Sr. No.112

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

RSA No.2368 of 2017(O&M)
Decided on:26.07.2017

Yashpal Duggal and another
..........Appellant(s)

versus

Dinesh Kumar and others
..........Respondent(s)

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ranjan Lakhanpal, Advocate
for the appellant.

Rajbir Sehrawat, J.(Oral)

There is an appeal filed by Kanta Duggal who was a Director of the company at the relevant time. The present suit was filed by respondent No. 1 for recovery of ₹ 29,24,769.15 /-. The suit was decreed. The appeal filed by the present appellant was also dismissed. Hence the present appeal.

The facts as evident from the file are that respondent No. 1 filed the suit of recovery of the above said amount against the company, namely, M/s Duggal Pouoltry & Breeding Farm Private Limited and also against its three directors namely, Anil Kumar Duggal, Yash Pal Duggal and Kanta Duggal, the present appellant. Admittedly, respondent NO. 1 company i.e. M/s Duggal Pouoltry & Breeding Farm Private Limited was a private company of the family of the persent appellant in which Ani Kumar Duggal defendant No. 2 in the suit was the Managing Director and Yash Pal Duggal and Kanta Duggal were the directors. The suit for recovery was filed on account of supply of poulty feed and maize by the plaintiff to the company from time to time on credit basis from Hoshiarpur. As claimed in the suit, the defendants used to make payments to the plaintiff at Hoshiarpur from time to time. The account of the defendants was a running account. Regarding the amount claimed in the suit the defendants had issued cheques signed by Anil Kumar Duggal. However, the cheques were dishonoured on their presentation before the bank. A complaint under Section 138 of the Negotiable Instruments Act, 1881(for short, 'the Act') was also filed. The present civil suit for recovery was also availed by the plaintiff. In the proceedings of the suit, Yash Pal Duggal and Kanta Duggal came present but Anil Kumar Duggal who had signed the cheques and the company itself were got proceeded ex parte, although two of its directors were contesting the proceedings. To substantiate his claim, the plaintiff produced the bills and the account entries of his business regarding supply of the material to the defendant company. To prove the bills and account entries the plaintiff had examined PW-2, PW-4 and PW-5 who duly proved the entries and the factum of supply of material to the respondent-company.

The defendant who contested the proceedings did not lead any evidence and only tendered the document Ex:D-2 which is the copy of the complaint filed under Section 138 of the Act and Ex:D-3 the copy of the cheque issued by Anil Kumar Duggal, steadily, from his saving account. Also Mark D-1 copy of the Rapat lodged with the police to the effect that cheques in question were lost and the same might have fallen in the hands of the plaintiff.

The trial court held that the plaintiffs/respondents No.1 had succeded in proving the entries and the liability of the company. Therefore, the suit was decreed. The court further held that the stand of the defendants that the cheques in question were lost is not plausible and that the cross questions put to the PW-1 show that there are direct suggestions to imply that the cheque in question were issued by Anil Kumar Duggal on behalf of defendant No. 1/company.

It is interesting to note that company did not file any appeal against this liability ascertained by the court nor Anil Kumar Duggal, who is stated to have issued the cheques in question, filed any appeal challenging the liability created by the judgment and decree of the trial court against the company. Therefore, the judgment and decree, and therefore the liability fixed against the company has gone totally uncontested.

While arguing the case, learned counsel for the appellant has submitted that since the liability involved in the suit was claimed by the plaintiff/respondent No. 1 only on the basis of the dihonour of the cheques and in the complaint under Section 138 of the Act Anil Kumar Duggal has been acquitted by the criminal court, therefore, the suit should have been dismissed and the claim is not maintainable. However, this submission of the counsel for the appellants is totally falicious. Claim of the plaintiff was not based on dishonour of the cheques. It was based on the basis of transaction of supply of poultry feed to the company and the bills raised therefore. Merely, because Anil Kumar Duggal has been acquitted in criminal proceeding that does not mean that the claim of the plaintiff in civil proceedings *ipso facto* stand disproved.

The next argument of counsel for the appellant is that the bills and entries produced before the Court were the record of the plaintiff only and there is no signature of receipt on the same on the part of the company or the appellant. However, this argument of learned counsel is also not worth acceptance. As pointed out earlier, the company has not come forward to dispute the supplies of the material to it or to deny the bills raised against it. Moreover, the court has rightly held that the bills and entries of accounts maintained in ordinary course of business can be proved by deposition on oath of the plaintiff and in this regard, has rightly relied upon the judgement rendered in *2008(2) Civil Court Cases 230 titled as Fateh Lal versus Bhagwati Lal*. In the present case, not only plaintiff himsel has stepped in the witness box but the sales man and the other witnesses have also been produced by him to support the transaction of supply of the material to the defendant company and to prove the bills and accounts entries. Therefore, the same stands duly proved before the courts below. Otherwise, also since admittedly, the company has been making payment from time to time and have never denied the supply of the material or the existence of the bills, therefore, this tantamounts to acknowledgment regarding the transactions of supply and the bills raised therefore.

In the present case, the company or the Managing Director of the company has never come forward to dispute their liability or to dispute the transactions of supply of the material by the plaintiff to the company. They have not even challenged the liability fastened upon them by the trial court. Therefore, the present appellant, who do not even claim to be authorised representative of the company can not question the liability against the company by filing the present appeal. She can at the best question her liability in her personal capacity. However, admittedly, she was a Director of the company and also a share holder, therefore, whatever liability the company law imposes upon her she can not escape that by filing a appeal even her personal capacity. She would always remain liable qua the liability of the company but subject to the extent of her liability according to the prevalent company law.

No other point was argued.

In view of the above, there is no infirmity in the concurrent findings recorded by the courts below. Hence the appeal is dismissed.

26th July, 2017 **[RAJBIR SEHRAWAT]**
Shivani Kaushik **JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*