

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

RSA No.3751 of 2017 (O&M)
Date of decision : 01.09.2017

Om Parkash

...Appellant

Versus

Beant Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harmanjit Singh Jugait, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

CM No.9193-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 9 day in refiling the present appeal is condoned.

Application stands allowed.

Main Case

Defendant is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts.

Plaintiff filed a suit for recovery of ₹5,80,000/- alongwith interest at the rate of 18% p.a. Defendant contested the suit and filed a written statement.

Learned trial Court after appreciating the evidence available on the file and also after looking into the agreement dated 19.03.2008 duly signed by the parties wherein the quantum of damages were assessed and agreed to be payable alongwith interest, decreed the suit. It is important to notice that the defendant did not lead any evidence.

Appeal filed by the defendant before the First Appellate Court was also decided after re-appreciating the evidence and the judgment passed by the trial Court was upheld.

Learned counsel for the appellant has submitted three following submissions:-

1. The Court at Ferozepur had no jurisdiction because the agreement was entered into Nabha.
2. The agreement dated 19.03.2008 was unconstitutional as damages were assessed at the rate of ₹7,000/- per day on account of non delivery of Combine Harvester.
3. The plaintiff has not even paid ₹3,00,000/- which was the balance price.

I have considered the submissions of learned counsel.

It is not in dispute that apart from taking objection with regard to the territorial jurisdiction, neither the Court framed any issue nor this argument was pressed either before the trial Court or before the First Appellate Court.

In the Regular Second Appeal, I cannot entertain such arguments particularly when it has not been pressed before the Courts

below. Still further defendant-appellant has failed to show any prejudice caused on the merits of the case.

Second argument of learned counsel is that the agreement assessing the damages at ₹7,000/- per day for delayed delivery of Combine Harvester is unconstitutional and submits that the amount of penalty, can be few hundreds a day but not ₹7,000/- per day.

I have considered the submission of the learned counsel. In the present case, original agreement was to deliver the Combine Harvester on 19.09.2007. Combine Harvester was not delivered on 19.09.2007 and thereafter a new date was fixed i.e. 30.09.2007. It was agreed that for further delay, defendant shall be liable to pay penalty at the rate of ₹7,000/- per day. Combine Harvester was delivered only on 19.03.2008. On 19.03.2008, the damages were quantified and it was agreed that ₹5,80,000/- would be paid alongwith interest. It is a case of a contract between the parties. Defendant has not been able to prove anything on the record to show that such contract was not on account of free will and volition. Defendant-appellant is a manufacturer of Combine Harvester. In these circumstances, argument of learned counsel for the appellant cannot be accepted.

Learned counsel for the appellant has further argued that ₹3,00,000/- balance sale consideration payable by the plaintiff has not been adjusted.

In my considered view, there is no force in the submission because when the Combine Harvester was delivered on 19.03.2008, the

parties entered into an agreement in writing wherein the plaintiff was held to be entitled to recover ₹5,80,000/-. Now, it is too late in the day for the appellant to stake a claim for the balance amount.

In these circumstances, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

01.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No