

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

**RSA No.5802 of 2017 (O&M)
Date of decision:23.03.2018**

M/s Fazilka Foods Pvt. Ltd. and others ... Appellants

Vs.

M/s Nadar Chand Daulat Ram Kamra ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Mukand Gupta, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

C.M.No.15337-C of 2017

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.

C.M stands disposed of.

RSA No.5802 of 2017 (O&M)

The appellant-defendants are aggrieved of the concurrent findings of facts and law, whereby, suit for recovery of ₹1,66,302, was decreed.

The respondent-plaintiff instituted the suit claiming aforementioned amount on the premise that appellant-defendants had been purchasing the paddy from the plaintiff details of which have been given in

the suit commencing from September 2004 to December 2008. However, the amount of ₹25,000/- reflected in the plaint showed that last payment was made on 08.03.2010. However principal amount of ₹1,07,247-47 paise was outstanding. Despite repeated requests, the same was not paid compelling plaintiff to institute the suit one day before expiry of limitation, i.e., on 07.03.2013 and claimed the balance amount of ₹57,927.53 paise as interest calculated @ 18% per annum upto 06.03.2013 and ₹1100/- being the costs of the legal notice dated 02.03.2013.

The suit was contested by the defendants on the premise that suit was not maintainable. A person who was not competent could not file the suit. It was stated that all the amounts due had been paid to Kanwal Nain Kamra, Proprietor of the firm.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to the relief of recovery as prayed for? OPP*
- 2. Whether the suit is within limitation? OPP*
- 3. Whether the suit is not maintainable? OPD*
- 4. Relief.”*

The respondent-plaintiff brought on record as many as 57 documents through the testimony of 5 witnesses, whereas, defendant No.3 himself appeared as DW1.

Mr. Mukand Gupta, learned counsel appearing on behalf of the appellant-defendants submitted that the appellants had paid amount in cash to Mr. Kanwal Nain Kamra, Proprietor of the firm, therefore, the suit was not maintainable. Even otherwise, the respondent-plaintiff had not come to the Court with clean hands as he did not disclose that suit was filed through Attorney. The plaintiff can not be permitted to lead evidence as per the provisions of Section 34 of Indian Evidence Act. The plaintiff had miserably failed to discharge the onus and thus, urged this Court for setting aside the findings under challenge by formulating the substantial questions of law.

I have heard the learned counsel for the appellant-defendants appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in the submissions of Mr. Gupta, for, defendant No.3 in cross-examination appeared as DW1, who allegedly submitted that cash amount had been given to Mr. Kamra. It is not possible that a person who had been dealing in commercial transactions for purchasing of the paddy would take the cash without receipt.

I am of the view that plaintiff has duly proved the pleaded case and the suit was not barred by law of limitation as the limitation was going to expire on 08.03.2013 but the same was filed one day before, i.e., on 07.03.2013. The arguments of Mr. Gupta, have not been able to form this Court a different opinion than the one arrived at by both the Courts below.

In view of what has been observed above, I do not find any illegality and perversity in the findings of both the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Dismissed.

(AMIT RAWAL)
JUDGE

March 23, 2018
savita

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