

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

**RSA No.4418 of 2017 (O&M)
Date of Decision: 15.09.2017**

Ashok Malhotra and another

... Appellants

Versus

M/s. Bridge Stone India Pvt. Ltd. and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Harish Chhabra, Advocate,
for the appellants.

ANIL KSHETARPAL, J. (ORAL).

Defendants No.3 and 4 are in Regular Second Appeal against the concurrent finding of fact arrived at by the Courts below.

The plaintiff filed a suit for mandatory injunction and for recovery of Rs.7,72,039.06 as on 31.12.2008 with the assertions that the plaintiff/company had business dealings with the defendants and tyres were supplied against invoices, however, the defendants had not made the payments against these invoices. Further assertion of the plaintiff was that the defendants gave cheques to it. It was further the case of the plaintiff that since the defendants were not discharging their liability, therefore, a meeting was held and the minutes of the meeting were drawn, Ex.P-3 on the file wherein the liability was admitted.

Learned trial Court after appreciating the evidence available on the file decreed the suit filed by the plaintiff.

Appeal filed before the first Appellate Court was also dismissed after reappreciating the evidence.

Learned counsel for the appellants has submitted that defendants No.3 and 4/appellants have nothing to do with the firm/defendant No.1 and, therefore, no decree could be passed against defendants No.3 and 4.

I have considered the submission of the learned counsel for the appellants.

All the defendants filed a joint written statement. It was undoubtedly pleaded that defendants No.3 and 4 have no concern with defendant No.1, however, no issue was framed. A reading of the judgements passed by the Courts below shows that even no such argument was pressed before the Courts below. In the Regular Second Appeal, learned counsel for the appellants cannot be permitted to raise the argument which is a question of fact based upon the evidence.

The suit has been filed on the basis of invoices, minutes of meeting and cheques. The plaintiff has led overwhelming evidence to prove that the amount is due. Ashok Malhotra, who is defendant No.4, has appeared in the witness box and has admitted in cross-examination the accounts of the plaintiff/company with regard to the receipt of invoices and the payment made by defendant No.1/firm.

For the reasons recorded above and also for the reasons

recorded in the judgements passed by the Courts below, I do not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

The appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

15.09.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No