

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

RSA No.609 of 2011 (O&M)
Date of decision: 17th May, 2018

M/s Ludhiana Fibres Limited

... Appellant

Versus

M/s L. Robeson and Company Limited & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. K.S. Dadwal, Advocate for the appellant.

Mr. ADS Sukhija, Advocate for respondent No.2.

Mr. Akshay Bhan, Senior Advocate with
Mr. Rohit Nagpal, Advocate for respondent No.3.

None for respondents No.1 & 4.

FATEH DEEP SINGH, J.

Plaintiff M/s Ludhiana Fibers Ltd. (in short 'the appellant' before this Court) had filed against respondent M/s L.Robeson and Co. Ltd. and others a suit for recovery of £14661 (at that time equated to Rs.3,92,517.40/-) on the grounds that defendant No.1 was a recovery merchant in United Kingdom and through their agent defendant No.1 was transacting business in India and defendant No.1 through defendant No.2 purchased from the plaintiffs 50 tons of alleged synthetic hosiery for which intent No.606/89 dated 21.07.1989 was signed by the parties at Ludhiana and was also registered with the concerned Textile Commissioner. However, during the course of transaction between them,

a dispute had arisen over the goods being supplied, leading to the plaintiff filing the suit in question.

Defendants No.1 and 2 in their joint written statement besides taking usual preliminary objections of maintainability of suit, bad for non-joinder of necessary parties or absence of any cause of action, on merits denied the stand of the plaint qua the status of the Company, though admitted an agreement was duly entered into between the two sides regarding which a transaction had taken place but denied each and every averment of the plaint terming it to be wrong and illegal, and sought dismissal of the suit.

Defendants No.3 and 4 filed separate joint written statement denying their liability in any manner or their co-extensive liability regarding this transaction claiming that they cannot be fastened with any liability and only M/s Essex Freight Services was liable or the insurer for loss or damage to the cargo between the parties and denied jurisdiction of the Indian Courts.

After replication, the trial Court framed following issues:

1. Whether the plaintiff is entitled to recover
Rs.3,92,517.40P? OPP
2. Whether the plaintiff is entitled to interest, if so at what
rate? OPD

3. Whether suit is bad for non joinder of necessary parties? OPD
4. Whether this Court has no jurisdiction to try this suit? OPD
5. Relief.

Plaintiff in his evidence examined PW1 I.D. Sharma, PW2 Parminder Singh, PW3 Kamal Kishore Arora, PW4 Anil Kumar and in the meanwhile defendants were proceeded against ex-parte, who did not lead any evidence in defence.

The Court of learned Civil Judge (Junior Division), Ludhiana through judgment dated 19.09.2007 passed ex-parte decree with costs to the effect that defendants are directed to pay amount of ₹14661 (pounds) i.e. Rs.3,92,517.40P along with interest @ 6% p.a. to plaintiff from the date of filing of this suit till realization of amount.

The same was challenged by the plaintiff and the Court of learned Additional District Judge, Ludhiana through impugned findings dated 08.09.2010 though upheld the findings of the trial Court but modified the interest so awarded @ 12% per annum from the date of filing of the suit till the date of decree and further interest @ 6% per annum from the date of decree till realization. The same is subject matter

of assailment in this regular second appeal by the plaintiff/appellant who is aggrieved over these findings.

Heard Mr. K.S. Dadwal, Advocate for the appellant; Mr.ADS Sukhija, Advocate representing respondent No.2; Mr. Akshay Bhan, Senior Advocate assisted by Mr. Rohit Nagpal, Advocate on behalf of respondent No.3 and perused records of the case.

Admittedly, the defendants did not contest the suit as they did not put in appearance and thus, the judgment and decree passed by the trial Court dated 19.09.2007 has since then attained finality. The moot point that has arisen is whether the decree ought to be passed for payment by way of pounds in English currency or in terms of Indian currency by way of equivalent amount.

Though, on behalf of the appellant Mr. Dadwal has cited **‘Forasol v. Oil and Natural Gas Commission’ 1984 AIR (SC) 241** to hammer home the point that there is no bar in making payment of decretal amount through foreign currency but the same is sought to be opposed with much vehemence by Mr.Akshay Bhan, Senior Advocate assisted by Mr. Rohit Nagpal, Advocate representing respondent No.3 and thus, the only rallying point before this Court is confined to whether the decree ought to have been passed in terms of foreign currency i.e. pounds or in terms of Indian currency.

