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

**RSA-3903-2014**
**Date of Decision : May 25th, 2016**

The State of Manipur and others .... Appellants

Versus

Druckgraften India Limited and others .. Respondents

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

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

Present Mr. P. Ramesh Kumar, Advocate,
for Mr. J.S.Bhatia, Advocate,
for the appellants.

Mr. Sajal Koser, Advocate,
for respondent No.1.

***SHEKHER DHAWAN, J.***

Present Regular Second Appeal by defendants No.1 to 3 is directed against the concurrent findings of fact recorded by both the Courts below in a suit for recovery of Rs.1,17,72,090/- [Rs.62,18,090/- as Principal amount and Rs.55,54,000/- as interest].

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

3. Relevant facts of the case for the purpose of decision of this

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appeal; that the plaintiff-company filed a suit for recovery on the ground that the it was carrying on business of printing and primarily with the security printing and is recognized by Directorate of Printing, Government of India and also approved by the Reserve Bank of India. In March, 1996, an agreement was arrived at between defendant No.2 and the plaintiff company for printing of lottery tickets for the defendant-State as per the guidelines issued by Hon`ble Supreme Court in Civil Appeal No. 2349 of 1994. Order for printing was issued by Government of Manipur, Directorate of State Lotteries and signed by Joint Director [Lotteries ]. The plaintiff company executed the contract as per requirement. Proper bill was being raised against the work executed by the plaintiff-company and the work continued till July, 1997. There was a running account. After July, 1997, no demand was raised by the defendants and as such the plaintiff – company requested the defendants to finalize the complete bills and to release the amount, but the said payment was not made despite demand and notice. The defendants had come with the plea that all the distributors were asked to deposit the amount with the Director Manipur-State Lotteries in Current Saving Account No. 5369, Canara Bank, Jhanakpuri Branch, New Delhi and the plaintiff was not party to the alleged agreement between the sole distributor and stockist concerned and as such, there was no question of the plaintiff to request them to release the amount. As per the plaintiff-company, since the plaintiff entered into an agreement with Government of Manipur, so the responsibility of making the payment and release the payment was of the State Government, but the payment was not made and

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as such necessity of suit.

4. Defendants No. 1 to 3 i.e., State of Manipur, Directorate of State Lotteries and Joint Director [Lotteries], put their appearance before the Court of first instance and filed written statement whereas defendants No. 4 and 5 failed to appear and they were proceeded against *ex parte*.

5. On these facts, the Court of first instance settled the issues. Parties led their respective evidence and after appreciating the entire oral as well as documentary evidence brought on record by the parties, the Court of first instance decreed the suit of the plaintiff-company for recovery of Rs.62,18,090/- alongwith interest @ 9% per annum w.e.f. 1.4.1998 till realization of the said amount. The appeal filed before the present appellants before the Court of first Appeal was also dismissed. As such, the present Regular Second Appeal.

6. Learned counsel for the appellants submitted that the rights and liability of the parties were to be determined as per agreement dated 5.4.1995. As per clause (14) of the said agreement, printing charges were to be paid by the distributor. As per clauses (18) and (19), the defendant-State was liable to make the payment, but the said agreement was valid till 05.4.1996 only and thereafter there was no responsibility of the State Government to make the payment and respondent No.1 was to collect printing charges from the distributor only.

7. Learned counsel for the respondents submitted that the printing order was placed by the State Government and printing was done on the instructions of the State Government and vide Ex. PW-1/8, the Government

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took the responsibility to make the payment. In this regard, reliance was also placed on Ex. PW-1/9 whereby respondent No.1 was continuously liable to make the payment as per undertaking of the State. Otherwise, both the Courts below have already appreciated the entire evidence and there is no ground to interfere in the said concurrent findings of fact having been recorded by the Courts below and the present appeal is not maintainable as no substantial question of law is involved in this appeal and the same be dismissed.

8. Having considered the submissions made by learned counsel for the parties and appreciating the material placed on case file and grounds of appeal, this Court is of the considered view that most of the facts are not disputed that the plaintiff-company had performed its obligation qua printing of tickets and there was no dispute regarding that aspect. The only point involved was whether after expiry of period of agreement, which was initially for a period of one year, the defendants were liable to make the payment or not? Undisputedly, the agreement Ex. PW-1/2 dated 5.4.1995 was initially for a period of one year, but the facts of the case are also relevant as evident on record and both the Courts below have taken note of that, that even thereafter, the printing orders were being placed by the Director State Lotteries upto July, 1997. More so, M/s R.K. Agencies, defendant No.4, was appointed by Government of Manipur. In fact, the distributor had withdrawn a sum of Rs.70.00 lacs but no action on account of civil or criminal liability was taken by the Director State Lotteries against the distributor who was the direct appointee of Director State Lotteries. At

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any rate, qua the claim of the plaintiff, the liability to make the payment is jointly and severally qua distributor as well as Director State Lotteries.

9. As regards to expiry of agreement dated 5.4.1996, the Courts below have taken the correct view that the initial period of agreement was for a one year but by conduct and implication, the defendant-State continued to get the order of printing and supply of lotteries till July, 1997 and made payment upto August, 1997 as well. That is evident from the Statement of accounts [Ex. PW-1/4] and documents dated 18.02.1997 [Ex. PW-1/22] and 21.06.1997 [PW-1/23]. As such, the plea taken by learned counsel for the appellants that liability of the State ceases to operate after expiry of period of one year, was rightly declined by the Court of first instance and said findings were correctly upheld by the Court of first Appeal. The concurrent findings have been recorded by both the Courts below on the basis of facts and evidence available on the file and there are no ground to interfere and set aside the said findings.

10. As per view taken by Hon`ble Supreme Court in **Deity Pattabhiramaswamy Vs. S. Hanymayya and others, AIR 1959 SC 57**, the provisions of Section 100 CPC are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact. As per view taken by Hon`ble Supreme Court in **Commissioner Hindu Religious & Charitable Endowment Vs. P.Shanmugama & Ors., JT 2005 (1) SC 201** and **Biswanath Ghosh [Dead] by LRs and Ors. Vs. Gobinda Ghosh alias Gobindha Chandra Ghosh & Ors. AIR 2014 SC 1582**, second appeal cannot be entertained if there is no substantial question

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of law involved therein.

11. In the present second appeal, there is no substantial question of law involved, rather both the Courts below have already appreciated the entire evidence. Hence, the present appeal is not maintainable as per provisions of Section 100 of the Code of Civil Procedure, 1908.

12. In view of the above, the present Regular Second Appeal stands dismissed.

**(SHEKHER DHAWAN)**
**JUDGE**

**May 25th, 2016**
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