

Sr. No. 102

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

RSA No. 929 of 2013(O&M)

Decided on: 09.10.2017

**M/s Golden Enterprises, Police Lines Road, Opposite Water Tank,
Gurdaspur**

.....Appellant

versus

Glaxo India Limited

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Inderjit Sharma, Advocate
for the appellant.

Rajbir Sehrawat, J.(Oral)

This is a second appeal filed by the defendant in suit for recovery wherein the decree of recovery of ₹ 1,77,992/- along with interest has been passed by the lower Appellate Court.

The brief facts as mentioned in the judgment of Appellate Court are that the M/s Glaxo India Limited filed a suit for recovery of amount of ₹ 2,27,992/- along with interest. The claim of the company was that the medicines for the above said amount were supplied to the defendant as per the supply orders placed by them. The defendant/appellant herein had given checks for those amounts. However, the checks of the said amount has been dishonoured. Resultantly, the suit for recovery was filed by the plaintiff, Glaxo India Ltd.

Upon notice, the defendant/present appellant contested the suit. The competence of Sh. K.K.Master through whom the suit was filed, was questioned by the defendant/appellant herein. It was further claimed that

the plaintiff had supplied a wrong medicines which were not ordered by the defendant and for which there were no possible customers. As soon as those medicines were received by the defendant, the fact was brought into the notice of the medical representative of the plaintiff, namely Inderjit Singh, who took back most of the medicines from the defendant. It was further claimed that the plaintiff tried to take undue advantage of the blank cheques which were given as security as per custom in the business market. It was further claimed that the supply of wrong medicine was informed by the defendant to the plaintiff company vide letter dated 02.09.1996, 22.09.1996, 09.10.1996 and 20.10.1996. Since the supply of wrong medicines were duly communicated to the plaintiff company and they were requested to take back the medicines, therefore, as per the stand of the defendant, the company representative Inderjit Singh took back the medicines of the value of ₹ 1,23,587.81/- and also gave an undertaking to collect the remaining medicines on the next tour. Then the defendant made a payment of ₹ 50,000/- vide bank draft dated 10.09.1996 for the medicine ordered by defendant. It was claimed by the defendant that since the medicines, which were wrongly supplied by the plaintiff, were taken back by the representative of the company, therefore, the defendants are not liable to make payment for any medicines.

Parties led their respective evidence.

After considering the respective pleas of the parties, in the first instance, the suit of the plaintiff company was dismissed on 23.11.2005 on the ground that it has not been filed by the authorised representative of the company. However, in appeal the matter was remanded to the Trial Court. After remand, the Trial Court passed a decree regarding recovery of ₹

96,967/- only by relying upon the document Ex:P-16, which was the supply order of the defendant/present appellant and Ex:-P20 which was the receipt of medicine on account of supply order Ex:P-16. The suit of the plaintiff was decreed qua an amount of ₹ 96,967/-. However, no credit was given by the Trial Court for the amount of ₹ 50,000/- paid through bank draft.

Aggrieved of the judgment and decree the defendant/present appellant filed appeal before the lower Appellate Court challenging the decree, even qua the amount which was decreed by the Trial Court. The plaintiff/respondent herein also filed cross-objections in that appeal. The lower Appellate Court partly allowed the appeal filed by the present appellant and gave them the benefit of ₹ 50,000/- which the defendant had paid to the plaintiff, but at the same time, allowing the cross-objections of the plaintiff/respondent and the suit of the plaintiff was also decreed qua an amount of ₹ 2,27,992/-. After deducting the amount of ₹ 50,000/- for which the credit was given to the defendants, the decree for recovery of an amount of ₹1,77,992/- was passed by the lower Appellate Court.

While passing the impugned judgment the lower Appellate Court relied upon the supply orders Ex:P-14 to P-17 on the ground that the defendant, while appearing in the witness box, has even admitted the supply of medicines and issued the cheque to the plaintiff company, at the relevant time which co-related to the supply of the medicines claimed by the plaintiff. It was further held by the lower Appellate Court that although the defendant/present appellant had claimed that wrong medicines were supplied by the plaintiff/respondent herein and it was claimed by the appellant that these medicines were returned to the plaintiff company's representative, however, no such evidence regarding return of medicines has

been led by the appellant. Therefore, the return of the medicines was not believed by the lower Appellate Court.

Aggrieved of the judgment and decree passed by the lower Appellate Court, the present appeal has been filed by the defendant in the original suit.

Learned counsel for the appellant has argued that the fact that wrongly supplied medicines were returned to the plaintiff was duly taken in the written statement. However, the plaintiff company instead of denying this fact has taken a vague plea that the said representative Inderjit Singh had left the company much earlier. It is his further argument that the intimation regarding the wrong supply of medicines and the return thereof was also given to the plaintiff company vide letters which were placed on record as Mark A-2 to Mark A-5. Therefore, they have succeeded in proving that they are not liable to make any payment to the plaintiff. Learned counsel for the appellant has also submitted that only one witness, namely, Sanjeev Sehgal PW-2, has been examined by the Company and no record has been produced.

Having heard learned counsel for the appellant, this Court does not find the arguments of learned counsel to be sustainable. Once the appellant himself has admitted that the medicines were supplied to them, though wrongly and without their orders, and it claimed that the medicines were returned by them, this means that they have taken a plea of a fact that the wrongly supplied medicines were returned by them to the plaintiff. In view of this, the fact that the plaintiff has not produced the record, pales into insignificance. Once the defendant takes a plea of having received wrong medicines and claims that the same were returned to the plaintiff company

then the onus to prove this fact is upon the defendants. At one time the defendant also made an effort to prove this fact by documents Mark A-2 to A-5, which were sought to be produced on record by way of a separate application. However, as submitted by learned counsel for the appellant that application was withdrawn by them. Hence, these documents can not be read into evidence and the same has rightly been rejected by the lower Appellate Court. Since the appellant claimed to have returned the medicines to the company representative, namely, Inderjit Singh then this fact was required by the appellant to be proved by examining Inderjit Singh as a witness. However, the appellant has not examined that witness before the Trial Court. Hence the fact that medicines were returned to the plaintiff has not been proved on record.

No other argument was raised by learned counsel for the appellant.

In view of the above, the present appeal fails and the same is dismissed being devoid of any merits.

9th October, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *No*