

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

**RSA No. 3606 of 2017
Date of decision : 20.07.2017**

M/s Shiva Ydyog and anr. ...Appellants

versus

M/sUberoi Metals ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.P. Daaria, Advocate
for the appellants.

RITU BAHRI, J.

This regular second appeal is directed against the concurrent findings of facts recorded by both the Courts below whereby the suit of the plaintiff-respondent (herein after to be referred as 'the respondent') for recovery of Rs.14,99,411.70 paise, was decreed.

Brief facts of the case are that the respondent pleaded that there were business dealings between it and the defendants-appellants (for short 'appellants') which too is a proprietorship concern, started in the financial years 2003-04. The respondent used to sell aluminium circle to the appellants, who used to pay the value of the same or at times, he would supply aluminium dust, scrap or gully to the respondent. A running account in this behalf was being maintained on computer, as per which a sum of Rs.14,99,411.70 paise was due against the appellants.

The suit filed by the respondent was decreed by the learned trial Court on the ground that it is not disputed between the parties that there

were business dealing between the parties. Appellant No. 2 in his cross examination had admitted that the material used to be purchased by them from respondent firm was only through bills. There was nothing on record what prevented the appellants from mentioning the details of such bills in his written statement or what prevented the appellants from producing the said bills at the time of his written statement.

During cross examination of P.W.1, the bills Ex DW1/A to Ex DW1/C was never put to said witness by the appellants.

As per document Ex P-91 i.e copy of judgment dated 14.08.2012 in a criminal complaint under Section 138 of N.I Act filed by the respondent against the appellants, a cheque of Rs.2 lacs was issued by the appellants, which is dated 18.07.2007 and the same was dishonoured. The complaint was filed on 20.09.2007 The factum of payment of Rs.2 lacs by cheque was admitted by D.W.1 in his cross examination. He further admitted that the dealing between appellants and respondent remained from 2004 to 2006. After 2007, the business between parties came to an end.

D.W.1 admitted in his cross examination that vide bill Ex P51 to Ex P63 scrap, gylly and burada was supplied to respondent. As per bills Ex D.W.1/B dated 30.07.2008, aluminium utensils are shown to have been supplied to the respondent, which is contrary to the admission made by D.W.1 himself.

No ledger account was produced by D.W.1 nor any writing to show the business dealings between the parties, thus, the Court did not rely upon document Ex DW1-D, Mark A and B.

The finding of facts recorded by the learned trial Court was rightly upheld by the Lower Appellate Court, as in the present case, the present-appellants have miserably failed to prove on record that the material was supplied to the respondent vide bills Ex DW1/A to DW1/C. Further the cheque of the appellants was dishonored and he was convicted and was ordered to pay double the amount of cheque and accordingly, a sum of Rs.4 lacs was paid.

Accordingly, the concurrent findings of facts recorded by both the Courts below does not require any interference by this Court.

No substantial question of law arises for adjudication by this Court.

The appeal is dismissed.

20.07.2017
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No