

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Regular Second Appeal No.1976 of 2018 (O&M)

Date of Decision: 18.04.2018

Banwari Lal Suresh Kumar

....Appellant (s)

Versus

Sturdy Industries Limited

...Respondent(s)

& Regular Second Appeal No.1982 of 2018 (O&M)

Radhey Shyam Enterprises

....Appellant (s)

Versus

Sturdy Industries Limited

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. JPS Viridi, Advocate
for the appellant(s).

HARI PAL VERMA, J.

This order shall dispose of two appeals i.e. RSA No.1976 of 2018 and RSA No.1982 of 2018, as similar facts and common question of law is involved in both the appeals. However, for brevity, facts are being noticed from RSA No.1976 of 2018.

The appellant-defendant has filed the present regular second appeal against the judgment and decree dated 11.01.2018 passed by learned

Additional District Judge, SAS Nagar, Mohali, whereby his appeal against the judgment and decree dated 19.01.2015 passed by Civil Judge (Jr. Divn.), Dera Bassi was dismissed.

Vide judgment dated 19.01.2015, learned Civil Judge (Jr. Divn.), Dera Bassi has decreed the suit filed by the plaintiff for recovery of Rs.74,235/- along with pre-litigation interest @ 12% per annum, pendente lite interest @ 9% per annum and future interest @ 6% per annum from the defendant-appellant.

Briefly stated, the respondent-plaintiff (herein called as 'plaintiff') is a company which manufactures ACC Cement corrugated, plain sheets and its accessories etc. It used to supply ACC cement to the appellant-defendant (herein called as 'defendant'). The defendant had a running account with the plaintiff. Plaintiff used to send the invoice/bills to the defendant and plaintiff used to receive payments against these invoices/bills. On account of material supplied to the defendant, a total sum of Rs.74,235/- was outstanding against the defendant as on 01.04.2011. As the defendant had failed to pay the aforesaid amount, despite service of legal notice, the plaintiff has filed the present suit.

The defendant has disputed the amount so claimed by the plaintiff-company on the ground that statement of account presented by the plaintiff is forged and fabricated and the plaintiff has not credited amount against the account of the defendant i.e. the amount which was adjusted on account of breakage of sheets. The breakage of sheets was the liability of the plaintiff and as such, some credit notes were issued by the plaintiff for

that purpose. Had those credit notes been taken into account by the plaintiff, no recoverable amount would remain outstanding against him.

After framing the issues and considering the evidence so adduced by the plaintiff, including the certified copies of account statement from the year 2006 to 2011(Ex.PC), as maintained by the plaintiff, invoices Ex.PD to Ex.PE, the Civil Court found that the defendant is liable to pay an amount of Rs.74,235/- to the plaintiff-company on account of material supplied by it, as the defendant had failed to prove any account statement maintained by him in respect of his transactions with the plaintiff-company. The statement of account maintained by the plaintiff-company Ex.PC, is the very basis of the outstanding amount. Accordingly, the suit was decreed vide judgment and decree dated 19.01.2015.

Aggrieved by the aforesaid judgment and decree dated 19.01.2015, the defendant-appellant filed an appeal before the lower Appellate Court, which was dismissed by learned Additional District Judge, SAS Nagar, Mohali vide judgment 11.01.2018.

Still aggrieved, the defendant-appellant has filed the present regular second appeal impugning the judgment and decrees passed by the Courts below.

Learned counsel for the appellant has argued that the impugned judgment and decrees passed by the Courts below are untenable in the eyes of law, as both the Courts below have not appreciated the evidence led by the appellant-defendant. The defendant has led in evidence the documents (vouchers) issued by the plaintiff-company. The defendant had even called for the record of the employees of the plaintiff-company

through its director, but the said Director denied appearing in the Court and the plaintiff-company also denied having any record of its employees, which creates a serious doubt about the claim of the plaintiff-company. Since the record of the company is not a public record, there is every possibility that the plaintiff must have manipulated and fabricated the record as per its convenience. The account record of the plaintiff-company has been given weightage by the Courts below without any corroborative evidence in this regard. Mere production of ledger does not make it admissible in the eyes of law. Therefore, the suit was liable to be dismissed.

I have heard learned counsel for the appellant.

Certified copies of the account statements from the year 2006 to 2011 of the defendant, as maintained by the plaintiff-company Ex.PC and invoices Ex.PD to Ex.PE have been produced in evidence. From the statement of account of the defendant, as maintained by the plaintiff-company Ex.PC, it is proved that the defendant is liable to pay the amount, as claimed in the suit. The defendant has relied upon credit notes Ex.D1 to Ex.D20 to show that the money stood paid to the plaintiff-company, as there was adjustment of outstanding amount on account of supply of damaged and broken material. However, the appellant-defendant has not been able to prove those credit notes. Even the persons who issued those credit notes on behalf of the plaintiff-company have not been examined and the plaintiff-company has also not admitted these credit notes in their evidence. Moreover, no such details have been pleaded by the defendant with regard to exact details of the credit notes. Thus, the defendant-

appellant has failed to prove any statement of account maintained by him in respect of his transactions with the plaintiff-company and in order to rebut the claim of the plaintiff-company.

No other point has been argued. Therefore, no exceptions can be taken to the concurrent findings of facts recorded by the Courts below. Accordingly, no substantial questions of law arise in this appeal.

Accordingly, the present appeal is dismissed.

A photocopy of this order be placed on the file of other connected case.

April 18, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No