IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116

RSA No.5963 of 2017 (O&M)
Date of decision: 17.02.2018

Rachna Duggal and others **...... Appellants**

Versus

M/s FTC Overseas and others **...... Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Prateek Sodhi, Advocate
for the appellants.

Mr. Vivek Salathia, Advocate
for respondent No.1.

*****

ANIL KSHETARPAL, J.

Defendants No.3, 4 and 5-appellants are in regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the trial Court and decreed the suit filed by the plaintiff for recovery of Rs.15,54,376/- along with interest @ 9% per annum from the date of accrual till the date of filing of the suit and further future interest @ 6% from the date of filing of the suit to the decree till realization.

Plaintiff, a registered partnership firm filed a suit for recovery of Rs.24,74,734/- along with interest upto date against defendant No.1, a partnership firm and defendants No.2 to 5, its partners. Plaintiff-firm had pleaded that defendant No.1-firm used to purchase goods from the plaintiff-firm against invoices and the plaintiff-firm had opened a running account in the name of defendant No.1-firm in its books. The plaintiff-firm pleaded that the last payment of Rs.1,00,000/- was received on 20.06.2005 through cheque which was credited and thereafter the defendants have failed to pay any amount. It was further pleaded that in order to pay the liabilities, defendant No.2, Sudhir Baldev Duggal had in fact appointed partner of the plaintiff-firm Ajay Wadhwa as General Power of Attorney with respect to 3 shops, however, before he could take any step, Sudhir Baldev Duggal sold the property and revoked Power of Attorney on 12.10.2006.

The defendants admitted business transactions, however, took a plea that the accounts were finally settled on payment of Rs.1,00,000/- vide cheque dated 20.06.2005 and thereafter, no further amount is due. Learned trial Court dismissed the suit while recording strange reasons, however, the learned First Appellate Court after re-appreciating the evidence available on the file reversed the finding of the trial Court and decreed the suit filed by the plaintiff-firm.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the photocopy of the record produced before me.

Learned counsel for the appellants has submitted that the suit filed by the plaintiff-firm was barred by time as the suit came to be instituted on 14.06.2008 whereas the defendant did not purchase any goods from the plaintiff-firm during the trading year 2005-06. He further submitted that the invoices have not been proved in accordance with Section 65-B of the Evidence Act as these are computer generated invoices and certificate was required to be issued by the person who was in control of the computer from where print-outs were taken. He further submitted that the firm-defendant No.1 had been dissolved on 14.07.2005 and defendant No.2 had taken over all the assets and liabilities of the partnership firm, therefore, the remaining defendants-appellants cannot be saddled with the liability. He further submitted that accounts were finally settled on payment of Rs.1,00,000/- on 20.06.2005. Hence, the judgment of the learned First Appellate Court is erroneous.

In the present case, the plaintiff-firm had maintained a continuous open running account of defendant No.1-firm. It is not in dispute that the last payment was made through cheque by the defendant in favour of the plaintiff vide cheque dated 20.06.2005. The suit was instituted on 14.06.2008. Hence, the suit was within limitation. In case of open and running account, the limitation begins to run from the last day of the financial year in which the last transaction took place. It will be significant to note that neither before the trial Court nor before the learned First Appellate Court, defendant ever defended the suit on the ground that the suit is barred by limitation. Anyhow, once there was series of transactions between the plaintiff-firm and the defendant, the limitation for filing the suit cannot begin to run from the last invoice of purchase as asserted by learned counsel for the appellants. Limitation as per Article I of the schedule to the Limitation Act could begin to run from the closing of the year where last transaction took place.

This Court also does not find any substance in the argument of learned counsel that the invoices which are Exhibits P-6 to P-60 have not been proved in accordance with Section 65-B of the Evidence Act. All the invoices are bearing certificate, certified that print-outs are as per the account maintained by the plaintiff-firm in its computer. Still further, the plaintiff-firm has also produced on file 'C' forms supplied by the defendant No.1-firm to the plaintiff-firm Ex.P-63. Form 'C' is generated when two dealers registered under the General Sales Tax Act enter into sale and purchase and the purchaser without payment of sale tax purchases goods from the other dealer. The purchaser after certifying to the Department about the goods having been utilized for the business issues a certificate to the seller. Once the defendant-firm has issued 'C' form , the receipt of goods under the invoices stands proved. It will be significant to note here that defendant No.1-firm had also issued a cheque of Rs.25 lacs in favour of the plaintiff-firm and in the proceedings under Section 138 of the Negotiable Instruments Act, the defendants have been convicted. Still further, the defendants had also filed a criminal complaint alleging that the invoices Ex.P-6 to P-60 are forged and fabricated. The criminal prosecution launched by the defendants was dismissed.

It is not in dispute that the liability which is subject matter of suit is when the firm was in existence before the dissolution of the firm, therefore, all the partners would remain liable for liability of the partnership firm incurred when the firm was in existence.

Last argument of learned counsel is that the accounts were finally settled on payment of Rs.1,00,000/- and therefore, the suit was not maintainable. The defendant-appellants failed to produce any evidence proving full and final settlement.

In view of the discussion made above, this Court does not find any good ground to interfere with the finding of fact arrived at by the learned First Appellate Court.

Appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

17.02.2018
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No