

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

**RSA No.2197 of 2016 (O&M)
Date of Decision: February 15, 2017**

Satish Kumar Malik

..Appellant(s)

Versus

Videocon Industries Ltd.

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Deepak Girotra, Advocate
for the appellant.

ANITA CHAUDHRY, J.

CM-5757-C-2016

For the reasons set out in the application, same is allowed as
prayed for and delay of 14 days in filing the appeal is condoned.

RSA No.2197 of 2016

This is the defendant's second appeal against the judgment
rendered by both the Courts below

The suit for recovery of Rs.5,62,987.84/- was decreed.
Interest @ 8% was allowed from the date of filing of the suit till
realization.

The plaintiffs are in the business of manufacture and sale of
home appliances and electronic gadgets. The defendant used to purchase
and sell their electric goods under the name and style of M/s. Paras

Electronics. The defendant was the sole proprietor. The goods manufactured by the plaintiff were taken on credit by the defendant, however, he failed to make some payments and a sum of Rs.5,62,987.84/- was outstanding. The defendant was erratic in the payments and several cheques issued by him were dishonoured. The defendant had been proclaiming that he was facing financial constraints and had promised to pay the dues but failed to honour the commitment made by him. It was pleaded that the defendant with an ulterior motive filed a suit for rendition of accounts and the averments made therein were false and frivolous and no claims with them were pending.

The defendant took the plea that he had filed a suit and therefore, this suit should be stayed and the plaintiff should first render accounts. It was averred that he had made the payment of the refrigerators well in time and the plaintiff-company had cheated him and did not fulfill the assurances and the amount of most of the claims were not passed on to him. It was pleaded that the statement of account contained bogus and false entries in the name of M/s. Paras Electronics and superfluous amount had been claimed and debited in the name of the defendant-firm. It was averred that the plaintiff-company used to give 4/5/6 years warranty with free services and repair of some parts and an extra amount of Rs.200/- per refrigerator was charged and were to provide the facilities but failed to provide the services. It was pleaded that the plaintiff had charged a sum of Rs.2,05,200/- from him @ Rs.200/- per refrigerator for the 1026 refrigerators sold to him but they failed to provide free service

and he was entitled to get this amount adjusted. It was pleaded that he had employed a mechanic for repair of the refrigerators and he was paying Rs.6,000/- per month to him and had spent Rs.3,60,000/- on his salary and he was entitled to recover that amount. It was claimed that the plaintiff failed to give the services to the customers and he had to spend Rs.56,250/- on it. It was pleaded that the defendant earlier had all the documents with him but on account of a fire all the documents were burnt. It was also pleaded that under a scheme the plaintiff was to give one refrigerator free on the sale of 19 refrigerators and 3 refrigerators were to be supplied free of cost on sale of 47 refrigerators and 5 refrigerators were to be supplied on the sale of 72 refrigerators and 8 refrigerators were to be supplied free on sale of 92 refrigerators and in addition to it some cash discount was to be given. The defendant's plea was that he had purchased 268 refrigerators in March, 2000 and he was entitled to get 50 refrigerators free of cost according to the said scheme and a sum of Rs.4,03,450/- was outstanding as per the scheme of May, 2000. Similarly, as per scheme of May, 2000, the refrigerator of the value of Rs.8015/- was to be supplied by the plaintiff-company to the defendant for a sum of Rs.7200/- and the refrigerator of the value of Rs.8265/- was to be supplied for a sum of Rs.7500/- and the refrigerators having the value of Rs.10,016/- was to be supplied for a sum of Rs.9651/- and the refrigerators of the value of Rs.11,115/- was to be supplied for a sum of Rs.10,735/- and the refrigerators of a value of Rs.9665/- was to be supplied for a sum of Rs.8700/- and the refrigerators of a value of

Rs.8315/- was to be supplied for a sum of Rs.7485/- and the refrigerators having the value of Rs.9366/- was to be supplied for a sum of Rs.8536/- and he had purchased 360 refrigerators under this scheme from the plaintiff-company and had suffered a loss of Rs.900/- per refrigerator and this amount comes to Rs.3,30,300/- and as such, the defendant had suffered a loss of Rs.7,33,750/- in total and as such, no amount was outstanding against him. It has been further averred by the defendant that the plaintiff had illegally kept 22 blank cheques of the defendant with it and the defendant was entitled to receive the same back. A counter claim was also filed by the defendant.

Plaintiff-company filed replication-cum-reply to the counter claim and it was pleaded that he had never defrauded the defendant and never withheld any amount or promised any scheme to which defendant was entitled.

On the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the defendant had approached the official of the plaintiff and M/s. Electrolux India Ltd. to supply the products manufactured by them on credit to him and by assuring that payment would be paid within two weeks of respective purchases, if so to what effect? OPP
2. Whether M/s. Electrolux India Limited, the plaintiff has started supplying various goods manufactured by them on credit to him, if so to what effect? OPP
3. If issues no.1 & 2 are proved in affirmative, whether the plaintiff is entitled to a decree for recovery of Rs.5,62,987.84 Paise in favour of the plaintiff and against the defendant with cost and

pendent lite interest at the rate of 12% per annum from the date of the suit till realization on the ground mentioned in the plaint?
OPP

4. Whether the plaintiff has concealed the material facts from the court, if so to what effect? OPD
5. Whether the plaintiff is estopped by its own act and conduct by filing the present suit? OPD
6. Whether the suit of the plaintiff has not been filed by the competent person? OPD
7. Relief.

