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

RSA No.1953 of 2012 (O&M)
Date of Decision.22.05.2018

M/s Pal Brothers and another ......Appellants

Vs

Videocon International Limited .....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. H.S. Deol, Advocate and
Mr. Mansur Ali, Advocate
for the appellants.

None for the respondent.

-.-

AMIT RAWAL J.(ORAL)

The appellants-defendants are in regular second appeal against the judgments and decrees rendered by the Courts below whereby the suit for recovery of ₹14,16,633/-along with interest @6% per annum from the date of institution of suit till actual realization has been allowed.

The aforementioned suit was filed on the premise that the respondent-plaintiff had been maintaining the accounts of goods purchased by the defendants on credit from time to time and crediting the payments received from the defendants. On 01.04.1992, there was a debit balance on account of the defendants to the tune of ₹7,85,940.60. The defendant-firm purchased the material worth ₹1,88,58,018.03 and certain payments through cheques and demand drafts to the extent of ₹1,65,85,794.55 were paid. The debit was to the tune of ₹25,47,385/-. The credit notes issued to the defendants were of ₹30,03,834.76. The total outstanding was ₹2,06,79,347.05

out of which the defendants paid ₹1,65,85,794.55 and ₹30,03,834.76 and as such, the net amount outstanding against the defendants on 30.11.1997 was ₹10,89,717.74.

The appellants-defendants contested the suit by raising preliminary objections qua maintainability and various other customary pleas. On merits, it was stated that the defendants were not liable to pay the amount allegedly shown due, for, defendant No.1 never opened its office at Zirakpur. There had been contradictions in the amounts as shown by the plaintiffs on the plaint. The cheques encashed for which the plaintiff had obtained the amount were not entered properly.

Since the parties were at variance, the trial Court framed following issues:-

> *"1. Whether the plaintiff is entitled to recovery of ₹14,16,633/- along with interest as claimed? OPP*
>
> *2. Whether the suit is not maintainable in view of the preliminary objection No.1? OPD*
>
> *3. Whether the suit is time barred? OPD*
>
> *4. Whether this Court has no jurisdiction to entertain and try the suit?*
>
> *5. Relief."*

The respondents-plaintiffs examined two witnesses in support of pleadings and tendered documents Ex.P1 to Ex.P137 to fortify their claims with regard to alleged due amount. On the other hand, the appellants-defendants examined DW1 Narinderpal Singh, husband of defendant No.2 by averring that entries in the account book were wrong. DW2 Wazir Singh was examined to prove the copy of cheque of ₹2 lacs each as Ex.D3 and D4.

On the preponderance of evidence, the trial Court decreed the suit, which has been affirmed in appeal by the lower Appellate Court.

Mr. H.S. Deol and Mr. Mansur Ali, learned counsel appearing on behalf of the appellants-defendants submitted that judgments and decrees passed by the Courts below were not only erroneous but perverse, for, they failed to adjudicate upon the specific grounds raised at the time of hearing of the appeal and as well as the trial as there had been an error in the account books. The appellants-defendants had already paid a sum of ₹2 lacs and the outstanding amount was only ₹2 lacs. Even the cheque had been encashed but the respondent-plaintiff again shown the said amount to be outstanding in the month of September, 1993. In this regard, he drew attention of the Court to the documentary evidence brought on record. This Court while issuing notice of motion on 20.01.2015 had passed the following order:-

> *"After hearing, learned counsel for the appellants has stated that an amount of Rs.2 lac alleged to have been paid vide cheque No.749031 which according to him as per Ex.D4 has been encashed, whereas respondent-plaintiff again shown the said amount to be outstanding in the month of September 1993. With regard to the remaining amount plus interest as ordered i.e. other than ₹2 lac Mr. Mansur Ali does not press this*

appeal.

Notice of motion for 17.07.2015.

Notice re: stay also.

In the meantime record of the trial Court be also requisitioned."

Respondents had put in appearance through counsel as noticed in the order dated 17.7.2015. However, on the adjourned date i.e. 29.04.2016, there was no representation for the respondents. On 30.09.2016, they were represented by lawyer but thereafter on 06.03.2017, there was no representation. The position was not different on 24.08.2017 and 22.03.2018. Today also there is no representation, therefore, I proceeded to decide the appeal.

I have heard learned counsel for the appellants-defendants, appraised the paper book and of the view that it is a simple case of calculation to be seen from the statement of account brought on record where by the respondent-plaintiff did not cause entry with regard to payment of cheque Ex.D4 dated 30.04.1993 of ₹2 lacs bearing No.749031 drawn of Punjab and Sind Bank. The aforementioned entry despite the cheque was encashed had again been shown to be outstanding against the appellants-defendants. This piece of evidence has totally been ignored by both the Courts below, therefore, there is abdication and perversity.

Mr. H.S. Deol and Mr. Mansur Ali have not disputed the remaining outstanding liability. I am of the view that the Courts below have committed fallacy in not examining the documentary evidence in the manner and mode as noticed by this Court.

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 judgments and decrees rendered by both the Courts below are modified to the extent that the respondent-plaintiff shall be entitled for recovery of ₹12,16,633/- along with interest @6% per annum on the same from the date of institution of the suit till actual realization. Rest of the findings are maintained. The second appeal is partly allowed in the above terms.

(AMIT RAWAL)
JUDGE

May 22, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No