Section 8 of The Foreign Exchange Regulation Act, 1973 (in short, ‘the Act’) read with Section 9 of the Act creates an embargo by way of Section 8(2) which is reproduced below to lay emphasis:

“8. **Restrictions on dealing in foreign exchange.** -

XXXX XXXX XXXX

(2) *Except with the previous general or special permission of the Reserve Bank, no person, whether an authorized dealer or a money-changer or otherwise, shall enter into any transaction which provides for the conversion of Indian currency into foreign currency or foreign currency into Indian currency at rates of exchange other than the rates for the time being authorized by the Reserve Bank.*

XXXX XXXX XXXX”

Learned counsel for the two sides do not dispute the fact that no requisite permission of Reserve Bank of India had been sought either at the time of filing of the suit or as on date to forego the restrictions placed upon payment in foreign exchange by the provisions of the Act. Their Lordships in the case of ‘**Forasol v. Oil & Natural Gas Commission**’ (**ibid**) have made following observations:

“... .. It would be convenient if we now set out the practice, which according to us, ought to be followed in suits in which a sum of money expressed in a foreign currency can legitimately be claimed by the plaintiff and decreed by the court. It is unnecessary for us to categorize the cases in which such a claim can be made and decreed. They have

been sufficiently indicated in the English decisions referred to by us above. Such instances can, however, never be exhausted because the law cannot afford to be static but must constantly develop and progress as the society to which it applies, changes its complexion and old ideologies and concepts are discarded and replaced by new. Suffice it to say that the case with which we are concerned was one which fell in this category. In such a suit, the plaintiff, who has not received the amount due to him in a foreign currency and, therefore, desires to seek the assistance of the court to recover that amount, has two courses open to him. He can either claim the amount due to him in Indian currency or in the foreign currency in which it was payable. If he chooses the first alternative, he can only sue for that amount as converted into Indian rupees and his prayer in the plaint can only be for a sum in Indian currency. For this purpose, the plaintiff would have to convert the foreign currency amount due to him into Indian rupees. He can do so either at the rate of exchange prevailing on the date when the amount became payable for he was entitled to receive the amount on that date or, at his option, at the rate of exchange prevailing on the date of the filing of the suit because that is the date on which he is seeking the assistance of the court for recovering the amount due to him. In either event, the valuation of the suit for the purposes of court- fees and the pecuniary limit of the jurisdiction of the court will be the amount in Indian currency claimed in the suit. The

plaintiff may, however, choose the second course open to him and claim in foreign currency the amount due to him. In such a suit, the proper prayer for the plaintiff to make in his plaint would be for a decree that the defendant do pay to him the foreign currency sum claimed in the plaint subject to the permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted and that in the event of the foreign exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the defendant do pay to the plaintiff the rupee equivalent of the foreign currency sum claimed at the rate of exchange prevailing on the date of the judgment. For the purposes of court-fees and jurisdiction the plaintiff should, however, value his claim in the suit by converting the foreign currency sum claimed by him into Indian rupees at the rate of exchange prevailing on the date of the filing of the suit or the date nearest or most nearly preceding such date, stating in his plaint what such rate of exchange is. He should further give an undertaking in the plaint that he would make good the deficiency in the court-fees, if any, if at the date of the judgment, at the rate of exchange then prevailing, the rupee equivalent of the foreign currency sum decreed is higher than that mentioned in the plaint

for the purposes of court-fees and jurisdiction. At the hearing of such a suit, before passing the decree, the court should call upon the plaintiff to prove the rate of exchange prevailing on the date of the judgment or on the date nearest or most nearly preceding the date of the judgment. If necessary, after delivering judgment on all other issues, the court may stand over the rest of the judgment and the passing of the decree and adjourn the matter to enable the plaintiff to prove such rate of exchange. The decree to be passed by the court should be one which orders the defendant to pay to the plaintiff the foreign currency sum adjudged by the court subject to the requisite permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted, and in the event of the Foreign Exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the equivalent of such foreign currency sum converted into Indian rupees at the rate of exchange proved before the court as aforesaid. In the event of the decree being challenged in appeal or other proceedings and such appeal or other proceedings being decided in whole or in part in favour of the plaintiff, the appellate court or the court hearing the application in the other proceedings challenging the decree should follow the same procedure as the trial

court for the purpose of ascertaining the rate of exchange prevailing on the date of its appellate decree or of its order on such application or on the date nearest or most nearly preceding the date of such decree or order. If such rate of exchange is different from the rate in the decree which has been challenged, the court should make the necessary modification with respect to the rate of exchange by its appellate decree or final order. In all such cases, execution can only issue for the rupee equivalent specified in the decree, appellate decree or final order, as the case may be. These questions, of course, would not arise if pending appeal or other proceedings adopted by the defendant the decree has been executed or the money thereunder received by the plaintiff... ..”

In the impugned findings, the learned Court has rightly drawn a conclusion that the plaintiff has not been able to lay out the formalities in the plaint in case he demands the recovery in pounds sterling and has laid stress on the provisions laid in the Act, and therefore, has rightly concluded that in the absence of any such permission, money decree in pounds sterling cannot be passed as an embargo is laid by the stringent provisions of the Act. Since the learned counsel for the appellant could not show any such permission having been granted either at the time of filing of the suit or till date, therefore, acceding to his prayer would be

clearly a violation and infringement of the provisions of the Act and which cannot be granted.

In the light of what has been detailed and discussed above, there appears to be no illegality or perversity in the impugned findings of the courts below which need to be upheld. The appeal being hopelessly without merit, stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

May 17, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No