IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. RSA No.94 of 2004 (O&M)
Date of decision : 13.02.2019

M/s Ganga Singh & Sons, Commission Agents and others

...Appellants

Versus

Gurbej Singh

...Respondent

2. RSA No.155 of 2004 (O&M)
Date of decision : 13.02.2019

M/s Ganga Singh & Sons, Commission Agents and others

...Appellants

Versus

Tara Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Atul Jain, Advocate for the appellants.

Mr. Divjyot Singh Sandhu, Advocate for the respondent.

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ANIL KSHETARPAL, J.

By this judgment, RSA Nos.94 and 155 of 2004 shall stand disposed of as both the suits are connected and the issue which needs determination is common.

The question which needs determination is “whether a farmer who sells his agriculture produce through a Commission Agent can maintain a suit for rendition of accounts against Commission Agent with the plea that the Commission Agent is not rendering accounts to him?".

Some facts are required to be noticed. In both the suits, plaintiffs are farmers whereas defendant No.1-appellant was a firm doing its business of Commission Agent in the grain market. Plaintiffs have alleged that they have been selling their agriculture produce through the defendant's firm and the firm is refusing to render accounts. It has been pleaded that the defendant-appellant's firm had opened an account of the plaintiffs in their account book and 'J' Forms have been issued for sale of *kharif* 1994 but thereafter defendants have not issued 'J' forms for the subsequent crops which have also been sold through the defendant's firm. The suit was contested by two set of defendants. Written statement was filed by Malkit Singh who pleaded that there is no cause of action against him and the suit is bad for non-joinder of parties. It was claimed by him that defendant No.1-firm was constituted in the year 1976 with certain partners which was dissolved and a new partnership firm was constituted which continued as such till 31.03.1992 when two partners retired and Tarlochan Singh son of Ganga Singh became sole proprietor of the firm from 01.04.1992. Second set of defendants i.e. defendant Nos.3 to 8 pleaded that there is no firm existing since 10.04.1997.

On appreciation of evidence, learned trial Court dismissed the suit whereas learned First Appellate Court has reversed the judgment and decree passed by the trial Court after recording a finding that the suit for rendition of account is maintainable.

Suit for rendition of account is a special specie of the suits. The suit for rendition of account can be filed in administrative suit under Order 20 Rule 13 of Code of Civil Procedure (hereinafter to be referred as "the CPC"). Such suit can also be filed alongwith a suit for dissolution of the partnership under Order 20 Rule 15 of the CPC. Order 20 Rule 16 of the CPC provide that suit for rendition of account can be filed between Principal and Agent. Order 20 Rule 16 of the CPC is extracted as under:-

> *"**Order 20 Rule 16 of CPC:-***
>
> ***Decree in Suit for account between principal and agent.-** In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit."*

It is apparent from the reading of Order 20 Rule 16 of the CPC that between the Principal and Agent, suit for rendition of account is maintainable. It may be noted that the suit for rendition of account is generally maintainable by the Principal against Agent. However, Hon'ble the Supreme Court in the judgment reported as ***AIR 1967 Supreme Court 333, Narandas Morardas Gajiwal and others Vs. S.P.A.M. Papammal and another***, have held that even the Agent has a right to sue the Principal for accounts as it is an equitable right arising under special circumstances although it is not a statutory right. Hon'ble the Supreme Court had also dealt with the aforesaid issue in a slightly different context in the judgment reported as ***(2006) 2 SCC 285, K.C. Skaria Vs. Government of State of Kerala and another***, and there also the Court noticed the judgment passed in the case of ***Narandas Morardas Gajiwal*** (Supra) and recognized that the Courts have an equitable right to claim rendition of accounts, once the opposite party is refusing to render the accounts.

Learned counsel appearing for the appellants has relied upon three judgments passed by the Hon'ble Single Benches of this Court which are as under:-

1) ***2011 (2) PLR 393 Bhim Singh Vs. M/s Mewa Singh & Company,***

2) ***Rajender Singh Vs. M/s Mangal Trading Company and others, RSA No.1152 of 2014, decided on 05.04.2016***

3) ***Harbhajan Singh Vs. M/s Jai Kishan Dass Sumer Chand and another, RSA No.3150 of 2014 decided on 10.10.2014.***

No doubt, the judgment passed in the case of Bhim Singh (Supra) lays down that a suit by the farmer against Commission Agent is not maintainable for rendition of account as there was no fiduciary relationship between the farmer and the firm. The other judgments passed in the case of Rajender Singh and Harbhajan Singh (Supra) are following the judgment passed in the case of Bhim Singh (Supra). However, attention of the Court in the aforesaid referred three judgments was not drawn to a judgment passed by Full Bench of East Punjab High Court in the case of ***Firm Ram Dev Jai Dev Vs. Seth Kaku, AIR 1950 East Punjab 92***. In the aforesaid judgment, question arose as to whether a Principal can file suit for rendition of account against *Pucca Arhtia* i.e. Commission Agent. Learned trial Court on framing of the preliminary issue held that the suit is not maintainable. However, in appeal the aforesaid view of the learned trial Court was reversed. When the matter came before the High Court, the question was referred to the Larger Bench (Full Bench of 3 Judges) and it was held that the Commission Agent works like an Agent of the Principal i.e. the person who has directed to deal on behalf of Principal. The Full Bench held that the Commission Agent stand in a dual relationship with its constituents. Para 16 of the judgment is extracted as under:-

