

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

**RSA No.2014 of 1991 (O&M)
Date of decision: 08.05.2017**

Ashok Kumar and Bros., Bharwani Road, Hoshiarpur

... Appellant

Vs.

Sudarshan Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Satinder Khanna, Advocate
for the appellant.

RAMESHWAR SINGH MALIK, J. (ORAL)

Unsuccessful defendant is in regular second appeal against the concurrent findings of facts recorded by both the learned Courts below, whereby suit for recovery filed by the plaintiff-respondent was partly decreed by the learned trial Court, whereas first appeal of the plaintiff was allowed by the learned first appellate Court, decreeing the suit of the plaintiff in toto and cross-appeal filed by the defendant-appellant was dismissed.

Brief facts of the case, as noticed by learned trial Court in para 1 of its impugned judgment, are that suit for recovery of Rs.26,530.25 had been preferred by Sudarshan Kumar claiming himself to be sole proprietor of M/s A.S. Tin Box Ludhiana against Ashok Kumar and Brothers on the averments that Sudarshan Kumar previously was partner in M/s A.S. Tin Box, Tilak Nagar, Rahon Road, Ludhiana. The said firm was dissolved on 31.03.1983 and

thereafter, all assets and liabilities were taken over by the plaintiff and he became sole proprietor of the concern. It was case of the plaintiff that defendant purchased on credit Tin scrape and old rejected empty tins from plaintiff as under: -

- (a) Vide bill No.345 dated 30.01.1983 for Rs.5808.00
- (b) Vide bill No.151 dated 08.07.1983 for Rs.7906.50
- (c) Vide bill No.152 dated 25.07.1983 for Rs.6426.00

Total: Rs.28140.50

The defendant ensured to make payment of the goods so purchased but did not make any payment. Register notice on 24.09.1983 under certificate of posting was also sent to the defendant but no avail. The plaintiff asserted that interest @18% per annum as per trade usage and in the market is chargeable, but he claimed interest @12% only.

Having been served in the suit, defendant put appearance and filed its contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, learned trial Court framed the following issues: -

1. Whether the defendant purchased the goods from the plaintiff worth Rs.20,140.50 as mentioned in paragraph 2 of the plaint? OPP
2. To what rate of interest, the plaintiff is entitled to recover? OPP
3. Relief.

In order to prove their respective pleaded case, both the parties produced their documentary as well as oral evidence. After hearing learned

counsel for the parties and going through the evidence brought on record, learned trial Court came to the conclusion that the plaintiff has partly proved his case. Accordingly, suit for recovery filed by the plaintiff for an amount of Rs.26,530.25 was partly decreed for an amount of Rs.5,808/-, vide impugned judgment and decree dated 16.01.1990. Both the parties felt aggrieved. Plaintiff filed his appeal seeking decretal of his suit in toto, whereas the defendant-appellant filed his appeal for setting aside the abovesaid judgment and decree dated 16.01.1990 passed by the learned trial Court. First appeal of the defendant-appellant was dismissed, whereas the appeal filed by the plaintiff was allowed by the learned Additional District Judge, vide impugned judgment and decree dated 07.09.1991. Both the appeals were decided vide common impugned judgment and decree. Hence this regular second appeal at the hands of the defendant.

The appeal was admitted for regular hearing vide order dated 07.10.1991 passed by this Court. That is how this Court is seized of the matter.

Heard learned counsel for the appellant.

Facts are hardly in dispute. The material fact which has gone undisputed before this Court is that it was a commercial transaction between the parties. A bare combined reading of both the impugned judgments and decrees passed by the learned Courts below will make it crystal clear that the plaintiff has duly proved his case, by leading cogent and convincing evidence, whereas the defendant-appellant failed to rebut evidence of the plaintiff. Under these peculiar facts and circumstances of the case, the learned trial Court ought to have decreed the suit of the plaintiff in toto. However, the learned trial Court misdirected itself, while partly decreeing the suit of the plaintiff. This was the

reason that the learned first appellate Court rightly dismissed the appeal filed by the defendant-appellant and the appeal filed by the plaintiff-respondent was allowed, vide impugned judgment and decree dated 07.09.1991. Having said that, this Court feels no hesitation to conclude that the learned Additional District Judge committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld.

Before arriving at a judicious conclusion, learned first appellate Court examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. The relevant and cogent findings recorded by learned first appellate Court in paras 17 to 20 of its impugned judgment, which deserve to be noticed here, read as under: -

“An other significant aspect of the matter, which escaped the notice of the learned trial Court was that both PW-1 and PW-2 have unanimously stated that the bills Ex.P3 and Ex.P4 had been signed by Ved Parkash partner of the defendant firm in their presence. This part of their statement is not challenged in cross-examination. Only Ashok Kumar defendant DW-1 half-heartedly denied that the bills Ex.P-3 and Ex.P-4 were not signed by Ved Parkash. But said Ved Parkash was not examined in the witness box to deny his signatures on oath. Therefore, a strong presumption must be drawn against the defendant, and it must be held that the bills Ex.P-3 and Ex.P-4 were signed by Ved Parkash in token of their correctness. Thus the case of the plaintiff is conclusively proved.

Besides this, the plaintiff served registered notice as well as

a notice under the certificate of posting on the defendant, but they never cared to reply not to deny their liability. No reason is explained for this lapse. Therefore, presumption must be drawn against the defendant.

On the analysis presented above, the findings of the learned trial Court relating to the bill No.151 of 8.7.83 Ex.P-3 and bill No.152 dated 25.7.83 Ex.P-4 cannot be sustained. So the findings of the learned trial Court on issue No.1 are modified and this issue is decided in toto for the plaintiff and against the defendant.

Admittedly these were commercial transaction between the parties. Even at the foot of the bills Ex.P-2, Ex.P-3 and Ex.P-4, it was printed in clear and legible terms, that 18% interest will be charged, if the bill is not paid within 15 days. The plaintiff has also stated on oath that the current market rate of interest is 18% p.a. This part of his statement is not challenged in cross-examination. So it must prevail. But the plaintiff has claimed interest at the rate of 12% p.a. only, which is not shown to be excessive or unreasonable. Therefore, it is held that till the date of filing of this suit, the plaintiff is entitled to claim from the defendant interest at the rate of 12% p.a. The findings of the learned trial Court on issue No.2 are modified accordingly.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the findings recorded by both the learned Courts below. Further, no question of law, much less substantial question of law arises for consideration of this Court, which is sine

qua non for entertaining the regular second appeal, while exercising the appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in **Narayanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (5) SCC 264.**

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present regular second appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

08.05.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No