In the High Court of Punjab and Haryana at Chandigarh

RSA No. 2140 of 2016(O&M)
Date of Decision:30.7.2018

M/s The Creations National Market and another

---Appellants

vs.

M/s M.M.Dyeing and Finishing Mills (P) Limited

---Respondent

Coram: **Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Divanshu Jain, Advocate
for the appellants

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<u>Rekha Mittal, J.</u>

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for recovery has been decreed and the respondent-plaintiff has been held entitled to recover an amount of Rs. 4,99,691.60 P. with interest @ 12% per annum from the date of its accrual till the date of decree and future interest @ 6% per annum.

The respondent-plaintiff filed the suit for recovery with regard to outstanding payment qua supplies made vide bills, detailed in para 2 of the judgment of trial court. It is averred that the respondent-company is manufacturing textile goods and appellants-defendants had been purchasing the textile goods manufactured by the respondent-plaintiff, on credit basis. The goods were supplied by the respondent-company against invoices, detailed in the plaint. The appellants had been making part payments and the same was credited to the account of appellants against supply of goods. The balance amount outstanding against the appellants is Rs. 6,29,941.60P. It was agreed between the parties that appellants shall pay interest @ 18% per annum on principal amount of supply of goods on credit.

Counsel for the appellants has assailed the judgments primarily on three counts. The first submission made by counsel is that as the goods were supplied at Delhi and part payments were also made by the appellants from Delhi, the Court at Ludhiana does not have the territorial jurisdiction to decide the instant litigation. The second submission made by counsel is that in the written statement, a specific plea was raised that Bill No. 427 dated 27.8.2005 for an amount of Rs. 6960/- and No. 18 dated 8.4.2006 for an amount of Rs. 34,851/- never came in the office of the defendants and they have no liability to make payment against these two bills. It is argued with vehemence that the trial court misdirected itself by holding that the appellants have not raised the plea that they have not received supplies of goods represented vide aforesaid bills and even if they have not received the bills in their office, that does not entitle them to escape their liability to make payment for the goods, referred to in the bills aforesaid.

The third submission made by counsel is that the appellants have raised a plea that a big stock of goods sent by the respondent has been lying unfit for sale in the godown of the appellants. The respondent assured the appellants to pay rent to the appellants for the site where respondent's goods stand stocked. An amount of Rs. 3,40,000/- is outstanding towards rent of the godown where goods of the respondent have been stored but the courts failed to set off an amount of Rs. 3,40,000/- while accepting claim of the respondent for recovery of decretal amount.

I have heard counsel for the appellants, perused the paper book particularly the judgments impugned, various annexures appended with the appeal and copies of documents supplied during the course of hearing.

The first plea raised by the appellants with regard to Court at Ludhiana lacking territorial jurisdiction to try the suit is misconceived and has rightly been rejected. Indisputably, the respondent is carrying on manufacturing of textiles at Ludhaina and goods were supplied to the appellants from Ludhiana. As per the settled position in law, cause of action is a bundle of facts pleaded by a litigant. In view of the fact that goods were supplied from Ludhiana, it is difficult to accept contention of the appellants that Court at Ludhiana does not have territorial jurisdiction to decide the suit.

The second submission made by counsel with regard to Bill No. 427 dated 27.8.2005 and No. 18 dated 8.4.2006, no such specific plea has been raised by the appellants in the written statement that they did not receive the goods shown to be sold to the appellants as per the aforesaid two bills. On the contrary, the respondent-plaintiff has produced on record documentary evidence including accounts maintained in the regular course of business reflecting supplies made to the appellants and credit entries qua part payments made by the appellants from time to time. In this view of the matter, I do not find any reason to interfere in the factual findings recorded by the Courts with regard to liability of the appellants to pay the amount of the aforesaid two bills.

This brings the court to liability of the respondent to pay an amount of Rs. 3,40,000/- towards rent of the godown in which the goods belonging to the respondent were stocked. The appellants in the written statement have raised a plea that a big stock of goods sent to the appellants by the respondent has been lying unfit for sale in the godown of the appellants, therefore, the respondent is liable to pay an amount of Rs. 3,40,000/- towards rental of the godown. It is not clarified whether those goods were supplied by the respondent to the appellants on the basis of bills in regard whereof the respondent-plaintiff has staked its claim for recovery.

Sh. Parveen Jain, sole proprietor of M/s The Creations National Market, Delhi appeared in the witness box and tendered into evidence his affidavit by way of examination-in-chief. In para 1 of the affidavit, he has deposed to the following effect:-

> "The plaintiff used a big godown of the deponent to store big stock of his goods which are even today lying in the godown. The plaintiff agreed to pay an amount of about Rs. 7500/- per month to the deponent for storing goods in the deponent's store at New Delhi. Total amount of the rent to be paid of the said godown to the deponent is for the period from July 2006 to March 2010. Total amount store big stock of his goods which are even today of rent payable by the plaintiff to the deponent becomes about Rs. 3,40,000/-. The plaintiff did not reduce this amount from the amount to be recovered from the deponent."

A plain reading of the aforesaid extract would reveal that it does not mention about stocks lying unfit for sale much less those stocks are subject matter of the suit. Balbir Jain DW2, Purchase Manager of the appellants filed his affidavit and in para 5, he has introduced a different story that the defendant had sent two courier dated 1.1.2005 and 24.5.2005 by which the plaintiff was informed to lift the goods which were lying in the godown because those were not for sale because of manufacturing defects. Krishan Kumar Kathuria DW3 also tendered his affidavit by way of examination-in-chief and in para 3 thereof, he has stated about defective goods having been supplied with specific reference to bill number and the amount with the plea that defendant firm had to retain the goods in a godown and had to pay rent of Rs. 7500/- per month. The appellants also produced document Ex. DW3/1 with regard to communication sent by the appellants to the respondent with regard to defective goods of the value of Rs. 3,26,764/- with details of bill number, date, defective goods, its price and total amount. In the written statement, appellants claimed adjustment of an amount of Rs. 3,40,000/- towards rental of the godown in which the goods were stocked. Parveen Jain in his testimony is silent with regard to any defective goods being supplied or the appellants being entitled to seek adjustment of price of those defective goods. On the contrary, he has sought to prove that some stocks of the respondent were stored in the godown of the appellants and the respondent is liable to pay rent @ Rs. 7500/- per month from July 2006 to March 2010. Taking into consideration that plea raised by the appellants in this regard is vague coupled with contradictory stand of the witnesses, it is difficult to accept contention of the appellants that the Courts have committed an error much less perversity by rejecting plea of the appellants that an amount of Rs. 3,40,000/- is liable to be set off from the amount found payable to the respondent-plaintiff.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

30.7.2018
paramjit

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