

RSA No. 1301 of 2015 (O&M)

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

RSA No. 1301 of 2015 (O&M)

Date of Decision: 19.9.2017

Rupinder Singh Chandehoke and another

.....Appellants

Vs.

Kamet Plastic Pvt. Ltd. and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Ms. Saloni Sharma, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the concurrent findings of facts, recorded by both the learned courts below, whereby suit for recovery filed by the plaintiffs, was dismissed by the learned trial court, vide its impugned judgment and decree dated 1.9.2011 and their first appeal was also dismissed by the learned Additional District Judge, vide its impugned judgment and decree dated 11.7.2014, plaintiffs-appellants have approached this Court by way of present regular second appeal.

Brief facts of the case, as recorded by the learned first appellate court in para 2 of the impugned judgment, are that plaintiff filed a suit for recovery of ₹1,73,984/-, including interest being proprietor of M/s Chandehoke and was well known building contractor. In January, 1999, defendant No.1 contacted the plaintiff for construction of a factory building

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at Focal Point, Derabassi. On 11.2.1999, plaintiff submitted rates etc. for construction of boundary wall that was to be carried out first at No. 112, Phase-2, Chandigarh and the work was started in July, 1999, at labour rates. Defendant No.1 also assigned extra jobs to the plaintiff for getting water connections, setting up of cement store, fixation of sources of material supplies, its procurement etc. The boundary wall was completed before 13.9.1999 and ₹55,500/- was claimed vide three bills for the work aforesaid, which was not paid. Defendant No.1 wanted to construct the factory building in continuation with boundary wall work and the matter was discussed.

Defendant No.1 asked for providing all types of facilities for setting up a new unit. The plaintiff provided man power, material services, structural engineer, electrical engineer etc., as per the requirements of defendants apart from their services. Estimated costs of first stage was approximately ₹3 lacs and defendant No.1 agreed to give ₹30,000/- as over riding of first stage. First stage framed 1/6th of total work carried. Plaintiff through letter dated 14.9.1999 gave details of relevant expenses and work with relevant dates. It was further averred that plaintiff requested for payment of ₹35,000/- but only ₹15,000/- was released in first week of December. Behaviour of defendant was non-cooperative and they denied to make the payment. The plaintiff constructed Bay 1 and 2 complete up to flooring, full structural part of Bay 3 and 4 including roof. The building roof was laid at a height of 25 approximately. Defendant No.1 also agreed to pay 10% of total project cost as service charges and thus, was entitled to the amount claimed aforesaid including interest @ 18% per annum from 31.1.2001 till date.

Having been put to notice, defendants No.1 to 3 appeared and filed their joint written statement, contesting the claim put forth by the plaintiffs, raising more than one preliminary objections. Plaintiffs filed their replication. On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to recover a sum of Rs. 1,73,894/- inclusive of interest @ 18% per annum?OPP
2. Whether in July, 1999, plaintiff rendered construction work for the defendant and raised the bill dated 13.9.1999 and if so, to what effect?OPP
3. Whether plaintiff conveyed on 25.7.2000 the payment system, expense billing system, tax etc, and if so to what effect?OPP
4. Whether the suit is not maintainable in the present form?OPD
5. Whether plaintiff is not competent to file the present suit?OPD
6. Whether the court has jurisdiction to decide the present suit?OPD
7. Whether plaintiff has not approached this court with clean hands and if so, what are the facts which he has not disclosed and to what effect?OPD
8. Relief.

In order to substantiate their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiffs have failed to prove their case for want of cogent and convincing evidence. Accordingly, suit for recovery, filed by the plaintiffs, was dismissed by the learned trial court, vide its impugned

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judgment and decree dated 1.9.2011. Plaintiffs felt aggrieved and filed their first appeal, which was also dismissed by the learned first appellate court, vide its impugned judgment and decree dated 11.7.2014. Hence this regular second appeal at the hands of unsuccessful plaintiffs-appellants.

Heard learned counsel for the appellants.

Suit for recovery filed by the plaintiffs-appellants was based on the plea that plaintiffs carried out some construction work for the contesting defendants. Amount which was sought to be recovered by the plaintiffs-appellants was on account of alleged non-payment for construction work carried out by the plaintiffs. It goes without saying that the appellants being the plaintiffs, onus was on them to prove their pleaded case, by bringing on record cogent and convincing evidence. However, in the case in hand, plaintiffs-appellants failed to prove their pleaded case for want of cogent and convincing evidence. In fact, except the self serving statement of plaintiff as PW-1, there was hardly any evidence brought on record, in accordance with law, which could have been said to be admissible in evidence. It is so said because the plaintiffs just placed on record the documents as Mark P-1 to Mark P-11 and none of these documents is exhibited document, which would leave no manner of doubt that plaintiffs miserably failed to prove these documents, in accordance with law. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to pass their impugned judgments and decrees and the same deserve to be upheld.

So far as oral statement made by the plaintiff as PW-1 is concerned, same was categorically denied by DW1-M.S. Grewal, who was Director of the defendant-Company. This witness categorically stated that

there was no outstanding amount against the defendants. So far as quality of evidence produced by the plaintiffs-appellants, as noticed hereinabove, is concerned, it was hardly of any help to the appellants because they failed to prove the documents Mark P-1 to Mark P-11, in accordance with law. In fact, plaintiffs-appellants were expecting too much from the learned courts below without discharging their onus, which was admittedly on them. Under these undisputed facts and circumstances of the case, it can be safely concluded that learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 11 of its impugned judgment, which deserve to be noticed here, read as under:-

“ It was argued by the counsel for the appellant that the respondents while appearing in the witness box as DW1 had given vague answers to specific questions and also failed to produce the accounts statement regarding the transaction between him and the plaintiff-appellant. The above submission is also devoid of merits. DW1 M.S. Grewal has appeared as witness being Director of Kamet Plastics and has categorically stated that no amount was outstanding towards the respondent to be paid by the plaintiff-appellant and has further denied having received any bill from the plaintiff-appellant. No doubt, he has not proved on record any account statement while appearing as witness, however, the fact remains that even during cross-examination, the counsel for appellant did not ask

any question nor sought directions to this witness for producing account statement. Adverse inference could have been drawn against him in the event of his having been directed to produce the accounts statement and yet no doing so. Thus, the mere fact that this witness of his own did not produce any statement of accounts will not go against him and it was for the plaintiff-appellant to prove his case by bringing on record convincing evidence regarding the same-and he could have yet summoned the record, at that stage, if he felt that the same was essential, but he has chosen not to do so. There is absolute lack of evidence in favour of the plaintiff-appellant and he has miserably failed to prove that any amount was due from the respondents to him. Learned counsel for the appellant had laid much stress on the documents marks P1 to P11 while submitting that the same have been placed on record in terms of the order of Hon'ble high Court and as such, could be read into evidence. This assertions on her part is totally misconceived. The above documents were merely placed on court file and their mere placing the same would not in any manner lead to a conclusion that they stood duly proved. Documents in original are also to be proved in accordance with law, which the plaintiff-appellant clearly did not do so and thus, no reliance over documents Mark P1 to P11 can be made. As such, this Court of is opinion that the trial court made no error in ignoring the said documents..”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. She also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law

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laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.**

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 appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case 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.

19.9.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No