

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4148 of 2016 (O&M)
Date of Order: 11.09.2018

M/s Parmeshwar Rice and General Mills and others

..Appellants

Versus

Ram Kishan (since deceased) and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vipin Mahajan, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)

C.M.No.10665-C of 2016 &
C.M.No.10666-C of 2016

Prayer in these applications is for condonation of delay of 69 days in re-filing and 29 days in filing the appeal.

For reasons mentioned in these applications, which is supported by an affidavit, the delay of 69 days in re-filing and 29 days in filing the appeal are condoned.

Applications are allowed.

MAIN

Defendants-appellants are in the regular second appeal against the concurrent findings of fact arrived at by the courts below while decreeing a suit for recovery filed by the plaintiff against the defendants.

Plaintiff, who claims to be the sole proprietor of M/s Bharadwaj Trading filed a suit against the defendants claiming that there was regular business transactions and paddy was supplied to the defendant-firm for an

amount of Rs.13,11,955.99 paise, out of which Rs.10,11,484/- has been paid and therefore the amount of Rs.3,00,472/- is balance, which has not been paid.

Defendants contested the suit pleading that there was no business transactions between the plaintiff and defendant-firm and the gate passes do not bear the signatures of the driver employed by the defendants.

In evidence, the plaintiff produced on file invoices Ex.P1 to P23 and gate passes Ex.P-23 to Ex.P-47. As per the gate passes, driver of the transport vehicle which had taken paddy to the godown of defendant no.1 had signed the aforesaid gate passes in token of delivery. Defendants further produced their books of accounts to prove that there was regular business transaction between the parties. Defendants did not lead any other evidence.

Learned trial court on appreciation of the evidence, decreed the suit which was affirmed by the learned first appellate court.

Before the learned first appellate court, defendants filed an application for additional evidence but the same was dismissed after noticing that the defendants had been granted more than 6 opportunities to lead evidence but no evidence was led.

Learned counsel for the appellant submitted that no doubt driver Nirmal Singh has been examined. However, it is not proved that Nirmal Singh was employed with defendant no.1-firm. However, once the counsel read the statement, it is apparent that no suggestion was given to Nirmal Singh in the cross-examination in this aspect of the matter. The statement of Nirmal Singh has gone unchallenged. Still further apart from books of accounts 23 invoices and 23 gate passes prove the delivery of

paddy. Still further, it is also proved that defendants had paid a sum of Rs.10,11,484/- out of total due i.e. Rs.13,11,955.99 paise.

In view of the aforesaid, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

September 11, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No