

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

RSA No.5992 of 2014 (O&M)

Date of decision: 8.4.2016

Ravi Parkash

... Appellant

versus

Jawahar Gupta and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Gaurav Singla, Advocate,
for the appellant

...

AMOL RATTAN SINGH, J. (Oral)

This appeal has been filed by the plaintiff before the learned Civil Judge (Junior Division), Kurukshetra, in a suit filed by him seeking recovery of Rs.99,443/-, alongwith interest thereupon, from the three respondents herein, all of whom were defendants before that Court also.

The suit was decreed in favour of the present appellant-plaintiff (hereinafter to be referred to the plaintiff), by the learned Civil Judge, but the said judgment and decree was partly reversed by the first Appellate Court.

Hence, this appeal.

2. The facts, as taken from the judgment of the learned Civil Judge, are that the plaintiff had filed the suit as an indigent person and had stated in his plaint that he had deposited a sum of Rs.43,200/- as an investment with respondents No.1 and 2, through respondent No.1, who was

the agent for the Company, i.e. the first two respondents.

It was claimed that the defendants admitted the deposit but were not repaying the amount and the interest accrued thereupon, leaving him with no option but to file the suit.

3. In response to the notice issued by the learned Civil Judge, the first two defendants (hereinafter to be referred to as the Company), did not appear despite service and were consequently proceeded against *ex parte*.

Respondent No.1 herein filed his written statement controverting the allegations made in the plaint, other than raising preliminary objections with regard to the maintainability of the suit, it being time barred, concealment of facts and the plaintiff being estopped by his own act and conduct from filing the suit.

It was also contended that the plaintiff had sufficient means and as such was not an indigent person.

4. Respondent No.1 also submitted that even if any amount was found due from the Company, he himself could not be made liable to pay the same.

It was further contended that the plaintiff had already received the demanded amount by way of a cheque issued on the Central Bank of India, Ladwa, in the month of October 1998 and that the plaintiff had earlier filed a complaint in the District Consumer Forum, which had been dismissed.

Still further, it was contended that the plaintiff was himself also an agent of Company, knowing all the rules and regulations thereof.

5. Upon the above pleadings, with no replication filed, the

following issues were framed by the learned Civil Judge:-

- “1. Whether applicant/plaintiff being indigent person is entitled to recover suit amount as prayed for? OPP
2. Whether the present suit is hopelessly time barred? OPD
3. Whether the plaintiff has not come to the court with clean hands and has concealed the true and material facts? OPD
4. Whether plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
6. Whether original plaint is liable to be rejected under Order 7 Rule 11 CPC? OPD
7. Relief.”

6. The plaintiff tendered his affidavit in support of the plaint and examined himself thereafter. Defendant No.3 (Respondent no.1 herein) also tendered his affidavit in support of his written statement and thereafter examined himself.

7. Upon consideration of the evidence, the learned Court found that the plaintiff was actually an indigent person with a report in that regard having been separately received and further, because he had also been declared to be so in another suit filed by him.

As regards the claim in the suit, it was found that the plaintiff had indeed invested Rs.43,500/-, on different dates, with the Company, through respondent No.1, which the Company had to repay, alongwith interest thereupon, compounding at the rate of 18% to 24%. The Company had thereafter paid a sum of Rs.24,000/- to the plaintiff, but of the principal sum, Rs.19,500/- remained unpaid to him and alongwith interest @ 18% per

annum, he was entitled to recover a sum of Rs.43,500/-. The said rate of interest was held to be payable as the amount invested and agreed to be paid back by the Company, to the plaintiff, was a commercial transaction.

The plaintiff was further held entitled to interest @ 12% per annum, *pendente lite*, from the date of filing of the suit, till realization of the amount.

The finding that the amount had been actually deposited by the plaintiff, was upon the admission of respondent No.1 in cross-examination, that he, as an agent for the Company, had received the amount on different dates, which he deposited with the Company under receipt issued by the Manager. He also admitted that after payment of some amount to the plaintiff, the remaining principal amount was still due to him.

8. The suit of the plaintiff was, therefore, decreed by the learned Civil Judge, in his favour, holding that respondent No.1 was liable to get the entire amount released from respondents No.1 and 2, i.e. the Company, and in case he failed to do so, he would be liable alongwith Company, jointly and severally, to make the entire payment to the plaintiff.

