IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4452 of 2018 (O&M)
Date of Decision: 02.08.2018

M/s Sant Khalsa Casting and others
......Appellants

Vs

Ashok Kumar and another
...Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Khushminder Kaur, Advocate for
Mr. Randeep Singh Rana, Advocate
for the appellants.

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RAJ MOHAN SINGH, J.

CM No.11800-C of 2018

This is an application under Section 149 CPC for making good the deficiency in court fee in filing the present appeal.

For the reasons mentioned in the application, the same is allowed. Applicants are allowed to make up the deficiency of court fee in filing the appeal.

RSA No.4452 of 2018 (O&M)

[1]. Defendants are in Regular Second Appeal in a suit for recovery of Rs.6,84,076/-. Along with the suit, a counter claim was also set up by the defendants in a sum of Rs.44,524/-.

[2]. Brief facts of the case are that plaintiff no.1 claimed himself to be the sole proprietor of the firm i.e. plaintiff No.2. Plaintiffs pleaded that the firm was involved in sale purchase of iron and steel goods. Defendants No.2 to 4 were partners of defendant No.1/firm and were involved in the business and were responsible for day to day activities of the firm. Defendants supplied machinery parts to the plaintiffs vide Bill No.7 dated 12.04.2008 in a sum of Rs.2,05,705/-. Plaintiffs paid the amount in three different modes i.e. Rs.3,00,000/- through cheque on 17.04.2008, Rs. 5,00,000/- through cheque on 16.05.2008 and Rs.3,00,000/- through cheque on 21.06.2008, thereby paid Rs.11,00,000/- in total as against Rs.2,05,705/-. In this way an amount of Rs.8,94,294/- was due towards the defendants and that was treated to be an advance payment for further business transactions. Thereafter defendants showed their inability to supply the goods. The amount remained pending with the defendants along with interest @ 36% per annum. Defendants returned the amount to the tune of Rs.4,15,000/- on 11.11.2008 and an amount of Rs.4,79,295/- remained pending towards defendants along with interest. The aforesaid amount was the subject matter of the suit.

[3]. Defendants contested the suit and admitted the transaction of supply of machinery parts to the plaintiff on

12.04.2008. However defendants denied due amounts towards them on 11.11.2008. They relied upon Bill No.32 dated 05.08.2010 vide which the plaintiffs purchased CI Casting from the defendants for Rs.5,11,327/- and the said fact was concealed by the plaintiffs in the suit as well as in the notice dated 06.09.2010 issued to the defendants. After adjustment of the aforesaid amount of Rs.5,11,327/- a sum of Rs.32,032/- remained due from the plaintiffs to the defendants along with interest.

[4]. After completion of the pleadings both the parties went to trial on the following issues:-

> *"1. Whether plaintiffs are entitled for recovery of Rs.6,84,076/- alongwith interest, as claimed for? OPP*
>
> *2. Whether plaintiffs have no cause of action to file the present suit? OPD*
>
> *3. Whether nothing is due from the defendants as claimed by the plaintiffs? OPD*
>
> *4. Whether defendants/applicants are entitled to counter claim of Rs.44,524/- along with interest? OP Counter Claimant*
>
> *5. Relief."*

[5]. Both the parties led their respective evidence to prove their case.

[6]. The only question for consideration was the factum of supply of CI Casting for Rs.5,11,327/- vide Bil No.32 dated 05.08.2010 Ex.D-4. The plaintiffs have denied the aforesaid

transaction. It was legally incumbent upon the respondents to prove execution of the aforesaid Bill Ex.D-4.

[7]. Both the Courts below after due consideration of facts and material on record found that there was no dispute with regard to the Bill dated 12.04.2008, vide which supply of machinery parts/rolling mill parts were made to the plaintiffs through Bill No.7 dated 12.04.2008 for a sum of Rs.2,05,705/-. The defendants also admitted that an amount of Rs.4,79,295/- of the plaintiffs remained due towards them, but thereafter vide Bill No.32 dated 05.08.2010 Ex.D-4, the plaintiffs again purchased CI Casting for an amount of Rs.5,11,327/- from the defendants. The entire controversy rested upon execution of Bill No.32 dated 05.08.2010 Ex.D-4. Plaintiffs have denied the said bill to be forged and fabricated.

[8]. Both the Courts below have considered the aforesaid aspect. In order to prove execution of Ex.D-4 (Bill No.32 dated 05.08.2010) the defendants have not examined any driver/owner of the vehicle, who carried the consignment to the destination of the plaintiffs. Even DW-1 Harminder Singh has admitted in his cross-examination that the material was sold in *lump sum* and the same was not weighed. However, perusal of Ex.D-4 would show that the weight of the consignment was 142 quintals 55 kgs. Number of vehicle was also not mentioned,

rather the same was not legible in Ex.D-4. The plea of the defendants that Ex.D-4 was entered in VAT Return i.e. Ex.D-7 was not considered to be tenable in view of statement of DW-1, who admitted that Ex.D-7 did not carry any signatures of the officials of the Sales Tax Department, nor any official has been examined in the case. The witness also admitted that he has not brought the account books.

[9]. After taking the entire stock of the material on record, both the Courts below have appreciated the fact that execution of Ex.D-4 was not proved on record, however the claim with regard to the interest @ 18% was held to be excessive. The rate of interest was slashed down to 9% per annum from 11.11.2008 till the date of decree and future interest @ 6% per annum from the date of decree till final realization of the amount.

[10]. In the light of aforesaid facts, the counter-claim set up by the defendants was found to be totally devoid of merits as the transaction with reference to Ex.D-4 was not found to be worth reliance and the entry to the tune of Rs.4,79,295/- was admitted by the defendants.

[11]. In view of above, I find that the findings of fact recorded by the Courts below are based on lawful appreciation of evidence. The findings are not proved to be perverse, nor the same are result of misreading of evidence. No law point worth

cognizance is involved in the present appeal. The same is accordingly dismissed.

[12]. All civil misc. applications are disposed of in the light of decision of the main appeal.

August 02, 2018 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No