

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

**RSA No.4732 of 2012 (O&M)
Date of Decision:18.07.2018**

Dr.J.S.Mann

...Appellant

Versus

M/s Digital World through its Proprietor

...Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Parminder Singh, Advocate for the appellant.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

The plaintiff filed a suit for mandatory injunction, directing the defendant to return 45 Samsung Computers installed by the plaintiff on rental basis in the business premises of the defendant as per the agreement dated 5.12.2003 and for recovery of Rs.1,48,500/- as arrears of rent. The defendant although pursuant to the notice served appeared in the court but did not file reply resulted in striking off his defence. The suit was decreed as agreement dated 5.12.2003 executed between the defendant and the plaintiff was proved. The defendant-appellant filed first appeal before the first appellate court. Following three submissions were made:-

“(i) There was an arbitration clause in agreement, so jurisdiction of the civil court was barred and application moved by appellant/defendant was wrongly and illegally dismissed by the learned lower court.

(ii) That account books brought on record have not been proved to be maintained properly and in regular course of

business, so lower court has wrongly relied upon the same to pass and decree for recovery of amount in question and

(iii) Agreement in question was between Smt.Shweta Chopra and appellant/defendant and there was no privity of contract between Harsh Chopra and appellant/defendant, but ignoring this important fact learned lower court has passed impugned judgment and decree.”

The learned first appellate court, after dealing with all the submissions, dismissed the first appeal.

Learned counsel for the appellant has submitted that the defendant-appellant was not given proper opportunity to defend the case. He was requested to point out from the judgment of the first appellate court that such contention was ever raised before the first appellate court. Learned counsel for the appellant has fairly admitted that such point has not been raised. This Court cannot for the first time permit the appellant to raise a point which was not pressed before the first appellate court. Still further, learned counsel for the appellant could not point out any error or perversity in the judgment passed by the learned trial court affirmed by the first appellate court.

In view thereof, there is no ground to interfere with the concurrent findings of fact arrived at by the courts below. Regular Second Appeal is dismissed. Pending application(s), if any, shall also stand disposed of.

18.07.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No