

101 RSA No.99 of 2014 (O & M) and
RSA No.4858 of 2013 (O & M)

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

RSA No.99 of 2014 (O & M)
Date of decision :11.08.2017

M/s Ram Kumar Chhabil Dass

...Appellant

Versus

M/s Prabhu Dayal Jagdish Rai and others

...Respondents

RSA No.4858 of 2013 (O & M)

District Manager, CONFED, Sirsa

...Appellant

Versus

M/s Prabhu Dayal Jagdish Rai and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.S.K. Jain, Advocate with
Mr. Akshay Jain, Advocate
for the appellant in RSA No.99 of 2014 and
respondent No.2 in RSA No.4858 of 2013.

Mr. Dheeraj Chawla, Advocate
for the appellant in RSA No.4858 of 2013.

Mr. Lal Singh Sandhu, Advocate
for respondent No.1 in both the appeals.

ANIL KSHETARPAL, J.

RSA No.99 of 2014 and RSA No.4858 of 2013 are being
disposed of through this single judgment as both are arising out of the same
suit.

RSA No.4858 of 2013 has been filed by defendant No.2 whereas
RSA No.99 of 2014 has been filed by defendant No.3.

Plaintiff had filed a suit for recovery of Rs.10,47,200/- along

with interest on the allegation that the plaintiff firm had been running business of Commission Agent at village Bani. The farmers used to bring wheat for sale, which was sold through defendant No.3 to defendants No.1 and 2. The wheat was purchased through Shri Ranvir Singh Purchase Inspector of CONFED in the months of April and May, 2003. It was asserted that wheat was duly supplied and placed in the godowns of CONFED. Defendant No.3 was nominated for purchase of wheat from the Commission Agents and make payment to the Commission Agents for onward transmission to the farmers. It was further asserted that the amount of Rs.6,80,000/- has not been paid.

On notice, defendant Nos.1 and 2 claimed that defendant No.3 was nominated as billing-cum-payment agent with respect to the wheat to be purchased from the grain market. It was further claimed that whatever wheat has been purchased and delivered to defendant Nos.1 and 2, payment thereof has been made to defendant No.3.

Defendant No.3 has filed a separate written statement asserting that Jagdish Rai proprietor of the plaintiff firm was also managing the affairs of another concern known as M/s Peer Kamria Trading Company. It was asserted that on the request of Jagdish Rai, who was also managing the affairs of M/s Peer Kamaria Trading Company, the payment was given in the account of M/s Peer Kamaria Trading Company, as cheque of Rs.8,20,000/- was received by Jagdish Rai on 23.04.2003.

Learned trial court after appreciating the evidence available on the file, decreed the suit filed by the plaintiff for recovery of Rs.6,80,000/- along with interest at the rate of 12% per annum from the date on which the said payment was due to the plaintiff firm till filing of the suit and at the rate

of 6% per annum from the date of the suit till its realization.

Two appeals were preferred before the First Appellate Court. First Appellate Court also after re-appreciating the evidence available on the file, dismissed the appeals that is how these two appeals have been filed.

I have heard learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts as well as records of the case.

Learned counsel for the appellant has submitted that the courts below have committed an error in not taking into consideration the evidence of defendant No.3 . He has further submitted that the learned courts have further overlooked the fact that both the firms namely the plaintiff firm M/s Prabhu Dayal Jagdish Rai and M/s Peer Kamaria Trading Company are operating from same premises. He has further submitted that Jagdish Rai, the sole proprietor of the firm has been admitted that they belong to the same village.

I have considered the submission of learned counsel for the appellant, however, I am unable to agree.

The argument of learned counsel for the appellant is that the evidence of defendant No.3 has not been taken into consideration is factually incorrect. The learned trial court while discussing the evidence has taken into consideration the evidence of defendant No.3. Even First Appellate Court has re-appreciated the evidence available on the file and has concluded against the appellant. The relevant extract of the discussion made by the Court while referring to statement of Mohinder Kumar is as under:

“19. It is also equally significant that Mohinder Kumar, when appeared as a prosecution witness in the criminal

case, got registered under Section 406 Indian Penal code against Jagdish Rai and Parmod Kumar, got recorded by way of statement Ex.PC that payment of Rs.6,80,000/- equivalent to the price of 1050 quintals wheat was made to him by CONFED. He also stated that he had not further made this payment to any one and the same was yet to be made. He, when appeared in the suit as DW2, fairly admitted in cross-examination that wheat sold by plaintiff-firm to CONFED on 18.04.2003 and 09.05.2003 was found 1050 quintals in actual weight. He also admitted that payment of purchased quantity of wheat by CONFED was made to commission agents by him. He also admitted that he had already received payment of said 1050 quintals wheat from CONFED but did not make its onward payment to plaintiff-firm. He also admitted that payment of two firms cannot be made by a single cheque. He candidly admitted that after coming to know Parmod Kumar as sole Proprietor of firm M/s Peer Kamria Traders, he never initiated any proceedings or action against Parmod Kumar. He, however, made categorical denial of certain facts as earlier noted in his previous statement Ex. PC made before the criminal court. He was duly confronted with his alleged admissions of portions 'A' to 'A' as well as at 'B', highlighted in his previous statement Ex. PC. Need not to mention that in the police investigation Jagdish Rai was

found innocent when not found owner of firm M/s Peer Kamria Traders. Therefore, there is no evidence on record to prove that Jagdish Rai was also owner of firm M/s Peer Kamria Traders.”

Therefore, there is no force in the arguments of learned counsel for the appellant.

Next submission of learned counsel for the appellant is that both the firms namely the plaintiff-firm and M/s Peer Kamria are operating from the same premises.

I have gone through the evidence. It is established that grain market at village Bani is temporary. There is no permanent premises. Grain market is one. Therefore, the submission of learned counsel for the appellant is that it is being operated from the same premises does not take the case of the appellant any further. Plaintiff-firm is owned by Jagdish Rai whereas M/s Peer Kamria Trading Company is owned by one Parmod Kumar. Defendant has not been able to establish any connection inter se both the firms.

Next argument of learned counsel for the appellant is that Jagdish Rai and Parmod Kumar belong to one village. Therefore, it should be assumed that both have colluded. I am afraid that such a presumption cannot be drawn unless there is evidence available on the file.

Learned counsel for the appellant further submitted that the FIR was registered against Jagdish Rai and Parmod Kumar.

In response thereto, counsel for the respondent submitted that no doubt initially the trial court had convicted Jagdish Rai and Parmod Kumar, however, the appeal filed by Jagdish Rai has been accepted by the learned

Additional Sessions Judge, Sirsa vide judgment dated 25.02.2014. This

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factual position is not disputed by the learned counsel for the appellant.

In view of the discussion made above, I do not find any good ground to interfere in the concurrent findings of fact arrived at by the courts below.

Both the regular second appeals are dismissed.

11.08.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No