

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

RSA No. 3432 of 2017 (O&M)

DATE OF DECISION : 12.12.2017

M/s A.K. Engineering Works, Faridabad

.... APPELLANT

Versus

M/s Saini Fabricators, Faridabad

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Jainika Jain, Advocate,
for the appellant.

* * *

AVNEESH JHINGAN, J.

The present regular second appeal has been filed at the behest of the defendant being aggrieved by the appeal of the plaintiff being allowed by the learned appellate court and the suit of the plaintiff being decreed.

For the sake of convenience, the parties are being referred to as per their original position in the civil suit.

The plaintiff filed a suit for recovery of ₹ 76,269/- against the defendant.

The facts, as averred in the plaint, are that the plaintiff was a proprietorship concern dealing in the job work of bending and welding etc. The plaintiff did job work for the defendant against various challans of different dates, as detailed in the plaint. The material was directly supplied to M/s Jayant Coating Industries, Pehladpur, Faridabad. The rate of

conversion/job work was ₹ 9/- per piece. Various bills worth ₹ 4,24,269/- were issued. The plaintiff received ₹ 3,11,000/- by way of cheque. There was a balance of ₹ 1,13,269/-. The defendant issued a cheque dated 03.09.2012 for a sum of ₹ 37,000/-. The said cheque was dishonoured, regarding which a criminal case under Section 138 of the Negotiable Instruments Act (for short, 'the Act') was pending. After deducting the cheque amount, balance amount of ₹ 76,269/- was outstanding. When the defendant refused to make the said payment, suit was filed by the plaintiff.

On notice, written statement was filed. Various preliminary objections were raised. The defendant denied that any amount was due towards him, though it was admitted that the plaintiff did the job work for the defendant. It was alleged that the plaintiff had done defective work for 1600 pieces, due to which a penalty of ₹ 70,400/- was raised. It was averred that there was a compromise in the criminal proceedings under Section 138 of the Act and an amount of ₹ 45,000/- was paid to the plaintiff.

The learned trial court framed five issues.

The proprietor of the plaintiff concern, in order to support his suit, himself appeared as PW.1 and exhibited challans/bills Ex.P1 to Ex.P126, besides Mark A.

The defendant, in order to rebut the claim of the plaintiff, himself deposed as DW.1.

The learned trial court, after considering the facts and the evidence produced, dismissed the suit vide judgment and decree dated 23.02.2016.

Aggrieved of the dismissal of his suit, the plaintiff filed an appeal. The learned appellate court, after re-appreciating the facts and re-considering the evidence, allowed the appeal and decreed the suit vide judgment and decree dated 01.05.2017.

Hence, the present Regular Second Appeal.

Learned counsel for the defendant argued that the learned appellate court erred in allowing the appeal and decreeing the suit. She contended that no amount was due from the defendant, as a penalty was imposed, as the plaintiff had supplied 1600 defective pieces. She further contended that even if the suit was to be decreed, the amount of ₹ 45,000/- paid by the defendant as compromise amount should have been adjusted.

No other contention was raised.

In the appeal, three questions of law have been framed, but the learned counsel, instead of addressing arguments on those questions, has only raised the aforesaid contentions.

The contentions raised by learned counsel for the defendant have no substance.

It has not been disputed that the plaintiff was doing the job work for the defendant. The bills produced have also not been disputed. From the challans and the bills produced, it has come on record that an amount of ₹ 1,13,269/- was due to be paid by the defendant to the plaintiff, out of which a cheque for ₹ 37,000/- was issued, regarding which criminal proceedings under Section 138 of the Act were pending. The suit was filed

after deducting the said amount. The main plea taken by the defendant that there was supply of 1600 defective pieces was not proved. It was admitted that no notice regarding the defective pieces was issued to the plaintiff. Hence, the said stand cannot be accepted.

The second contention raised by learned counsel for the defendant that the amount of ₹ 45,000/- paid by the defendant on compromise in the proceedings under Section 138 of the Act should have been adjusted cannot be accepted. As stated earlier, the suit was filed after deducting the amount, for which the cheque was issued. The compromise in the criminal proceedings was only qua ₹ 37,000/-, i.e. the cheque amount. Nothing has been placed on record to show that the said compromise was for the entire balance amount. In such circumstances, there is no blemish in the findings recorded by the appellate court and no fault can be found in the suit being decreed by the learned appellate court.

In view of the above, no fault can be found with the cogent findings recorded by the learned first appellate court and the impugned judgment and decree deserve to be upheld.

During the course of hearing, learned counsel for the defendant failed to point out any patent illegality or perversity in the abovesaid cogent and convincing finding recorded by the learned first appellate court. He 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.

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, this appeal stands dismissed, however, with no order as to costs.

December 12, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes