

RSA-4545-2013 (O&M)

101

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

RSA-4545-2013 (O&M)

Date of decision : 07.12.2018

M/s Pamwi Tissues Ltd. and another

... Appellants

Versus

M/s Universal Sales Corporation and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. K.S. Khehar, Advocate
for the appellants.

Mr. Deepanjay Sharma, Advocate
for the respondent(s)-Caveator.

AMIT RAWAL, J.

CM-12215-C-2013

For the reasons stated in the application, the delay of 31 days in
refiling the appeal is condoned.

CM stands disposed of.

RSA-4545-2013

The appellants-defendants No.3 and 4 are in regular second
appeal against the concurrent findings of fact, whereby the suit for recovery
of ₹41,24,366/- along with interest @ 12% per annum from the date of
filing of the suit till the date of decree with further interest of 6% per
annum, has been decreed by the trial Court and affirmed by the lower
Appellate Court.

The genesis of the suit was that the defendants approached the

RSA-4545-2013 (O&M)

plaintiffs for supply of Caustic Soda Lye and Chlorine Gas. The defendants promised to clear the amount within 60 days by way of cheque/draft and to pay the interest @ 24% per annum. After confirming all the terms and conditions, the defendants placed orders in the month of September, October and November 2000. On receipt of the orders, the plaintiffs supplied the material, which was duly received as per the endorsement of the bills. The defendants also claimed modvate to the tune of ₹2,73,366/-. The defendants released the part payment, but withheld the remaining amount without any reasons. Despite repeated requests, the defendants did not make the payment and in these circumstances, defendant No.4, on 31.03.2002, confirmed the balance ₹20,64,891/-, but as per the books of account maintained by the plaintiffs, an amount of ₹41,24,363/- as on 15.02.2003 was found to be outstanding.

Defendant Nos.1 to 4 opposed the suit by taking the plea of maintainability of the suit and also being barred as per the provisions of Section 22 of the Sick Industrial Companies Act (in short 'the Act') as reference of the company before the BIFR was pending adjudication. It was also stated that the claim of the plaintiffs pertained to the liability in respect of period prior to 31.03.2002, for which, M/s Shalimar Wires Industries Limited, could be held liable as per the terms of the agreement made pursuant to the order of BIFR.

Defendant No.5 filed a separate written statement and stated that Prem Chand Goel was a co-promoter and was willing to rehabilitate the company by investing money to the tune of ₹1534 Lacs.

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

RSA-4545-2013 (O&M)

1. *Whether the plaintiff is entitled to seek recovery of ₹41,24,366/- along with interest? OPP*
2. *Whether the suit is bad for mis-joinder of parties? OPD*
3. *Whether this Court has no jurisdiction to try the present suit? OPD*
4. *Whether the suit is infructuous? OPD*
5. *Relief.*

The plaintiffs in order to prove his case, examined Subhash Chand as PW1, D.K. Ghose as PW2 and brought on record Ex.P1 to Ex.P49, whereas the defendants examined KR Sharma as DW1 and brought on record various documents.

On the basis of evidence brought on record, the trial Court decreed the suit and the appeal taken before the lower Appellate Court was also dismissed by negating the objections of Section 22 of the Act as by that time, an application for declaring the company Sick, vide order dated 15.03.2012, was also dismissed by the Appellate Authority.

Learned counsel for the appellants-defendants, in support of the memorandum of appeal, raised the following submissions:-

1. As per the provisions of Section 22 of the Act, owing to the pendency of the reference, legal proceedings could proceed and were liable to be suspended.
2. The suit was filed on 19.02.2003, but the reference was pending as BIFR had sanctioned rehabilitation scheme on 23.02.1993, therefore, Civil Court did not have jurisdiction to continue with the suit.
3. The assets of the appellants-Company at Barotiwala were

RSA-4545-2013 (O&M)

given on lease to respondent No.5, M/s Shalimar Wires Industries Limited, for a period of nine years w.e.f. 01.04.1993.

4. The date of lease was 15.06.1993 and vide Clause 2K, defendant No.5, had undertaken to pay and discharge all the dues payable on account of purchase and import of raw material.
5. The plaintiffs, in cross-examination, admitted that defendant Nos.3 & 4, were totally different from defendant Nos.1 and 2.
6. Prior to filing of the suit, a legal notice dated 07.08.2002 under the Companies Act, was issued to respondent No.4 at Calcutta and not to defendants Nos.1 to 4.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Khehar, for, the applicability of the provisions of Section 22 of the Act, would pale into insignificance as the proceedings of seeking declaration of the company as Sick as per order dated 15.03.2012, not only dismissed by BIFR, but by the Appellate Authority. Undertaking given by defendant No.5, in the written statement, was not as per the Clause 2K of the lease agreement, but is between defendant Nos.1 to 4 and 5, whereas the plaintiffs were not the party. The entire transaction was official transaction. Defendant Nos.1 to 4 are the same company, which fact has been admitted by DW-1. The confirmation letter of receipt of the goods, has been proved on record vide Ex.P31 and the same has gone un-rebutted.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no

RSA-4545-2013 (O&M)

substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

07.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**