Both the parties were given opportunity to lead evidence and considering the evidence produced by the plaintiff, the suit was decreed. It relied upon the statement of account issued by the bank which was certified under the Bankers' Book Evidence Act, 1991. It noted that the defendant did not produce any documents in support of his submission. The trial Court noted that a number of cheques were given by the defendant which were dishonoured. The plaintiff had also placed on record the customer ledger details pertaining to the defendant and the debt note raised to the defendant for the period 01.04.1999 to 05.06.2003 (Ex.P-9). The suit of the plaintiff was decreed and a decree for recovery of Rs.5,62,987.84 Paise along with interest of 8% per annum from the date of suit till its realization was passed.

Aggrieved by the judgment an appeal was preferred by the defendant, which was dismissed. The Appellate Court made the following observations in para nos.14 & 15, which read as under:-

14. So far as the amount of Rs.5,62,967.84 paise is concerned, which amount was to be recovered by the plaintiff company. It has come in evidence that various home appliances and electrical gadgets including refrigerators, washing machines, microwave ovens etc. used to be purchased by the defendant on credit basis on the assurance that the amount will be cleared within two months. The plaintiff relied upon the statements of account Ex.PW2/1 to Ex.PW2/19 and customer ledger (detail) Ex.PL with effect from 30.4.1999 to 24.08.2001 reflects a sum of Rs.5,62,967.84 paise to be balance towards Ms. Paras Electronic. The other documentary evidence comprising of various cheques Ex.PD to Ex.PJ along with cheques' return memos Ex.PD/1 to Ex.PJ/1 further corroborates to the version of plaintiff that a number of cheques issued by defendants were unpaid. Even in the cross examination, DW1 Satish Kumar has admitted that he was dealing with Electrolux from the year 1999 till 2001. It has been admitted that 1026 fridges were purchased by him from 1999 till 2001. Therefore, from the oral and documentary evidence led by the plaintiff, the plaintiff was able to show that plaintiff was entitled to have a decree of recovery for a sum of Rs.5,62,967.84 paise against the defendant since preponderance of probability leans in favour of the plaintiff and hence, the decree of recovery in favour of plaintiff has been rightly granted by the learned trial judge.

15. Coming to the counter claim of defendants, DW1 Satish Kumar has stated in the cross examination that he was not having any ledger since his entire shop had been burnt due to fire. He stated that he was not having any record from

1999 to 2001 of the firm regarding the cheque books and vouchers and some of the record is present at his house and the Hard disk was also burnt and he was not having record of the firm after 08.03.2004. That he could not obtain any detail of his firm from the bank since it was communicated by the bank that they could not give any detail which is 10 years old. That he could not give the personal bank account details in the Court. That he had given application for closing of account of Paras Electronics to the Union Bank, but he did not remember the month, date and time for the same. That after the shop was gutted in the fire, he did not any prepare any ledger or any account statement. He also stated that he had not been fined in any of the cases by the Consumer Court. Under these circumstances, no benefit can be given to the defendant from Ex.D1 and Exhibit D2 which are the details of the debit note Exhibit D3 in which services charges at the rate of Rs.200/- for 1026 refrigerators i.e. Rs.2,05,200 (1026 x Rs.200/-) has been shown. Similarly, no benefit can be given to the defendant from Exhibit D4 which are the expenses of the mechanic at the rate of Rs. 6000/- per month for 16 months amounting to Rs.3,60,000/-. So is Exhibit D5 which shows gas claim of Rs.56,250/-. Thus the counter claim of the defendant has been rightly declined as it is own case of the defendant that the entire shop of the defendant was gutted in fire and except oral statement, there is no reliable documentary evidence with the defendant to substantiate the stand taken.”

The Appellate Court upheld the findings recorded by the trial Court and dismissed the suit.

The matter was argued at length before the Co-ordinate Bench. I find that appellant had taken a plea that he had filed a suit for rendition of accounts and the matter had been transferred to the same Court and as the counsel was not aware of the fate of that case he took a number of adjournments to find its status. On 08.12.2016 it was noted that the counsel for the appellant had stated that the suit filed by the firm had been eventually dismissed for non-prosecution and therefore, nothing more was to be said in that regard.

However, the counsel for the appellant again sought to raise the same issue that had been taken before the Co-ordinate Bench though they are aware of the fact that the suit filed by them had been dismissed for non-prosecution. The counsel for the appellant had stated at bar that no application had been filed for revival of that suit.

I have heard the counsel for the appellant at great length and have perused the record.

The present case of the plaintiff was based upon the statement of account maintained in accordance with Bankers' Book Evidence Act, 1991. A certificate in this regard was appended. The defendant had taken specific pleas but was unable to substantiate any of them. There is only a case of denial. The appellant did not produce his record on the pretext that all his record had been burnt.

The plaintiff had produced the statement showing the amount due. The defendant had taken three specific pleas i.e. that on the

sale of specific number of refrigerators he was entitled to an extra refrigerator, which was not given; he had appointed an employee and had paid Rs.6,000/- per month and the loss that he had suffered for free service and repair provided during the warranty period. He was claiming adjustment of that amount. The defendant except for his oral statement could not prove his case. Though there was an admission by the plaintiff's witness that there was a scheme for providing free refrigerators on sale of number of refrigerators but he had also stated that the scheme was for a limited duration, therefore, it was for the defendant to show the duration of that scheme and the purchases made by him. Only submission on behalf of the appellant was that the record was with the appellant and they had to produce the same. The counsel had referred to certain marked documents but those could not have been considered as they had not been proved. I find no infirmity in the findings recorded by the Court below. The findings of both the Courts are affirmed and the appeal is dismissed in limine.

February 15, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No