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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5045-2017 (O&M)
Date of decision : 23.01.2018

M/s Ambey Chemicals and others

... Appellant(s)

Versus

Harish Anand and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shrey Goel, Advocate
for the appellants.

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AMIT RAWAL, J. (ORAL)

The appellants-defendants are aggrieved of the findings rendered by the lower Appellate Court, decreeing the suit seeking recovery of ₹11 Lacs (an odd amount) in toto, by reversing the partial decree of ₹2,09,000/- (an odd amount) ordered by the trial Court.

Mr. Shrey Goel, learned counsel appearing on behalf of the appellants-defendants in support of his submissions has raised the following submissions:-

i) The respondent(s)-plaintiff(s) had placed on record some loose leaves of accounts' book, which is not permissible *per se* as per the provisions of Section 34 of the Indian Evidence Act. In support of his contentions, he relies upon the *ratio decidendi* culled out by Hon'ble Supreme Court in ***"Ishwar Dass Jain (dead) through LRs V/s Sohan Lal (dead) by LRs" 2000(1) SCC 434***.

ii) The respondent(s)-plaintiff(s) had placed on record the bills

(Ex.P-5, Ex.P-7, Ex.P-13, Ex.P-29, Ex.P-3, Ex.P-33, Ex.P-45, Ex.P-47, Ex.P-52, Ex.P-54, Ex.P-55, Ex.P-57, Ex.P-63, Ex.P-64, Ex.P-66), but only few of the bills had the acknowledgement of receipt of the goods and as well as an entry of the transporter and remaining bills did not have any entry. It is, in this background of the matter, the trial Court partly decreed the suit to the extent of ₹2,09,000/- (an odd amount). The plaintiff(s), thus, miserably failed to discharge the onus claiming the outstanding amount as reflected in the suit.

iii) The ledger account had not been signed by any of the partners except bearing the signatures of the appellants-defendants.

All these facts weighed in the mind of the trial Court to form an opinion that the entire amount was not acknowledged by the appellants-defendants, but the lower Appellate Court committed illegality and perversity in decreeing the suit *in toto* by heavily relying upon the statement of PW-3, Asim Khanna, Chartered Accountant. The Transporter had not come forwarded to prove the case of the plaintiff(s) that the goods reflected in the bills were actually transported and received by the appellants-defendants. The foundation for reversal of the findings based upon the reliance on loose sheets, which has already submitted, is erroneous and could not be looked into, thus, urges this Court for formulating the substantial questions of law as drawn in the memorandum of appeal.

I have heard the learned counsel for the appellants-defendants and appraised the paper book.

Before adverting to the arguments of Mr. Goel, it would be in the fitness of things to extract the provisions of Section 34 of the Indian Evidence Act and as well as the para 24 of the judgment cited supra, which reads as under:-

> ***"Section 34 in The Indian Evidence Act, 1872***
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>> *"Section 34: Entries in books of account, including those maintained in an electronic form] when relevant - Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability".*
>
> ***Para 24***
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> *Now under Section 34 of the Evidence Act, entries in "account books" regularly kept in the course of business are admissible though they by themselves cannot create any liability.Section 34 reads as follows:*
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>> *"Section 34: Entries in books of account when relevant - Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability".*
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> *It will be noticed that sanctity is attached in the law of evidence to books of account if the books are indeed "account books i.e. in original and if they show, on their face, that they are kept in the "regular course of business". Such sanctity, in our opinion, cannot attach to private extracts of alleged account books where the original accounts are not filed into Court. This is because, from the extracts, it cannot be discovered whether the accounts are kept in the regular course of business or if there are any interpolations or whether the interpolations are in a different ink or whether the accounts*

> *are in the form of a book with continuous page-numbering. Hence, if the original books have not been produced, it is not possible to know whether the entries relating to payment of rent are entries made in the regular course of business."*

On conjoint reading of the aforementioned provisions and relevant para of the judgment, it is discernible that the account books maintained in routine would not be a concrete piece of evidence to charge the person with a liability, there has to be over and above i.e. other corroborative evidence. The loose sheets have been duly signed by the appellants-defendants. No contrary evidence either through an Expert or by sending it to any laboratory recognized by the Government has been done to verify the signatures, thus, the acknowledgment as enshrined under Section 18 of the Limitation Act, has been proved to the hilt. The case of the plaintiff did not rely upon only loose sheets purported to be from the account books, but also on the basis of record i.e. balance sheets as on 30.09.2005 w.e.f. 01.04.2005 to 30.09.2005, duly filed with the Income Tax Return and signed by the Chartered Accountant, wherein under the list of creditors (Ex.P-72), the name of the defendant(s) was reflected by showing the outstanding amount of ₹14,04,127.50. Except bald statement, no other piece of evidence has been led to enable the Court to form a different opinion than the one arrived at by the lower Appellate Court. The lower Appellate Court being the last Court of fact and law examined the entire evidence and found that the plaintiff(s) had proved the liability of the defendants commensurating with the amount claimed in the suit. Non-availability of the signatures on the ledger would not be fatal to the case in view of the fact that both the signatures were of the defendants. There is no dispute to the *ratio decidendi* culled out in the judgment cited supra, but the fact remains that the ledger sheet was not only piece of evidence brought on record. Similarly non-availability of the signatures of any of the partners would also not be fatal for non-suiting him to recover the amount, aforementioned. Though the appellants-defendants acknowledged to have received the goods, but outstanding amount, according to it, was ₹ 2,09,000/- (an odd amount), therefore, once the other bills have not been proved on record, it is also untenable, for, the lower Appellate Court had read the evidence in cumulative and not in isolation. In my view, the respondents-plaintiffs proved the case by discharging the onus as enshrined under Section 101 of the Indian Evidence Act, on the contrary, the appellants-defendants failed to discharge the same except bald statement.

As an upshot of my findings, I do not find any illegality and perversity in the judgment and decree of the lower Appellate Court being the last Court of fact and law as the same is based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination.

Resultantly, the present regular second appeal is dismissed.

(AMIT RAWAL)
JUDGE

23.01.2018
Yogesh Sharma

✓
Whether speaking/reasoned **Yes/ No**
✓
Whether Reportable **Yes/ No**