

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.1224 of 1992

Date of Decision.27.09.2018

Sneh Chawla

...Appellant

Vs

M/s Trehan Enterprises

...Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the appellant.

Mr. Kuldip Sanwal, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff is in regular second appeal against the judgment and decree of the lower Appellate Court whereby the judgment and decree of the trial Court decreeing the suit of the plaintiff for recovery of ₹40,000/-, has been reversed.

The appellant-plaintiff instituted the suit against M/s Trehan Enterprises for recovery of ₹40,000/- on the premise that plaintiff had supplied timber to the defendant on credit from Pathankot. Accounts were reconciled on 11.07.1985 and a sum of ₹38,939.49 was found due from defendant. The aforementioned accounts were confirmed by Bhushan Trehan i.e. brother of Suraj Parkash Trehan. As per the aforementioned settlement, it was mutually agreed that the payment shall be made by the end of September, 1986 starting from July, 1986. The defendant was also to issue C-Form in respect of certain bills but did not pay the amount, therefore, the suit aforementioned was filed on 25.08.1986.

The defendant contested the suit by raising numerous preliminary objections with regard to non-joinder of partners, maintainability etc. On merits, it was stated that Sneh Chawla was not admitted to be sole proprietor of M/s Dimple Timber. Bhushan Trehan was brother of Suraj Parkash, who had no authority to verify or confirm accounts.

On the basis of aforementioned pleadings, trial Court framed the following issues:-

- “1. Whether Sneh Chawla is the sole proprietor of the trade named Dimple Timber Pathankot?OPP*
- 2. Whether the plaintiff supplied goods to the defendant on credit and Rs.38,939.49 due payable by the defendant to the plaintiff? OPP*
- 3. Whether the plaintiff is entitled to the interest. At what rate and how much? OPP*
- 4. Whether the defendant has been sued through Sh. Suraj Parkash? OPP*
- 5. Whether written statement filed by Suraj Parkash can be read in this case? OPP*
- 6. Relief.”*

The plaintiff in support of the pleadings examined six witnesses namely PW1 Parshotam Lal, PW2 Balwinder Singh, PW3 Vijay Gupta, PW4 K.N. Chawla, PW5 Atam Singh, PW6 Bhupinder Singh and tendered into evidence following documents:-

Ex.P1 Settlement

Ex.P2 Photostat copy of account.

Ex.PW4/1	Original power of attorney
Ex.PW4/2 to Ex.PW4/5	Carbon copies of bills
Ex.PW4/6 to Ex.PW4/8	Carbon copies of railway receipts.
Ex.PW4/9	Copy of ledger.
Ex.PW4/10	Copy of notice.
Ex.PW4/11	Reply of notice.
Ex.PW6/A & Ex.PW6/B	letters.

On the other hand defendant examined DW1 Suraj Parkash Trehan and produced Ex.DA and Ex.DB receipts and Ex.DC and DD challans.

The trial Court on the basis of evidence brought on record by not only looking into the settlement but also bills/receipts, decreed the suit. However, in appeal, the lower Appellate Court reversed the judgment and decree of the trial Court on the ground that Bhushan Trehan, brother of Suraj Parkash had no authority to arrive at settlement or confirm the reconciliation to which he had no concern.

Mr. Amit Jain, learned counsel appearing on behalf of the appellant-plaintiff submitted that the lower Appellate Court abdicated in setting aside the well-reasoned judgment of the trial Court as there is no reference or advertence to the bills, original ledger and railway receipts to establish that defendants had an outstanding sum of ₹38,000/- and odd amount. Even if settlement dated 11.7.1985 Ex.P1 on the basis of having arrived at by unauthorized person is ignored, still there is illegality and perversity.

The defendant had not led any evidence to establish that he had discharged the liability in lieu of goods/timber received against the bills, as such, adverse inference was also liable to be drawn.

Per contra, Mr. Kuldip Sanwal, learned counsel appearing on behalf of the respondent submitted that there is no illegality and perversity. If at all, the lower Appellate Court had not adverted to other documents, it is a fit case where the matter should be remitted back as the parties have been prevented to advert to all the documentary evidence, if the settlement was to be ignored. Otherwise, challans Ex.DC and Ex.DD proved the payments made towards purchase of timber, therefore, no amount was due, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Jain. Receipts and the ledger referred to above vide Ex.PW4/6 to Ex.PW4/8 and Ex.PW4/9 have not been rebutted as they carry presumption of truth vide which timber was supplied to the defendant. The lower Appellate Court, in my view, abdicated in not adverting to the aforementioned documents but laid its focus only on settlement. On the other hand, trial Court adjudicated the *lis* independently *vis-a-vis* settlement. For the sake of brevity, finding rendered on issue No.2 in paragraph 8, 9 and 10 reads as under:-

“8. PW4 K.N. Chawla is the special attorney of the plaintiff. He has proved the power of attorney Ex.PW4/1. According to him, timber was sent to the defendant through three bills from Pathankot and on bill from Jammu. He has proved the carbon copies of the

bills Ex.PW4/2 to Ex.PW4/5. He has also identified the signatures of Sneh Chawla on Ex.PW4/4. Timber was sent through railway. Carbon copies of the railway receipts are Ex.PW4/6 to Ex.PW4/8. Dimple Timber maintains accounts in the ordinary course of business. Copy of the original ledger is Ex.PW4/9. Bhushan Trehan, who is the brother of Suraj Parkash Trehan made the settlement on behalf of the defendant in the presence of Shri B.K. Gupta and Parshotam Lal. The same is also proved by PW1 Parshotam Lal. The settlement is Ex.P1. As per that settlement the defendant admitted the amount of Rs.40,000/- to be paid to the plaintiff.

9. The defendant did not make the payment in terms of that compromise. A notice was sent. Copy of which is Ex.PW4/10. Reply receipt from the defendant is Ex.PW4/11.

10. It was argued by the learned counsel for the defendant that there is no evidence that the goods were delivered to the defendant. He has also argued that the railway receipts show that goods sent by Dimple Timbers to self-meaning thereby that the goods were to be received at the other end by M/s Dimple Timbers. He has also argued that there is no authorisation to Bhushan Trehan to settle the accounts on behalf of the defendants. He has thus urged that the defendant is not liable to pay anything. There is no merit in the contention of the learned counsel for the defendant. DW-1 Suraj Parkash has admitted that he is joint with his wife in mess and residence. According to him his wife is the sole proprietor of M/s Trehan Timber. He is also conducting the business on behalf of his wife in the name of M/s Trehan Enterprises. He has admitted that Bhushan Trehan is his brother and he is in correspondence with him. The settlement Ex.P1 was

shown to him. He could not deny the signatures of Bhushan Trehan on this settlement. Bhushan Trehan himself has not stepped into the witness box to deny his signatures on the settlement. The settlement is a clincher. According to this settlement Rs.38,939.49 is due towards the defendant. This issue is accordingly decided in favour of the plaintiff and against the defendant.”

There is no whisper of the aforementioned documents by the lower Appellate Court. The lower Appellate Court being the last court of fact and law was enjoined upon an obligation to refer to all the documents. It would be futile exercise in remitting the matter back as the defendants had not denied execution of the receipts.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29]”*

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or

repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

As an upshot of my finding, the judgment and decree rendered by the lower Appellate Court suffers from illegality and perversity and same is hereby set aside. Resultantly, judgment and decree passed by the trial Court is restored.

The second appeal is allowed.

(AMIT RAWAL)
JUDGE

September 27, 2018

Pankaj*

Whether Speaking/Reasoned Yes

Whether Reportable No