

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: October 31, 2018

1. RSA No.2723 of 2017 (O&M)

The Central Jail, Hisar & others

...Appellants

Versus

Babaji Medical Store

...Respondent

2. RSA No.4924 of 2017 (O&M)

Babaji Medical Store

...Appellant

Versus

The Central Jail, Hisar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Pramjeet Singh, AAG, Haryana
for the appellants in RSA No.2723 of 2017 &
for the respondents in RSA No.4924 of 2017.

Mr. Ram Kumar Saini, Advocate,
for the appellant in RSA No.4924 of 2017 &
for the respondent in RSA No.2723 of 2017.

AMIT RAWAL, J.

This order shall dispose of two Regular Second Appeals bearing No.2723 and 4924 of 2017 as the common question of law and fact is involved. The facts are being taken from RSA No.2723 of 2017.

CM No.12941-C of 2017 in RSA No.4924 of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 31 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.2723 of 2017

Respondent-plaintiff Baba Ji Medical Store filed a suit on the premise that w.e.f. 01.01.2007 to 31.12.2007, plaintiff on many occasions, on the request of the defendants, supplied medicines amounting to ₹8,58,080/-. However, payment of ₹ 5,37,436/- on different dates was made, but the remaining amount of ₹ 3,20,644/- remained due. In the year 2008, a dispute had arisen amongst the officials of defendant No.1, who had embezzled the medicine bills and in this regard, an FIR was lodged against them. Defendant No.2-D.G.Jail, Panchkula visited the shop of the plaintiff and inspected the record and in that process, carbon copies of the medical bills were handed over, but the same were never returned back and despite request the payment was not paid.

The suit was opposed by the defendants on the ground of maintainability, payment of court fees, cause of action and locus standi. The factum of purchase of medicines was not denied. It was disclosed that FIR No.142 of 2008 was lodged against Veerbhan, Pharmacist, Dr.O.P.Mehta and Smt.Shashi Ahlawat, Superintendent Jail and as per the judgment dated 29.03.2014, plaintiff accepted that he neither knew Veerbhan Pharmacist nor any payment of medicines was pending against the defendants and, thus, prayed for dismissal of the suit.

On the preponderance of the evidence brought on record, noticing the fact that it was a suit for recovery, plaintiff paid the court fees and the suit was decreed for a sum of ₹ 3,20,644/- along with interest @ 12% per annum from the date of institution of the suit till the date of judgment and @ 6% per annum from the date of decree till realization. Both the parties filed appeals as the plaintiff had been insisting for costs and the

defendant-appellants on medicines. Both the aforementioned appeals have been dismissed and, therefore, two Regular Second Appeals have been filed.

Mr. Pramjeet Singh, Assistant Advocate General, Haryana representing the State submitted that the judgments and decrees of the courts below are not sustainable in the eyes of law as there is no reference to Ex.D1 to Ex.D7, wherein plaintiff candidly admitted that nothing was due qua supply of the medicines nor he knew the person. He cannot be permitted to turn around and claim the amount. The suit *ex-facie* was not maintainable and the payment of the court fees would not bring the suit within limitation. In another appeal, it was submitted that the suit was liable to be dismissed with costs as non-grant of costs can not give a cause of action to file the appeal and Regular Second Appeal.

Per contra, Mr. Ram Kumar Saini, learned counsel for the appellant in RSA No.4924 of 2017 and for the respondent in RSA No.2723 of 2017 submitted that the court fees had been paid and execution sought and, therefore, the objection qua limitation was immaterial. The factum of the receipt of the medicines amounting to ₹ 8.00 lacs odd amount and the balance due had been admitted. Findings of the criminal court would not have a bearing on the civil court and such proceedings have to be decided independently, i.e., on the basis of the evidence on record.

Defendants have failed to place on record any material to show that no payment was due.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned State counsel and Mr. Raj Kumar Saini in both the appeals. The findings of fact arrived at by the courts below do not call

for any interference as it is settled law that findings arrived at in the criminal case cannot be having a binding effect.

Concededly, the plaintiff had appeared as a witness and stated that he did not know the person nor any amount was due. The same cannot be read against the plaintiff in another proceedings as the suit has been decided on the material evidence. Defendants failed to produce any evidence to show that the entire payment had been made and nothing was due. The liability of the defendants admittedly had been proved through document Ex.P16 which has gone unrebutted as against sale of medicines amounting to ₹ 8.00 lacs odd amount, payment of ₹ 5,37,436/- was made to the plaintiff in respect of the bill. All the bills Ex.P1 to Ex.P15 have been proved on record. Even the information sought under the Right to Information Act Ex.P17 had also been on the same lines. Non-grant of costs is a discretion of the court and cannot be assailed.

In view of what has been observed above, I do not find any illegality and perversity in the impugned judgments and decrees. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeals are dismissed.

October 31, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No