

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

RSA No.6274 of 2014

Date of decision : 03.11.2016

District Education Officer (Primary) Moga and another

.....Appellants

Versus

M/s Sobha Singh Gurcharan Singh General Merchants

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ajaib Singh, Additional Advocate General, Punjab
for appellants.

Mr. Dharam Pal, Advocate for respondent.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment and decree dated 17.07.2014, passed by learned Additional District Judge, Rupnagar, whereby the appeal filed by the appellants-defendants against the judgment and decree dated 17.04.2014 passed by the learned Civil Judge (Junior Division), Rupnagar has been dismissed.

2. For the sake of convenience, the status of the parties is being mentioned as in the original suit.

3. The respondent-plaintiff filed the suit for recovery of ₹55,000/- along with interest @ 18% per annum against the appellants-defendants on the grounds *inter alia* that it had supplied articles to

appellant-defendant No.2 as per his demand vide bills No.8879 and 8880 dated 04.02.2009 of the value of ₹ 55,000/-. The appellants-defendants did not make the payment despite repeated demands. Hence, the suit after serving the notice under Section 80 of the Code of Civil Procedure, 1908 (for short the “CPC”).

4. The appellants-defendants contested the suit on the grounds *inter alia* that they have never placed any order with the respondent-plaintiff to supply the articles. As per the rules, whenever any article is required to be purchased then the District Education Officer is the only competent authority for placing the order. The order is to be placed after getting quotations from at least three firms. Moreover, the receipt signed by respondent-defendant No.2 *i.e.* Block Primary Education Officer, Moga is only to be used by appellant-defendant No.1 the District Education Officer (Primary) Moga and has not been issued to the respondent-plaintiff. They further pleaded that no such articles/material were ever supplied by the respondent-plaintiff to the appellants-defendants. With these pleas, the appellants-defendants pleaded for dismissal of the suit.

5. From the pleadings of the parties, the following issues were framed:-

1. Whether the plaintiff is entitled to recover the suit amount from the defendant? OPP
2. Whether the plaintiff is entitled to interest as prayed for, if so on what rate from? OPP
3. Whether the suit is not maintainable in the present form? OPD

4. Whether the suit is bad for want of legal and valid notice under Section 80 of CPC? OPD
5. Whether this Court has got no jurisdiction to try and decide the present suit? OPD
6. Relief.

6. On appreciation of the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court decreed the suit of the respondent-plaintiff for recovery of ₹55,000/- from the appellants-defendants along with interest @ 12% per annum from the date of supply of articles till realization of the decretal amount.

7. Aggrieved with the aforesaid judgment and decree dated 17.04.2014, the appellants-defendants preferred the appeal and the same has also been dismissed by the learned Additional District Judge, Rupnagar vide impugned judgment and decree dated 17.07.2014. Hence, this regular second appeal.

8. I have heard learned counsel for the parties and have gone through the file carefully.

9. Initiating the arguments, learned Additional Advocate General for the appellants-defendants contended that appellant-defendant No.2 the Block Primary Education Officer, Moga was not competent to place any order for supply of the goods with the respondent-plaintiff. It was only appellant-defendant No.1 who could place the order and that too after receiving the quotations from three different firms. Thus, he contended that the version put forth by the respondent-plaintiff that it has supplied the goods worth ₹55,000/- to the appellants cannot be relied upon. He further

contended that there is no evidence to show that any articles were received by the appellants-defendants from the respondent-plaintiff. Thus, he pleaded that the suit of the respondent-plaintiff has been wrongly decreed by the learned courts below.

10. On the other hand, Mr. Dharam Pal, Advocate, learned counsel for respondent-plaintiff contended that it is established from the oral as well as documentary evidence that the respondent-plaintiff has supplied the articles worth ₹ 55,000/- to the appellants-defendants vide bills Ex.P1 & Ex.P2 and receipt Mark-A. The said amount has not been paid by the appellants-defendants. There is no rebuttal to the evidence adduced by the respondent-plaintiff. Thus, the pleas raised in the written statement by the appellants-defendants are not established. The respondent-plaintiff has been rightly held entitled to recover the decretal amount.

11. I have duly considered the aforesaid contentions.

12. As per the case of the respondent-plaintiff, it had supplied the article/material worth ₹ 55,000/- to appellant-defendant No.2 vide bills Ex.P1 and Ex.P2 dated 4.2.2009. Gurcharan Singh, proprietor of the plaintiff firm has appeared as PW-2. In his affidavit Ex.PW2/A he has categorically deposed about the supply of the goods worth ₹ 55,000/- vide bills Ex.P1 and Ex.P2 to appellant-defendant No.2 as per their demand. He further categorically stated that the aforesaid articles were received by appellant-defendant No.2 on 04.02.2009 and he has signed the receipt. After one week when he approached respondent-defendant No.2 to make the payment, he put off the matter and did not make the payment. The

testimony of PW-2 Gurcharan Singh is also corroborated from the statement of PW-1 Saurav the employee of the plaintiff firm. Their oral testimonies are also corroborated from the documentary evidence *i.e.* bill Ex.P1 for supply of 1000 copies @ ₹10/- per copy, total amounting to ₹10,000/- and the bill Ex.P2 for the supply of 300 kits containing various articles @ ₹150/- per kit, total ₹45,000/-. The receipt with respect to the aforesaid articles is Mark-A. Thus, the aforesaid evidence shows that the plaintiff firm has supplied the articles worth ₹55,000/- to appellant-defendant No.2 vide bills Ex.P1 and Ex.P2. There is nothing on record to show the payment of the aforesaid amount by the appellant.

13. There is absolutely no rebuttal to the aforesaid evidence adduced by the respondent-plaintiff. The evidence of the appellants-defendants was closed on 05.03.2014 without examining any witness. It is settled principle of law that the averments raised in the written statement cannot take the place of proof. The plea raised in the pleadings has to be proved by leading cogent and convincing evidence. But in the instant case the appellants-defendants have totally surrendered and did not led any evidence in rebuttal to the evidence oral as well as documentary adduced by the plaintiff firm.

14. In the written statement, it has been alleged by the appellants-defendants that appellant-defendant No.2 was not competent to place any order for supply of articles. It is also alleged that no order to supply the articles can be placed without obtaining quotations from three firms but there is absolutely no material on record to show that any action

has been taken by the department against appellant-defendant No.2 for exceeding his authority and not complying with the rules.

15. It is also very surprising that even though no evidence was adduced by the appellants-defendants in the trial Court, still they have wasted the public money by filing the appeal knowing fully well that in the absence of their evidence they will not be able to assail the findings recorded by the courts below.

16. Thus, keeping in view of my aforesaid discussion, there is no perversity or illegality in the concurrent findings recorded by the learned courts below.

17. Consequently, no question of law, much less the substantial question of law arises in the present appeal.

18. Therefore, the present appeal being devoid of merits, is hereby dismissed with cost of ₹5000/-.

03.11.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No