

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

RSA No.4445 of 2015 (O&M)

Date of Decision.02.09.2016

Arihant Jain and Sons Commission Agents, Ferozepur Cantt.

.....Appellant

Vs.

M/s GMT Rice Mills

.....Respondent

Present: Mr. Mandeep K. Sajjan, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

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AMIT RAWAL J. (ORAL)

C.M. No.8910-C of 2016

For the reasons stated in the application, delay of 36 days in filing the restoration application is condoned.

Application is allowed.

C.M. No.8911-C of 2016

For the reasons stated in the application, order passed by this Court on 09.05.2016 is recalled and the appeal is restored to its original number.

Application is allowed.

RSA No.4445 of 2015

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking recovery of amount of ₹79,839.77 on the premise that the defendant had purchased the paddy on 03.08.2004 by issuing Form I.

Learned counsel for the appellant-plaintiff submits that, as

noticed by the trial Court, the defendant admitted in cross-examination that he purchased the paddy and could not even show the receipt of the amount of money and therefore, adverse inference was liable to be drawn against the respondent-defendant. The respondent-defendant in the suit has been arrayed as M/s GMT Rice Mills Jhoke Harihar, Tehsil and District Ferozepur through its partners. However, the trial Court despite observing the above fact dismissed the suit illegally and perversely on the premise that it was not partnership firm but was a company and the company was purchased by Sh. Shushank Singla son of Uma Shanker vide agreement dated 15.07.2005 and recovery of the amount ought not to have been ordered from the assignee company, thus, urges this Court for setting aside the judgments and decrees passed by the Courts below by formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that factum of company instead of firm was disclosed in the written statement and therefore, nothing prevented the plaintiff to seek amendment in order to continue the suit but instead he continued the suit against the firm which was not in existence. Even the liabilities of the firm have been transferred to the subsequent company/purchaser and this fact has been proved vide agreement dated 15.07.2005, Ex.D3. In view of the above, recovery could not be ordered against the firm which was not in existence and become extinct. All these facts weighed in the mind of Courts below while dismissing the suit.

For the foregoing reasons, I do not differ with the findings rendered by the Courts below as the same are based upon correct appreciation of documentary as well oral evidence, much less, no

substantial question of law arises for consideration. No ground for interference is made out.

The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 02, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No