

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 582 of 2018

- Global Rishi Vally School Through Sh. Dhirendra Gupta (Wrongly Mentioned As Virendra Gupta In The Order Copy), Managing Director Global Rishi Vally School, R/o Sejbahar, P.S. Tikrapara, Raipur, Tehsil And District Raipur Chhattisgarh.

---- Appellant/defendant No.1

Versus

- Shri Book Depot Through Its Proprietor Pawan Kumar Gupta, S/o Chandra Kumar Gupta, Aged About 41 Years, R/o Opposite Amba Devi Mandirs Gali, Satti Bazaar, Raipur, Tehsil And District Raipur Chhattisgarh.

--Respondent No.1/Plaintiff

- Principal Global Rishi Vally School, R/o Sejbahar, P.S. Tikrapara, Raipur, Tehsil And District Raipur Chhattisgarh.

---- Respondent/defendant No.2

For appellant : Mr. Sameer Oraon, Advocate.
For respondents : Mr. D.N. Prajapati, Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

Oral Judgment

23-09-2019

1. Heard on I.A.No.1 of 2018 which is an application for condonation of delay in filing the present appeal supported with an affidavit of Virendra Gupta.
2. For the reasons mentioned in the application, I.A. No. 1 of 2018 is allowed and delay of 91 days in filing the instant appeal is condoned.

3. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 20-4-2018 passed by 2nd Additional Judge to the Court of 1st Additional District Judge, Raipur (CG) in Civil Suit No. 17-B/12 wherein the said court decreed the suit filed by the respondent/plaintiff to the tune of Rs.96,518/- with interest being cost of the books supplied by respondent No.1 to appellant.

4. Respondent No.1/plaintiff filed a suit for recovery of an amount to the tune of Rs.96,518/- from the appellant/defendant No.1 and defendant No.2 in lieu of supply of books to school of the appellant. The books were received by respondent No.2 who was Principal at the time of supply of books. When payment is not made a notice was issued to appellant on 15-9-2011 which was received by him on 19-9-2011 but payment is not made despite of notice that is why suit was filed.

5. Learned counsel for the appellant submits as under:

- I) When respondent No.1 is not a legal entity hence suit is not maintainable as per Order 30 Rule 10 of the Code of Civil Procedure, 1908.
- ii) Delivery of books has not been proved in the present case and the same cannot be proved by producing invoices. It is against the provisions of Section 34 of the Sales of Goods Act, 1930.

- iii) The trial court has not evaluated the evidence in its true perspective, therefore, same is liable to be set aside.

He placed reliance in the matter of **Svapn Constructions Vs. Idpl Employees Cooperative Group, reported in 127 (2006 DLT 80.**

6. On the other hand, learned counsel for the respondents would submit that Smt. N. Query (PW/2) was working as Principal at the time of delivery of books and as per version of this witness books were delivered to school in which the appellant is Director who is liable to make good the payment. He would further submit that the trial court has decided all the issues and recorded finding that the suit is maintainable and the appellant is liable to pay the amount of books supplied to him.

7. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

8. The first question for consideration of this court is whether suit is maintainable or not. Appellant is Managing Director of the appellant school. His status is not questioned by either side and again the status of Smt. N. Query (PW/2) is also not questioned that she was Principal at the time of supply of books. Respondent No.1 is sole proprietor of Shri Book Depot and he can file a suit in

his name. It is not a case of partnership but it is a case of sole ownership. Sole owner has all the right to file a suit against the person against whom cause of action arises. It is not a case that only invoices have been produced before the trial court, but there is direct evidence of Principal Smt. N. Query (PW/2) who received the books on behalf of the appellant institution which is unrebutted. There is nothing on record to reject the version of this witness that is why the trial court recorded finding in affirmative that books were supplied to appellant institution.

9. It is argued on behalf of the appellant that Smt. N. Query (PW/2) was removed from school that is why she is deposing against the institution, but there is nothing on record that she has been removed for any kind of charge, therefore, there is nothing to disbelieve the version of Principal and the trial court is right in believing the same.

10. The second question for consideration of this court is whether books worth Rs.96,518/- was supplied to appellant institution.

11. Bills Exs.P/2 to P/8 shows the amount of books which have been supplied to appellant institution. These bills have not been rebutted and total of the bill is amounting to Rs.96,518/- and after recording oral and documentary evidence, the trial court decreed for the same and again granted interest @ 6% per annum from the

date of institution of suit till realisation of the amount. After re-assessing the evidence this court has no reason to record a contrary finding. Case law cited by learned counsel for the appellant does not help to the appellant as the same is clearly distinguishable from the facts of the present case.

12 Accordingly, the appeal is liable to be and is hereby dismissed at motion stage itself.

13. Appellant to bear the cost of litigation throughout.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju