

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 714 of 2015 (O&M)

Date of Decision: 20.05.2016

R.S.Builders & Engineers Ltd. and Others

... Appellant(s)

Versus

M/s Shri Krishan & Company and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 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. A.S.Sullar, Advocate
for the appellant(s)

Shekher Dhawan, J.

Present regular second appeal, filed by defendants No. 1, 2 & 4, against concurrent findings of facts having been recorded by both the Courts below in a suit for recovery of ₹ 5,96,831/-.

The Court of first instance decreed the suit for recovery and first appeal preferred by defendants No. 1, 2 & 4 was dismissed by the first Appellate Court and hence, regular second appeal before this Court.

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 plaintiffs filed suit for recovery

with the plaintiffs, who used to maintain books of accounts in the regular course of business. All the transactions were being entered in the running account and there was an outstanding amount of ₹ 4,65,248/-, which was not paid by the defendants despite demand and as such necessity of the suit.

Defendants contested the suit *inter alia* taking the plea that account books, which are being maintained by the plaintiffs are false and are not binding upon defendant No.2. Defendants never promised to repay the balance amount nor any legal notice was served and suit is without any merit and same be dismissed.

On these facts, issues were settled by the Court of first instance and parties were put to trial. The parties have led their evidence and after appreciating thereof, the Court of first instance decreed the suit for recovery of ₹ 4,65,248/-. First appeal, preferred by defendants No. 1, 2 & 4, was dismissed. Hence, present regular second appeal before this Court.

Learned counsel for the appellants submitted that in the present case, construction was completed much prior and appellants were not to pay anything to respondents No.1 to 3, but still both the Courts below recorded findings against the appellants, which are liable to be set aside.

Having considered the submissions made by learned counsel for the appellants and appraisal of the record of the case, this Court is of the considered view that the Courts below have scanned the entire oral and documentary evidence. The case of appellants is merely denial, which has rightly been discarded by the Courts below. There is no substantial question of law involved in the present appeal.

As per view taken by Hon'ble the Supreme Court in *Deity*

provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of finding of fact. As per view taken by Hon'ble the Apex Court 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*, second appeal cannot be entertained if there is no substantial question of law involved therein.

In view of the above, 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 20, 2016
"DK"