IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.2513 of 2016 (O&M)
Date of decision : 01.03.2018

Garg Concast Limited

...Appellant

Versus

Satnam Singh and another

...Respondents

2. RSA No.1352 of 2018 (O&M)
Date of decision : 01.03.2018

Garg Industries Limited

...Appellant

Versus

Satnam Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Wadhwan, Advocate for the appellant.

Mr. Rajdeep Singh Chugh, Advocate for respondent No.1.

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ANIL KSHETARPAL, J. (ORAL)

By this common judgment, I shall be disposing of two appeals bearing RSA No.2513 of 2016 and 1352 of 2018 arising out of the same suit filed by the plaintiff-respondent for recovery of ₹3,44,000/-.

In the considered opinion of this court, following substantial question of law arises for determination:-

A) Whether a plaintiff who does not appear in the witness-box and does not produce the account books even after having been directed by the Court, adverse inference is to be drawn against him?

The plaintiff-Satnam Singh being the proprietor of M/s Sardar Trading Company filed a suit claiming that he had given advance of ₹2,00,000/- to defendant No.1-Garg Concast Limited against the purchase of steel ingots, however, the same has not been supplied. The plaintiff pleaded that the cheque was without the name of the payee and, therefore, the cheque has been got encashed by defendant No.2-Garg Industries Limited on 10.04.2000. The plaintiff further pleaded that the material as ordered has not been supplied and hence, he is entitled to recover the amount alongwith the interest at the rate of 24% p.a.

The defendants contested the suit and pleaded that the order was placed by the plaintiff with defendant No.2 who had supplied the material vide invoice dated 11.04.2000 pursuant to the aforesaid order for a sum of ₹2,22,849/-.

Although, both the Courts below have decreed the suit filed by the plaintiff for recovery of the amount i.e. ₹2,00,000/- alongwith the interest, however, both the defendants have separately filed these appeals.

It is not disputed that Satnam Singh did not appear in the witness-box. Initially, the suit was filed through one Sh. Harbans Singh as General Power of Attorney of the plaintiff. It is stated that Harbans Singh died and Baljit Singh who is brother of Satnam Singh-proprietor appeared in the witness-box as PW1, cross-examined by the counsel for the defendants.

He states as under:-

> *"I remember Sardar Trading Company had dealings with Garg Concast Ltd. since 1998-99 upto 2000-01 but I can exactly tell after seeing the record. I have not brought the record of the period 98-99 and 2001 onwards. I can check the record and tell whether it is my possession or not. Sardar Trading Co. has never dealt with M/s Garg Industries Ltd. I have to check the record and see whether Sardar Trading Co. has in its possession the bills of Transaction with M/s Garg Concast Ltd. (At this stage, cl. for the defendant requested that direction be issued to the plaintiff to produce the above said record in order to cross examine further).*
> *Request allowed.*
> *Xxxxx deferred and the witness is directed to bring the record."*

On the next date of hearing, Baljit Singh did not bring the account books either of the year 1998-99 or thereafter. The plaintiff only produced on file a computer generated statement showing the ledger of M/s Sardar Trading Company with respect to an account maintained in the name of defendant No.1. This statement of account is with respect to the period covering from 01.04.2000 to 31.03.2006. However, the plaintiff did not produce any statement of account with respect to defendant No.2 i.e. Garg Industries Limited-appellant in RSA No.1352 of 2018. The plaintiff further did not produce on file his sales tax record or even the income tax record. As noticed earlier, Satnam Singh never appeared in the witness-box.

On the other hand, defendants in order to prove their case, produced on file a copy of invoice dated 11.04.2000 which records the vehicle number through which the material was sent, sales tax number of M/s Sardar Trading Company. Somebody has received the material for M/s Sardar Trading Company because the rubber seal of M/s Sardar Trading Company is visible on the invoice. To support the case, the defendants also produced on file a copy of sales tax return of defendant No.2-Garg Industries Limited from 01.04.2000 to 30.06.2000. Invoice dated 11.04.2000 is clearly mentioned at Sr. No.12, Bill No.10. Sales tax number of the M/s Sardar Trading Company, Steel ingots supplied and the sale amount have also been duly specified.

Both the Courts have assumed that the invoice is forged because on the original copy of the invoice, there is no seal of M/s Sardar Trading Company. It is normal practice that whenever a invoice is issued, two or three copies are prepared. Two or more copies are sent to the purchaser so that the acknowledgment of the purchaser is obtained on one of the copy which was returned. In the present case, that returned copy has been produced on file as Ex.DW2/2 which is in consonance with the stand taken by the defendants in evidence.

It is well settled that the plaintiff has to stand on his own legs. In the present case, this Court finds that the plaintiff has failed to stand on his own legs. The plaintiff was required to appear at least in the witness-box and face the cross-examination. However, he has failed to appear. Baljit Singh, the only witness who has appeared in the witness-box on behalf of the plaintiff has failed to produce the account books of the firms and its sales tax record in order to prove that the amount paid was being shown as a advance and carried subsequently. It is significant to note that Ex.P2, copy of ledger is only relating to Garg Concast Limited i.e. defendant No.1. Cheque was encashed by Garg Industries Limited. No account books of Garg Industries Limited has been produced. The plaintiff could have produced its sales tax record or sales tax return to prove that amount was paid to Garg Industries Limited as advance and the amount still stands against the name of Garg Industries Limited. The plaintiff could have produced on file its books of account to show that the material as alleged by the invoice dated 11.04.2000 was never received by it.

In view of the discussion made above, the question of law as framed, is answered in favour of the appellants.

The judgments and decree passed by both the Courts below are set aside.

Counsel for the appellant has submitted that in order to show his bona fide intention, had deposited ₹1,00,000/- with the trial Court as directed by this Court. Appellant shall be entitled to withdraw the same.

Appeals allowed.

01.03.2018 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**