9. Respondent No.1 filed an appeal against the aforesaid judgment and decree, in which the learned first Appellate Court upheld the findings on merits by the learned Civil Judge, with regard to the deposits made by the plaintiff with the Company and the amount otherwise due to him as principal alongwith interest, but held that respondent No.1, i.e. the appellant before the lower Appellate Court (present respondent No.1, Jawahar Gupta) could not be held liable for the acts of his Company, in the absence of any recital in that regard on the printed application form on the filling in of which, the plaintiff had invested the money with the Company.

Hence, holding that in terms of Section 230 of the Indian Contract Act, 1872, an agent cannot be held personally liable for acts done by him on behalf of his principal, respondent no.1 was discharged of any liability, by the Ist appellate Court.

It was further held that the plaintiff fully was aware that respondent No.1 was acting as an agent for respondents No.2 and 3, i.e. the Company and as such, there was no mistake and impression in the mind of the plaintiff either, to that effect.

A judgment of the hon'ble Supreme Court, in **Vivek Automobiles Limited v. Indian Inc.**, (2009) 17 SCC 657, was also cited, to hold that respondent No.1 could not be held personally liable to discharge any liability of respondents No.2 and 3, without a specific recital in any contract made with the plaintiff.

That not being the case, the appeal of present respondent No.1 was partly allowed, by reversing that part of the judgment and decree of the learned Civil Judge, by which respondent No.1 Jawahar Gupta, was held liable to make the payment of the decretal amount, to the plaintiff. However, the present appellant was held entitled to recover the amount of Rs.19,200/- alongwith interest @ 18% per annum from the date of deposit of such amount till the date of realization, from respondents No.2 and 3, i.e. the Company.

10. When this matter had come up for hearing initially, this Court had asked learned counsel for the appellant to address arguments on two issues, i.e. the main issue as to how the first respondent herein could be held personally liable, as an agent of respondents No.2 and 3, to discharge the Companys' liability, and secondly, as to how the suit filed by the appellant

before the learned Civil Judge was within limitation, the deposit having been made in the year 1997 and the suit having been instituted on 13.06.2007.

11. When the matter came up for final arguments today, learned counsel for the appellant very fairly submits that he has not been able to find any law showing the liability of an agent to be personal to him rather than to his principal, in the absence of any specific contract in that regard.

To illustrate, Section 230 of the Contract Act needs to be referred to. The said provision reads as under:-

“230. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Such a contract shall be presumed to exist in the following cases:-

- (1) Where the contract is made by an agent for sale or purchase of goods for a merchant resident abroad;
- (2) where the agent does not disclose the name of his principal;
- (3) where the principal, though disclosed, cannot be sued.”

Thus, from a bare reading of the provision itself, it is amply clear that an agent acting on behalf of his principal, in this case, respondent No.1 on behalf of the Company he was representing, i.e. respondents No.2 and 3 herein, cannot be held liable to discharge the Companys' liability, with neither of the 3 conditions given in Section 230, to hold him liable, existing in the present case.

It has also not been shown in any manner, that the finding of the learned Civil Judge, that the plaintiff was aware that respondent No.1

was acting as an agent for respondents No.2 and 3, is a perverse finding. In any case, that could not have been shown to be so, when the appellant-plaintiff filled in a printed form issued by the Company, as found by the Courts below, enabling him to make a deposit with it, as an investment.

Hence, with respondent No.1 herein having acted on behalf of his principal, i.e. the Company, respondents No.2 and 3, the exceptions carved out in Section 230, to the basic principle that a contract against his principal cannot be enforce against an agent, cannot be invoked by the appellant-plaintiff, those 3 conditions being non-existent, as already said.

12. It also needs to be stated here that the issue of limitation raised by this Court, vide its order dated 29.03.2016, was obviously mis-placed, firstly, this not being an appeal by the Company that has been held liable as the judgment-debtor, by the judgment and decree of the learned first Appellate Court.

Secondly, in any case, an issue was framed on limitation, before the learned Civil Judge, which the defendants-respondents herein could not prove against the plaintiff-appellant; hence, nothing further needs to be said in that regard by this Court.

13. Therefore, in view of what has been held, the present appeal is dismissed *in limine*, upholding the judgment and decree dated 14.11.2013 of the learned Appellate Court, i.e. the Additional District Judge, Kurukshetra.

No order as to costs.

CM Nos.14239-C and 14240-C of 2014

In view of the fact that the appeal has been dismissed *in limine*, the question of condonation of the delay of 100 days and 132 days, in

refiling and filing the appeal respectively, is rendered academic and is not gone into.

8.4.2016
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(AMOL RATTAN SINGH)
JUDGE