

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

RSA No.3493 of 2010(O&M)

Date of decision: 16.11.2018

M/s Kartar Singh and Co.Appellant

VERSUS

Kuldip Mahajan and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. P.S. Rana, Advocate for the appellant.

Mr. Rohiteshwar Singh, Advocate for the respondents.

REKHA MITTAL, J.

The present appeal directs challenge against concurrent findings of fact recorded by the Courts whereby suit for recovery in respect of goods supplied by the appellant/plaintiff to M/s Sh. Maha Luxmi Traders, Mohali, proprietorship concern of Sh. Kuldip Mahajan – respondent No.1 was dismissed by the trial Court vide judgment and decree dated 09.05.2006 that came to be affirmed in appeal by Additional District Judge, Ludhiana.

The sole submission made by counsel for the appellant is that on 04.04.2006, case was fixed for evidence of the plaintiff and the same was adjourned to 10.05.2006 for the said purpose with last opportunity to adduce evidence but the Court in absence of Sh. Surjit Singh, partner of Sh. Kartar Singh and Company and counsel for the firm and without their knowledge had taken up the case on 04.05.2006 and 09.05.2006 and eventually decided the suit for want of cross examination of Surjit Singh

and any other evidence to establish claim of the appellant/plaintiff. It is vehemently argued that the factum of case being adjourned from 04.04.2006 to 10.05.2006 has been recorded in the diary and brief maintained by counsel for the appellant and even on the index of suit the date is 10.05.2006. It is further argued that had it been true that counsel for the appellant was present in the Court on 04.05.2006 and 09.05.2006, there was no reason for him to make averments in the grounds of appeal with regard to his being not present in the Court on the aforesaid two dates and the suit having been decided by denying an opportunity to Sh. Surjit Singh to appear in the witness box for his cross examination. It is prayed that the judgment and decree passed by the trial Court may be set aside and the matter be remitted to the trial Court for decision afresh after providing opportunity to the parties to adduce evidence in accordance with law.

Counsel representing the respondents has supported judgments passed by the Courts with the submission that issues in the case were framed on 31.03.2004 and thereafter the case was adjourned on several occasions but neither Surjit Singh caused appearance for his cross examination nor the appellant examined any other witness despite last opportunity granted on two to three occasions as well as subject to payment of costs. It is vehemently argued that the Appellate Court has rightly refused to accept contention of the appellant when examined in the light of detailed orders dated 04.05.2006 and 09.05.2006 passed by the trial Court. The last submission made by counsel is that proceedings conducted by a Court deserve sanctity.

I have heard counsel for the parties, perused the paper-book and records.

There is no denial that ordinarily Court proceedings should get primacy vis-à-vis plea by a litigant that the same have not been correctly recorded as Court proceedings are treated to be sacrosanct and legal sanctity attached thereto. However, in the instant case, plea of the appellant before the first Appellate Court was that on 04.04.2006 the case was adjourned to 10.05.2006 and orders passed on 04.05.2006 and 09.05.2006 were recorded at the back of appellant and its counsel. The grounds of appeal have been signed by the same counsel who had been representing the appellant/plaintiff before the trial Court. The plea of the appellant that the case was adjourned from 04.04.2006 to 10.05.2006 not only gets corroborated from the diary and brief maintained by counsel for the appellant but also from the index/first page of the records certified copy whereof is appended with the appeal before this Court. First page of records which is meant for entering index does not contain dates 04.05.2006 and 09.05.2006 and rather contains date 10.05.2006 after 04.04.2006.

Taking into consideration specific averments raised in the grounds of appeal supported by documentary evidence maintained by Advocate representing the appellant before the trial Court and the date mentioned on the first page of records of trial Court coupled with principles of natural justice, in my considered opinion, plea raised by the appellant that its evidence was closed in absence of proper representation resulting in dismissal of suit, merits acceptance. This apart, substantial justice cannot be allowed to be pilled against rules of procedure. In this view of the matter, judgments and decrees impugned are set aside.

For the foregoing reasons, the appeal is allowed. Judgment and decrees passed by the Courts are set aside. The matter is remitted to the trial Court for decision of the suit afresh after impleading LRs of Kuldip Mahajan (stated to have passed away) on the basis of an application to be filed by the appellant and thereafter providing one opportunity to the appellant for the purpose of cross examination of Surjit Singh and other evidence to be adduced by the appellant. After evidence of the appellant is closed, the respondents/defendants would be at liberty to adduce their evidence in accordance with law. Parties through their counsel are directed to appear before the trial Court on 14.12.2018.

The trial Court shall put best efforts to dispose of the suit within a period of six months of the parties putting in appearance as suit filed in the year 1998 has been restored on the board of trial Court.

NOVEMBER 16, 2018

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no