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

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RSA No.5964 of 2017 (O&M)
Date of decision: 17.02.2018

Sandeep Duggal and others **...... Appellants**

Versus

M/s Ajay Kumar and Company 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.

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ANIL KSHETARPAL, J.

Defendants No.3, 5 and 6-appellants are in regular second appeal against the concurrent finding of fact arrived at by the Courts below decreeing a suit for recovery of a sum of Rs.14,80,180/- along with interest upto date.

Plaintiff-partnership firm claimed that defendant No.1-partnership firm was purchasing goods namely dry fruits, fresh fruits etc. from the plaintiff from time to time. The goods were sold against the bills and an open and running account was maintained by the plaintiff-firm in its books. In the account of defendant No.1-firm, the invoices were debited and various amounts received from the defendant against purchasing of goods used to be credited. It is further the case of the plaintiff that last payment of Rs.59,294/- was received by cheque No.566412 issued by defendant No.1-firm on 19.04.2015 and thereafter, no further payment has been made.

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According to the plaintiff, now a sum of Rs.9,47,148/- is due and payable by the defendants. The plaintiff further pleads that in order to discharge their liability, Sudhir Duggal, defendant No.2, partner of defendant No.1 offered to give three shops to the plaintiff-firm. Sudhir Duggal executed a General Power of Attorney in favour of Ajay Wadhwa, partner of plaintiff-firm on 19.04.2006. However, before the plaintiff could take any steps, Sudhir Duggal sold the aforesaid shops himself and revoked Power of Attorney on 12.10.2006.

The defendants contested the suit. It was pleaded that defendant No.1-firm was dissolved on 14.07.2005 and thereafter, Sudhir Duggal, defendant No.2 had taken over all the assets and liabilities of the firm w.e.f. 14.07.2005. The business dealings of the plaintiff-firm with the defendant No.1-firm were not disputed. It is further pleaded that defendant No.2 had given a blank cheque to Ajay Wadhwa, partner of plaintiff-firm which has been misused.

Both the Courts after appreciating the evidence available on the file decreed the suit filed by the plaintiff.

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 this Court.

Learned counsel for the appellants has submitted that the suit filed by the plaintiff was barred by time as the partnership firm-defendant No.1 has not made any purchases for more than three years before the filing of the suit and the last invoice is dated 28.05.2004 whereas the suit was instituted on 17.04.2008. He has further submitted that the invoices produced by the plaintiff are computer generated and there is non-compliance of Section 65-B(2) of the Evidence Act. Hence, not admissible

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in evidence. He has further submitted that once the partnership firm had been dissolved on 14.07.2005 and all assets and liabilities were taken over by defendant No.2, therefore, the suit could not be decreed against the remaining defendants. Learned counsel further submitted that the accounts had been settled and the payment of Rs.59,294/- was in full and final settlement.

On the other hand, learned counsel for the respondent has supported the judgments and decrees passed by the Courts below.

Business dealings between defendants and plaintiff-firm are not disputed. It is also not in dispute that the last payment was made by defendant No.1 in favour of plaintiff-firm on 19.04.2005. The suit was filed on 17.04.2008 i.e. within a period of three years from the date last payment was made. Such being the position, the suit filed by the plaintiff could not be held to be barred by time. Still further, the defendants have chosen to take the point of limitation for the first time in this Court. The defendants neither before the trial Court nor before the learned First Appellate Court had objected to the suit on the issue of limitation.

It will be noticed that the plaintiff-firm has produced on record ST-XXII-C form as Exhibits P-99 to P-106. This form is issued by the Department of Excise and Taxation to the purchaser of the goods after verifying the books of accounts. The defendant No.1-firm had issued forms ST-XXII-C in favour of the plaintiff-firm. Learned counsel for the appellants did not point out that any of the invoices produced by the plaintiff-firm is not reflected in the 'C' form. Whenever two dealers who are registered with the Department of Excise and Taxation, enter into sale-purchase of goods, against 'C' form and the purchaser is not required to pay sale tax to the seller as the purchaser certifies that the goods purchased have been utilized by him

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for his business or sale and he has collected the tax and paid it to the Department.

In view of the 'C' form having been produced which is coupled with the invoices, the plaintiff-firm has proved the case against the defendants. Still further, even as per books of accounts of defendant No.1 Ex.D-17, it is to pay a sum of Rs.4,19,171/-. Hence, the plea of the learned counsel for the appellants that the accounts have been finally settled on payment of Rs.59,294/- does not have any substance. It is not disputed that the computer generated invoices produced in the Court were bearing certificate of endorsement on the back side. Learned counsel for the appellants has argued that the certificate has to be issued by the person who has having control over the computer. He submits that since the partner of the firm has admitted that he does not know how to operate computer, hence, the certificate signed by him is not in consonance with Section 65-B of the Evidence Act. This Court has considered the submission, however, do not find any substance in it. The books of accounts are maintained by the Data Entry Operator under overall control of the partner of the firm.

Next argument of learned counsel for the appellants is that since the partnership firm had been dissolved on 14.07.2005 and Sudhir Duggal, defendant No.2 had taken over all the assets and liabilities of the partnership firm, hence, the decree could not be passed against the remaining defendants. The argument of learned counsel for the appellants is without any substance. The suit is with regard to liability of the partnership firm when it was in existence before dissolution. Such being the position, the liability of the partners would continue to exist even after dissolution and the partners would remain liable for the liabilities of the firm incurred before dissolution of the firm.

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Learned counsel for the appellants in the last has submitted that the suit has been decreed for a sum of Rs.14,80,180/- along with interest @ 6% per annum. The Court has overlooked that the principal amount claimed was only Rs.9,47,148/-, hence, the decree could not be passed on an amount of Rs.14,80,180/-.

Learned counsel for the respondent-plaintiff did not seriously object to the aforesaid submission.

In view of the above while dismissing the appeal filed by the defendants-appellants, the judgment and decree passed by the Courts below is modified. The suit of the plaintiff shall stands decreed for a sum of Rs.9,47,148/- along with interest @ 6% per annum from 19.04.2005 i.e. the date of last payment to the plaintiff by the defendants till realization covering the period prior to the filing of the suit, pendency of the suit as well as future interest.

Hence, this appeal is partly allowed.

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned Yes / No

Whether Reportable Yes / No

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