IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No.3792 of 2017 (O&M)
Date of Decision: August 01, 2017

Subhash Chand and another

... Appellants

Versus

Om Parkash

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S. Sahu, Advocate,
for the Appellants.

ANIL KSHETARPAL, J.

CM No.9357-C of 2017.

Allowed as prayed for.

RSA No.3792 of 2017

Defendants have filed this Regular Second Appeal against the judgements of both the Courts below ordering preparation of the final decree in a case of rendition of accounts.

Plaintiff/respondent had filed a suit for rendition of accounts. Learned trial Court passed the preliminary decree on 18.10.2011. No further appeal was preferred. The preliminary decree became final.

Plaintiff thereafter filed an application for passing the final decree.

Since the dispute was with regard to the accounts, with the concurrence of both the counsel, learned trial Court appointed a Chartered Accountant to scrutinise the accounts produced by both the parties. This fact has been recorded by the learned trial Court in para 3, which is extracted hereunder: –

> *"With the concurrence of both sides, Shri S.K. Singla, Chartered Accountant was appointed as local-commission to scrutinize the account rendered by both the parties, vide order dated 05.11.2012, passed by the undersigned."*

The Local Commissioner after examining the records/account books produced by the defendants and the slips (Parchis) produced by the plaintiff, came to the conclusion that plaintiff is entitled to recover Rs. 44,377/- from the defendants.

Defendants filed objections against the report of the Local Commissioner. The appellants/defendants had submitted that the slips as produced by the plaintiff could not be taken into consideration as in the preliminary decree, the Court had ordered only examination of the accounts.

Learned trial Court framed an issue on the legality of the report of the Local Commissioner and permitted the parties to lead evidence.

After appreciating the evidence, the objections filed by the appellants/defendants were rejected and final decree in terms of the report of the Local Commissioner was passed.

The first appeal preferred by the defendants/appellants was also dismissed.

I have heard learned counsel for the appellants at length.

Learned counsel for the appellants has reiterated the submissions made before the Courts below. Learned counsel for the appellants has stated that the slips were inadmissible in evidence and the Local Commissioner committed an error while taking into consideration the aforesaid slips. He further submitted that the finding of the Court below is perverse.

I have considered the argument of the learned counsel for the appellants, however, I do not find any merit in the same.

The Chartered Accountant was appointed as a Local Commissioner with the consent of the parties. The Chartered Accountant after examining the records/account books as also the slips written by Sunil Kumar, Accountant of the defendants/firm, has found that defendants/firm is to pay a sum of Rs.44,377/- to the plaintiff. Initially, the appellants had taken a stand that Sunil Kumar was not his Accountant, however, in cross-examination, it was admitted by Subash Chand, Proprietor of defendant No.1/firm that Sunil Kumar was his Accountant. Even Sunil Kumar was examined, who admitted that these slips may be under his handwriting but the same are not signed by him.

Taking into consideration the false stand taken by the plaintiff and admission of Sunil Kumar, the Courts below concluded that final decree be passed in terms thereof.

Learned counsel for the appellants has submitted that such slips are inadmissible in evidence.

I have considered the submission of the learned counsel for the appellants, however, I am unable to agree. These slips are in the handwriting of Sunil Kumar, Accountant of the firm. These slips contained entries of accounts.

Defendants have produced computerised accounts, which are not signed by the plaintiff. Once the slips are proved to be in the handwriting of Sunil Kumar, the slips cannot be held to be inadmissible in evidence.

The Local Commissioner was appointed with the concurrence of the parties. The Local Commissioner was a qualified Chartered Accountant. The Local Commissioner after examining the account books and slips had reported to the Court that a sum of Rs. 44,377/- is payable to the plaintiff.

Next submission of learned counsel for the appellants is that finding of the Courts is perverse.

I have examined the finding of the Court. Learned counsel for the appellants has failed to establish any perversity in the judgements passed by the Courts below.

For the reasons recorded above, there is no ground to interfere with the concurrent finding of fact arrived at by the Courts below. The appeal is ordered to be dismissed.

(ANIL KSHETARPAL)
01.08.2017 **JUDGE**
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No