

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

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RSA No.4199 of 2016 (O & M)
Date of Decision:16.07.2018

M/s Parishudh Machines Pvt. Ltd.

...Appellant

Versus

Adita Raj Business Solutions Pvt. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Lokesh Sinhal, Advocate
for the appellant.

ANIL KSHETARPAL, J.(Oral)

CM No.-10805-C-2016

For the reasons stated in the application, which is duly supported by an affidavit, delay of 16 days in re-filing the appeal is condoned.

Application is allowed.

Main Case

Defendant-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the Courts below while decreeing the suit for recovery of the amount for supply of material.

It is the case of the plaintiff that there was an agreement between the parties and the plaintiff-Company used to supply material to the defendant-Company, however, payment whereof was not forthcoming. It was further pleaded that in discharge of part of the liability, the defendant had also issued a cheque, which was dishonored and the defendants were

convicted therein.

Defendants contested the suit and pleaded that there was some arrangement between the plaintiff and the defendant-Company and certain material was purchased. However, it was pleaded that all the material was purchased through proper purchase order and, therefore, the suit filed by the plaintiff is liable to be dismissed.

Both the Courts below after examining the evidence available on the file have recorded a concurrent finding of fact that the plaintiff has been successful in proving its case.

Learned First Appellate Court while affirming the finding of learned trial Court has recorded as under:-

“ However, the said plea is not substantiated from the record. Neither the name of the said store keeper came on record nor the modus operandi to commit fraud has come on record. No complaint made to any authority regarding the fraud or action taken against such employee has been put forward. Not even the report of the internal audit has been placed on record.

The arguments of the learned counsel for the defendant-appellant in regard to the non issuance of the purchase order and receipt of the bills and their authenticity are shattered from the cross-examination of its own witnesses DW-2 Arvind Kumar and DW-3 Shiv Prasad.

DW-2 Arvind Kumar is the Purchase Manager of the defendant company. He has admitted in his cross-

examination that he knew about the delivery and receipt of the material between the plaintiff and respondent. They had given the purchase order to the plaintiff company had supplied the goods. He admitted that the Bills Ex.P-5 to P-39 bears the stamp of defendant-company. He further admitted that while purchasing the material from the plaintiff, their company used to issue Form-16. He admitted that they have not placed on record any policy according to which the defendant company used to issue the purchase order before the purchase of material. He has further admitted that they did not place on record any Audit Report from which it can be shown that the plaintiff company is raising the false bills.

DW-3 Shiv Prasad is the Vice-President of the defendant Company. He has also admitted that they did not place on record any policy of the company from which it can be proved that the defendant company used to issue purchase order. He admitted that the stamp on Ex.P-40 belongs to the defendant company. He admitted that Ex.P-40 to Ex.P-41 are confirmation of balance account by the defendant company which was sent to the plaintiff company.

It is noteworthy that all the bills Ex.P-5 to P-39 finds mentioned in Ex.P-40 to Ex.P-41 (confirmation of accounts) and the plaintiff is claiming only the said

amount of bills.”

Learned counsel for the appellant has submitted that a fraud was committed by the plaintiff-Company in collusion with the official of the defendant-Company. He submitted that in one day, four different invoices have been generated, which have been acknowledged by the official. He further submitted that the suit filed on behalf of the plaintiff-Company was not properly instituted as it had not pleaded that who had authorized, Director of the Company through whom the suit was filed. He has further submitted that it is not even stated that who had authorized him to file the suit.

This Court has considered the submission. Learned counsel for the appellant has produced the photocopies of Ex.P-40 and Ex.P-41 as referred to by the learned First Appellate Court. Ex.P-40 and Ex.P-41 are confirmation of accounts by the defendant-appellant with respect to transactions which were carried out between the parties from 01.04.2007 to 31.03.2008 (Ex.P-40) and from 30.04.2008 to 31.03.2009 (Ex.P-41). Both these confirmation of accounts have been signed by the authorized Signatory on behalf of the defendant/appellant-Company along with the seal of the Company.

In these circumstances, after examining the admission of the Purchase Officer and the Vice President of the Company, who had appeared as DW-2 and DW-3, this Court does not find any substance in the first argument of learned counsel for the appellant.

Second submission of learned counsel is just to be noticed and rejected particularly when learned counsel for the appellant failed to point out before the Courts below any objection in this regard was taken while

filing the written statement or any issue thereon was got framed. The plaintiff at the stage of regular second appeal cannot be non-suited on a ground which was neither raised while filing the written statement nor pressed before the Courts below.

Learned counsel for the appellant further submitted that the application for additional evidence was filed before the learned First Appellate Court, which was dismissed. He submitted that if that application had been allowed, the result of the case would have been otherwise.

This Court has considered the submission. Application under Order 41 Rule 27 of the Code of Civil Procedure can only be allowed, if the requirements of Order 41 Rule 27 of the Code of Civil Procedure are fulfilled.

Learned First Appellate Court has found that the documents which were sought to be produced were in the knowledge of the defendant-Company but they did not produce it.

Still further, the Courts had examined these documents and found that such documents are of no assistance to the case of the defendants.

In view thereof, there is no scope for interference.

Regular second appeal is dismissed.

All the miscellaneous applications, if any, are disposed of, in view of the above said judgment.

16.07.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No