IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1632 of 2009 (O&M)
Date of decision: 15.05.2018

Sheela Rekhan, Proprietor M/s Anjali Investments Industrial Area, Yamunanagar

… Appellant

Versus

M/s Shiv Steel Rolling Mill, Isopur and others

… Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. CB Goel, Advocate for the appellant.
Mr. Rakesh Gupta, Advocate for respondents No.1 to 3.

ARUN PALLI, J. (Oral)

The suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 27.10.2004. As even the appeal preferred against the said decree failed and was dismissed on 15.11.2008, she is in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff filed a suit for recovery of Rs.6,93,473/- i.e. Rs.3,67,900/- towards Principal and Rs.3,25,573/- on account of interest calculated @ Rs.2% per month. Briefly, the case set out in the plaint was that plaintiff firm was a proprietorship concern and would deal in Chit Fund business and other investment activities. The plaintiff started a group of Rs.5,00,000/- bearing No. "Super 51-A" on 15.04.1994 for a period of 20 months, which was to end on 15.11.1995. The monthly installment for each member was Rs.25,000/-. In terms of the condition of the scheme, each member was required to pay the installments regularly after deducting the profit of each month, and in the event of default the subscriber was required to pay interest @ 2% per month. Defendant No.1 through defendants No.1 to 4, and Sh. Banarsi Dass Behal father of defendants No.5 to 7, approached the plaintiff in the month of July 1994 and showed their willingness to become a member of the group "Super 51-A". As the defendant-firm needed an urgent financial assistance, the plaintiff acceded to their request, though the said group had reached the stage of 4th installment. Defendant deposited a sum of Rs.25,000/- vide cheque No.892155, dated 20.07.1998, and thereafter the auction bid of defendant No.1 for a sum of Rs.3,50,000/- was accepted. Defendants were given Rs.3,40,000/- by cheques dated 19.07.1994 & 30.07.1994, which they duly encashed. Late Banarsi Dass had agreed to abide by all the terms and conditions, and to pay the first three installments for the month of May 1994, June 1994 and July 1994 @ Rs.25,000/- each. The defendants did not deposit any installment except a few payments in the months of May 1995, April 1995, March 1997 and January 1998. Thus, the suit.

In the written statement filed on behalf of the defendants, it was pleaded that they never approached the plaintiff to become members of any such group or scheme. The details set out as regard accounts in the plaint were totally false and fabricated. Accordingly, it was prayed that the suit filed by the plaintiff be dismissed.

On a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that as per the case set out by the plaintiff, the defendants become member of the scheme/group "Super

51-A" and deposited a sum of Rs.25,000/- vide cheque No.892155 dated 20.07.1998. However, the said plea itself vitiated the case of the plaintiff, as the defendants had joined the group while it was at the stage of 4th installment and was started on 15.04.1994. Meaning thereby, the alleged cheque No.892155, dated 20.07.1998, of Rs.25,000/- was issued by the defendants in July or August, 1994. Thus, apparently the plaintiff was trying to manipulate her case by collecting evidence as no person would have accepted a post dated cheque that would have been of some relevance 4 years later. Besides that, plaintiff failed to lead any evidence to show that the defendants were indeed the members of any such group. Though the plaintiff produced Ex.P22 to Ex.P30, which were hand written, documents in support of its claim, but the original record as regards these was never produced. In the given circumstances, the plaintiff was rather under obligation to prove that actually any such scheme/group i.e. "Super 51-A", was being run by the plaintiff and the defendants were the members thereof. Since the plaintiff purportedly running the Chit Fund, and claimed to be maintaining regular accounts, they were required to prove the documents showing the format and workability of the Chit Fund Scheme 51-A. To prove its claim, the plaintiff ought to have produced the list of members of the group and the proceedings as regard bids and the amount that was disbursed to the members every month. No member of the group was examined either to substantiate its version. Rather, the power of attorney holder of the plaintiff PW2 conceded in his cross-examination that they had no documentary proof as regards Scheme 51-A, its constitution as also its terms and conditions. The plea that the defendants had admitted receipt of Rs.3,40,000/-, and had paid Rs.25,000/- to become members of the group, was also rejected. For the plaintiff failed to substantiate that transactions, if any, inter se the parties were pursuant to Chit Fund Scheme 51-A. In fact, it was conceded by PW2 in his cross-examination that plaintiff and the firm of her husband have been dealing with the defendants for the past 7-8 years which rather corroborated the version of Subhash Goyal (DW1) that several monetary transactions used to take place between the parties then. However, there were no business between the defendants and the firm of the husband of the plaintiff for the past 7 years. Further, for the present suit was filed in the year 2004, it was held to be time barred. On being pointedly asked, learned counsel for the appellant could not point out anything from the record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality.

Thus, no question of law, much less any substantial question of law, arises for consideration. The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

15.05.2018
Rajan

Whether speaking / reasoned: YES
Whether Reportable: NO