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

**R.S.A. No 691 of 1996
Date of decision : 20.08.2019**

Anand Sarup and anr. ....Appellant

versus

State of Haryana and anr. ...Respondents

CORAM: **HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Manu K. Bhandari, Advocate
for the appellants.

Mr. R.K.S. Brar, Addl. A.G. Haryana

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RITU BAHRI , J.

The present appeal is directed against concurrent finding of facts recorded by both the Courts below whereby suit filed by plaintiffs/appellants against the defendants/respondents was dismissed.

Brief facts of the case are that the appellants stood sureties of M/s Markanda Trading Company, Shahabad Markanda and both the sureties had withdrawn their surety which was intimated to respondent No. 2 by an application, which was received by respondent No. 2. The reply of the same was received by the appellants from respondent No. 2 and in that reply respondent No. 2 discharged the surety of the appellants after a lapse of six months i.e on 08.10.1988 beginning w.e.f 08.04.1988. M/s Markanda Trading Company for whom the appellants stood as sureties have A.P. Mahendra, R.K. Verma and Smt.Santosh Wadhawan as partners and that Sh. A.P. Mahendru is having one residential house at Mohan Nagar, Kurukshetra and also an oil and flour mills at Paonta Sahib (H.P) and that R.K. Verma, the other partner is owner of one residential house and other property at Kunjpura and the third partner of M/s Markanda Trading Company Smt. Santosh Wadhawan is a partner of M/s Vidhya Oil Mills, Parwanoo. Thereafter, the appellant was issued notice by respondent No. 2 on 05.02.1991 for recovery of Rs.1,04,102/- for alleged tax of M/s Markanda Trading Company and directed them to appear on 20.02.1991 wherein appellants submitted that they are not liable to pay the above said amount as they are no more sureties of the above company and the amount be recovered from the partners of the said firm.

On notice, respondent No. 1 and 2 filed joint written statement taking a stand that jurisdiction of the Civil Court is barred by expressed provisions of Section 62 of the Haryana General Sales Tax Act, 1973. Reference has been made to judgments of Hon'ble the Supreme Court of India in a case of ***Kamla Mills Ltd vs. State of Bombay, 1965 (16) STC 613 and M/s Illury Subbayya Chetty and sons vs. State of Andhra Pradesh, 1963 (14) STC 680***

Both the Courts below have rightly dismissed the suit of the appellants by observing that the department made all efforts to recovery the amount of M/s Markanda Trading Company, Shahabad and they were unable to locate the properties of the partners of their whereabouts, in pursuance of the surety bonds, they proceeded to recover the arrears of the tax for the year 1985-86 and 1986-1987 from the appellants, as the appellants stood discharged on 07.10.1988. Further the tax liability pertained not to the period after 07.10.1988 when the appellants stood discharged. The tax relates to the period of 1985-86 and 1986-87 and during this period the appellants were lawful sureties of M/s Markanda Trading Company, Shahabad. The appellants cannot evade the liability on the pretext that demand was raised for the first time in the year 1990 because it cannot be lost sight that under the various provisions of the statute, the dealers are required to file returns and their returns are assessed by the competent authorities and in that process, a considerable time is consumed.

Accordingly, the concurrent findings of facts recorded by both the Courts does not require any interference by this Court

No substantial question of law arises for adjudication by this Court.

The appeal stands dismissed.

August 20, 2019 **(RITU BAHRI)**
G Arora **JUDGE**