Prayer in this application is for permission to lead additional evidence in the form of a complaint and the site plan.

At the time of hearing of the application, after making some submissions, the counsel for the applicants-appellants does not press the application and, therefore, the same stands dismissed.

CM No.5396-C of 2016

Prayer in this application is for preponement of the hearing of the appeal in the light of the fact that the execution proceedings are pending before the Court for 24.05.2016.

For the reasons mentioned in the application, the same is allowed.

The hearing of the main appeal is preponed from 14.07.2016 and the same is taken on board for consideration.

RSA No.2522 of 2015

Challenge in this appeal is to the judgment and decree dated

19.03.2011 passed by the Civil Judge (Senior Division), Karnal, whereby the suit filed by respondents 1 to 3-plaintiffs for recovery of ₹5,12,683/- which is arrears of rent along with 12% interest, has been decreed against appellant-defendant No.1, the partnership firm as also the other two defendants, who are the active partners of the said partnership firm, appeal against which preferred by the appellants-defendants 1 and 2 has been dismissed by the Additional District Judge, Karnal, on 02.02.2015.

2. It is the contention of learned counsel for the appellants that the respondents-plaintiffs have intentionally not impleaded all the partners to the partnership firm as parties. He further contends that even if the said assertion is not to be accepted, the liability, if any, would be of the partners as per the terms and conditions of the partnership deed dated 01.04.1992 Exhibit P-9. He, therefore, contends that the judgments and decree as passed by the Courts below cannot sustain as the liability has been imposed upon the firm as well as appellant-defendant No.2 as also respondent No.4-defendant No.3-Rajesh Kumar only, who was proceeded against *ex parte* even before the trial Court and had preferred not to file an appeal against judgment and decree. He, thus, contends that the impugned judgments and decree be set aside and the suit of the respondents 1 to 3-plaintiffs be dismissed.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgments.

4. It is apparent from the judgments, as has been passed by the Courts below, especially the trial Court in para 29 where the question, as has been raised by the counsel for the appellants that the other partners to

the firm are not party to the suit, has been correctly dealt with that the partnership firm has been impleaded as a party and the active partners of the firm and, therefore, the impleadment of the other partners to the firm would be immaterial. This is in accordance with Section 24 of The Indian Partnership Act, 1932 (hereinafter referred to as 1932 Act). The rights and liabilities of the partners of the firm are based upon and subject to the contract as mentioned in the partnership deed as per Section 13 of the 1932 Act. The Court has itself clarified the position on this aspect and, therefore, the plea of the counsel for the appellants, cannot be accepted that the other partners should have been impleaded as party to the suit.

5. The assertion of the counsel for the appellants that the liability has only been foisted upon the defendants to the suit, is correct for the reason that the company itself has been held responsible along with the two active partners for the recovery and, therefore, the decree has been rightly passed against the defendants. As has been mentioned above at the time of the execution of the decree, the liability of the firm would be as per the partnership deed and, therefore, it is wrong to suggest that only the appellant-defendant No.2 and defendant No.3 have been held liable, it is so because they are admittedly the active members of the partnership firm and, therefore, have been rightly made the party to the suit and liability also fixed on them for the said purposes. It may be added here that as per Section 25 of the 1932 Act, every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner, therefore, their liability is equal. However, as per the judgment of the Supreme Court in *Sahu Rajeshwar Nath Versus I.T.O. Meerut*,

AIR 1969 SC 567, it is open to a creditor of the firm to recover the debt from anyone or more of the partners. The judgments and decree passed by the Courts below being in accordance with law, do not call for interference and are upheld.

6. No other point has been argued by the counsel for the appellant.

7. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeal.

9. Therefore, finding no merit in the appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.6551-C of 2015, stands disposed of as infructuous.

May 10, 2016
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE