IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A. No.1304 of 1992 (O&M)
Date of Decision: September 27, 2018

M/s Harbans Lal Des Raj, Dana Mandi, Phagwara through Harbans Lal partner and legal heirs of Des Raj partner

...Appellants

Versus

M/s Gian Chand Raj Kumar, Mandi, Phagwara & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Nemo of the parties.

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AMIT RAWAL, J.

Appellant-plaintiff is in Regular Second Appeal against the judgment and decree dated 05.03.1992 of the Lower Appellate Court, whereby the suit for recovery of Rs.1,39,113-38P dismissed by the trial Court vide judgment and decree dated 30.07.1988 being barred by law of limitation, has partly been decreed for a sum of Rs.4011-84P with proportionate costs and interest @ 12% per annum from the date of the suit till realisation.

Plaintiff instituted the suit for recovery of Rs.1,39,113-38P as principal and interest thereon on the premise that the defendants have purchased the paddy on credit from the plaintiff firm and Rs.4853-78P was brought forward from the year ending 31.03.1978 which was due from the defendants. However, in the year 1978-79, the defendant firm purchased the paddy on credit worth Rs.7,04,961-03P vide different bills, detail of which was given in paragraph 4 of the plaint. The last bill was dated 06.02.1979. The aforementioned goods were purchased by the defendants. However, they paid a sum of Rs.6,34,385-48P being part payment as reflected in para No.6 of the plaint on various dates and the last date for payment was shown as 06.07.1983.

It was further averred that the payments made by the defendants were adjusted in the previous bills spanning from 19.10.1978 to 30.10.1978. The defendants acknowledged the liability towards the outstanding dues and issued a cheque on 28.12.1978 drawn on New Bank of India, Phagwara for a sum of Rs.1,50,000/- towards the payment of price of goods, but the same was dishonoured. Another cheque drawn on State Bank of Patiala, Phagwara was issued on 15.09.1981 acknowledging the liability accepting that the defendants were in arrears and, therefore, claimed the aforementioned amount.

Defendants No.1 to 4 contested the suit by raising plea that the suit was barred by law of limitation and was bad for mis-joinder of parties. On merits, it was stated that the defendants had made payment to the tune of Rs.6,34,385-48P, but the plaintiff wrongly misappropriated in respect of the bills as described in the corresponding paragraphs. Original bills were never returned to the defendants. The defendants firm did not issue cheques as alleged. However, it is denied if Joginder Paul issued a cheque dated 15.09.1981 for and on behalf of defendant firm.

Defendants No.5 and 6 filed their separate written statement and contested the suit by taking various objections.

The trial Court, on the basis of the pleadings of the parties to the lis, framed the following issues:-

"1) Whether the plaintiff-firm is a registered partnership concern and Des Raj is one of its registered partners? OPP

2) Whether an amount of Rs.4853-78 were due from the defendants on 31.3.78? OPP

3) Whether the defendant purchased paddy worth Rs.7,04,961-03 during the year 1978-79 from the plaintiff? OPP

4) Whether the defendant made payment of Rs.6,34,385.48 paise to the plaintiff. If so its effect? OPP

5) Whether the defendant firm issued cheque no.PGW-124738 dated 28.12.78 for Rs.1,50,000-00. If so its effect? OPP

6) Whether Joginder Paul defendant no.2 issued cheque no.592984 dated 15.9.81 and acknowledged the liability of the plaintiff? OPP

7) Whether the plaintiff is entitled to the interest claimed for? OPP

8) Whether the suit is within time? OPP

9) Whether the suit is bad for mis-joinder of parties? OPD

10) Whether the provisions of Order 32 Rule 3 CPC have not been complied with? OPD

11) Whether the suit is collusive between the plaintiff and defendants (except No.5 and 6)? OPD No.5 & 6.

12. Whether the defendant no.7 is liable to claim of the plaintiff? OPD

13. Relief.

Plaintiff firm examined PW-1 Des Raj and also brought on record documents Ex.P1 to Ex.P160, i.e., bills, sales tax forms, certified copies of lesser account books etc. On the other hand, the defendants examined DW-1 Raj Kumar (defendant No.5), DW-2 Pawan Kumar Manager of the defendant firm and various other witnesses.

On the preponderance of the evidence brought on record, the trial Court dismissed the suit by taking the last date for payment of cheque dated 15.04.1981 acknowledging the debt, whereas the suit was filed was filed on 15.09.1984. The Lower Appellate Court, as noticed above, partly decreed the suit aforementioned for a sum of Rs.4011-84P.

There is no representation on behalf of the parties. The appeal is of the year 1992. Accordingly, I proceed to decide the appeal on merits.

As per the memorandum of appeal, the judgment and decree of the Lower Appellate Court in not decreeing the suit in toto has been assailed on the premise that the factum of account being mutual, open and current was not examined in correct perspective. The account books maintained by the appellant were duly exhibited as Ex.P81 to Ex.P160. The provisions of Sections 60 and 61 of the Contract Act were not taken into consideration in correct perspective. The Lower Appellate Court had erred in not applying the provisions of Section 19 of the Limitation Act. The question of limitation pressed into service and the claim cannot be said to be barred by law of limitation.

I have gone through the paper book, judgments and decrees of the courts below and as well as the records of the courts below and of the view that there is no force and merit in the pleas of the appellant.

Though the trial Court had taken the acknowledgment of debt as per the provisions of Section 18 of the Limitation Act as 15.09.1981 when the cheque was issued and by calculating the period of three years as the suit was filed in September, 1984, dismissed the suit on the ground of limitation, but the Lower Appellate Court confined it into Rs.4011-84P on the premise that the defendants had acknowledged the entire outstanding amount due as Rs.4011-84P vis-a-vis the payment dated 18.11.1978. The limitation run from the date when the cheque was given and not from the date of encashment, so if at all, the cheque which was given on 15.04.1981 was encashed in September, 1981 would not extend the period of limitation.

PW-2 Des Raj stated that the payments made by the defendants were adjusted in the previous bills from 19.10.1978 to 14.11.1978 and part payment of bill dated 18.11.1978, therefore, balance left was Rs.4011-84P which the defendants were liable to pay. No other material has been brought on record to establish the liability of the defendants as claimed in the suit.

As an upshot of my aforementioned observations, the findings of the Lower Appellate Court do not call for any interference or cannot be said to be perverse or fallacious. No substantial question of law arises for determination by this Court. Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 27, 2018
ramesh

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**