IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.6596 of 2014 (O&M)
Decided on: 02.04.2018

M/s Sachidanand Cycles Pvt. Ltd. & others ....Petitioners

Versus

Naresh Chand Aggarwal ...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Viren Jain, Advocate, for the petitioners.

None for the respondent.

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G.S. SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 28.08.2014 (Annexure P-1), passed by the Court of the Learned Civil Judge (Jr.Divn.) Ludhiana, whereby the application filed by the petitioner-defendants for de-exhibiting and striking out the affidavit tendered in rebuttal evidence as Ext.PD along with Exts. P66 to P77, has been dismissed.

Counsel for the petitioners has argued at length that the onus, as such, of proving the issues was upon the plaintiff-respondent, in affirmative and the affidavit Ext.PD along with Exts.P66 to P77 could not have been tendered as evidence in rebuttal on 29.10.2013. Resultantly, it is submitted that the order declining the de-exhibiting and striking out the documents from the records, is not justified. He has, accordingly, placed reliance upon **Andhra Pradesh Coop. Wool Spinning Mills Ltd. & another Vs. G.Mahanandi & Company & others 2003 AIR (A.P.) 418**, **Jagdev Singh & others Vs. Darshan Singh & others (2007) 1 RCR (Rent) 196 (DB)**, **Surjit Singh & others Vs. Jagtar Singh & others (2007) 1 RCR (Civil) 537 (DB)**, **Gurjeet Kaur Vs. Mani Singh &**

another 2015 (1) PLR 643, **Avtar Singh & another Vs. Baldev Singh & others 2015 (1) PLR 230** & **Ranjit Singh Vs. Jitender Singh 2016 (1) PLR 265**, to place reliance upon the said proposition.

The argument of counsel for the petitioners, as such, is misconceived, in view of the peculiar facts and circumstances. It is to be noticed that the suit for recovery of Rs.14,01,396/- dated 06.04.2004 was filed, with a specific plea that the plaintiff-respondent was a Proprietor of M/s Maya Sons, Ludhiana and therefore, was competent to file the suit which was pertaining to the non-payment of bills ranging from the year 2000-2004.

In the defence, the stand taken by the petitioner-defendants was that M/s Maya Sons was a partnership concern and therefore, the firm was not a registered partnership firm and therefore, the suit was barred under Section 69 and could not proceed.

Replication came to be filed by the respondent that the earlier firm was a partnership firm duly registered with the Registrar of Firms Punjab at Chandigarh under the Indian Partnership Act, 1932. The plaintiff was also one of the registered partner of the firm along with Smt.Reva Devi and Arun Kumar along with one Dharampal. The firm was dissolved and therefore, the plaintiff was the proprietor of the firm at the time of sale of the goods which was a proprietorship firm of the plaintiff and he was filing the Income Tax Returns for the year 2000-2001 onwards.

On the basis of the said pleadings, initially the following issues were framed on 17.08.2005:

> "1. Whether the plaintiff is entitled to recover suit amount alongwith interest @ 18% P.A. As prayed for? OPP.
> 2. Whether the plaintiff is entitled for future interest @ 18% P.A. As prayed for? OPP.
> 3. Whether the plaintiff has got no locus standi to file the present suit? OPD.
> 4. Whether suit of the plaintiff is not maintainable in the present form? OPD.
> 5. Relief."

The following two additional issues were, thereafter, framed on 03.02.2012, on an application filed for framing of additional issues:

> "1A. Whether the plaintiff is Proprietor of M/s Maya Sons and not a partner in partnership concern? OPP
> 1B. Whether the suit is barred section 69 of the Indian Partnership Act? OPD"

The respondent-plaintiff led his evidence which was closed on 30.03.2012 and thereafter, the evidence of the petitioner-defendants was closed on 15.10.2013. Ext.PD was then tendered into evidence along with Exts.P66 to P77 on 29.10.2013. Resultantly, the application came to be filed, as noticed, for de-exhibiting and striking out the said affidavit along with the documents on the ground that the mandatory provisions of Order 18 Rule 3 CPC were being violated and the plaintiff could not be allowed to fill up the lacuna under the garb of rebuttal evidence.

In the reply to the application, plea taken was that the rebuttal, as such, was regarding issue No.1B, which is being reproduced above, that the same was barred under Section 69. It was further submitted that from the office of the Sale Tax Department, Government of Punjab Ludhiana, the defendant had examined DW2-Kuldip Singh, Junior Assistant, who produced the record of M/s Maya sons and also produced the record (Exts.D13 to D17). It was, in such circumstances, the defence taken was that the plaintiff had a right to lead rebuttal evidence to the evidence led on issue No.1B.

The argument of counsel for the petitioner, now, while placing reliance upon the judgment of the Division Bench in **Andhra Pradesh Coop. Wool Spinning Mills Ltd. & another** (supra) that issue No.1 was only a legal issue, as such and therefore, the plaintiff could not be permitted to lead evidence in rebuttal, is without any basis.

The facts which have been discussed above would go on to show that the petitioner-defendants had examined a official witness who had placed on record some documents. The stand of the plaintiff is that initially M/s Maya Sons was a partnership firm and thereafter, it became proprietorship. A perusal of the affidavit (Ext. PD) which has been attached as Annexure P-5 (Colly.) would go on to show that various documents were referred to which were already on record, as such, which the plaintiff had produced in affirmative at the time of leading his evidence. The relevant part reads as under:

> "As per record brought by the DW-2 of sale tax department the sale tax number allotted to the firm is mentioned as 51025915 dated 14.05.1990 which is mentioned on the bills which was subsequently changed to Tin no.0345101468 on the introduction of PVAT (Punjab Value Added Tax) Act

> 2005 w.e.f. 01.04.2005 by the sale tax department and the sale tax department called for fresh applications for the allotment of Tin numbers from the sale tax number holders. The plaintiff did not applied for the allotment of Tin number under the PVAT Act 2005 and consequently the sale tax/tin number was cancelled by the sale tax department on 29.12.2005 as per record brought by the DW-2 Ex as D-1."

In view of the evidence which has even been led by the petitioner-defendant and to discharge and rebut the evidence which has been led by the plaintiff itself regarding issue No.1B, which would also have to be read along with the maintainability of the suit under issue No.4, the onus of which was upon the petitioner-defendant, the evidence is being led by the plaintiff.

In such circumstances, this Court is of the opinion that the application has rightly been dismissed and no cause, as such, is made out in the facts and circumstances discussed above. Resultantly, the present revision petition is dismissed, being devoid of any merit.

02.04.2018 **(G.S. SANDHAWALIA)**
Sailesh **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No