> *"16. With the utmost respect to the learned Judge I am unable to accept the correctness of his decision. The authorities referred to by him do no establish that the relationship of principal to principal is the only relationship between the constituent and pucca artias and that no relationship of principal and agent exists between them. On the contrary some of the decisions as explained by me above clearly show that the relationship of principal and agent subsists side by side with the new relationship as between a principal and a principal which arises as soon as a transaction is put through between the constituent and the pucca artias. He has completely overlooked the fact that the Pucca Arhtias stand in a dual relationship with their constituents, that although a new relationship as between a principal and a principal arises on the conclusion of a transaction vis a vis that transaction yet the relationship as between a principal and an agent also subsists. An ordinary agent has to show that he has carried out the mandate of the principal by actually putting through a contract with third parties and to disclose their names and to account for any profit that he may have made in the course of the principal's business. The Pucca Arhtias on the other hand are, by the usages of trade now amply recognized by judicial decisions, absolved from liability to account on this stringent footing but nevertheless they are liable to render general accounts showing what contracts of purchases and/or sales they put*

through with themselves as the other contracting parties, the result of the cross contracts, the payments received by them and the amount finally due by one to the other. This general liability to account is inherent in the relationship of principal and agent and cannot be got rid of by the agent merely because he also stands in the position of a principal with respect to the actual contracts. The Pucca Arhtias are not bound to show what they do with the goods they purchase from the constituent or wherefrom they get the goods which they sell to the constituents or what profit they made, there is nothing in the earlier cases to show that as agents they are not liable to render general accounts on the lines stated above. In my judgment, and I say so with respect, the decision of Monroe, J. cannot be supported either in principal or on authority."

The attention of the Court was not drawn in the aforesaid three judgments namely Bhim Singh (Supra), Rajender Singh (Supra) and Harbhajan Singh (Supra) to Section 213 of the Indian Contract Act, 1872 which makes it obligatory for an agent to render proper accounts to his principal on demand. The Commission Agent for the purpose of selling the crop produced by the Agriculturists acts as his agent. It is the Commission Agent, who has to sell the crop brought in by the farmer in the grain market. In State of Punjab, the working in the grain markets is governed by the Punjab Agricultural Produce Markets Act, 1961. Under the aforesaid Act, the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter to be referred as "the Rules of 1962") have been notified. As per Rule 2(4) of the Rules of 1962, *pucca arhtia* is defined whereas as per Rule 2(9) of the Rules of 1962, *kacha arhtia* has been defined. *Kacha*

Arhtia is a dealer who in consideration of commission offer his services to sell agricultural produce. Licences to the dealers are governed by Rule 17 whereas Rule 24 lays down a procedure for sale of the agricultural produce. Sub-Rule 13 of Rule 24 of the Rules of 1962 provide that in absence of any written agreement to the contrary the sale price of agricultural produce purchased under these rules shall be paid by the buyer to the Kacha Arhtiya on delivery of Form I. Still further, the Rules provide that every licensed dealer is obligated to maintain the account of transactions and submit the returns to the Market Committee from time to time. The obvious purpose of making the licenced dealers to prepare the accounts and submit returns is to rule out transparency in the dealing with the Agriculturists. If it is ultimately held that the Agriculturists/Farmer is not entitled to file a suit for rendition of the account, an Agriculturists who does not know the details of the accounts and the amount which is due to him shall be left with no other alternative. On equity also, such suits cannot be held to be not maintainable.

The argument of the learned counsel for the appellants that the Farmer can file a suit for recovery only after affixing Court fee is without any substance particularly in a situation when the Farmer does not know as to what is the amount receivable by him. As regards the payment of the Courts fee, the Court while passing a final decree in a suit for rendition of the account would pass a decree subject to payment of Courts fee.

Since, the attention of the Court while deciding the aforesaid referred three judgments namely Bhim Singh (Supra), Rajender Singh (Supra) and Harbhajan Singh (Supra) were not drawn to Full Bench Judgment (Supra), therefore, the aforesaid judgments are per incuriam.

Accordingly, it is held that the suit filed by a farmer against Commission Agent for rendition of account is maintainable as farmer is a Principal whereas Commission Agent is an Agent who sells the crop on behalf of the farmer who is Principal.

However, there is an error in the judgment passed by the First Appellate Court. Rather than passing a preliminary decree, the First Appellate Court had passed a final decree. Order 20 Rule 16 of the CPC provide for passing a preliminary decree so that after the accounts are rendered, the plaintiff is not driven to another litigation, if anything is found due. Order 20 Rule 16 of the CPC provide for passing a preliminary decree. The object behind passing a preliminary decree is to take accounts and thereafter proceed with the matter once accounts have been rendered.

Accordingly, both the appeals are partly allowed.

The decree passed by the First Appellate Court shall be substituted by a preliminary decree for rendition of account. Learned trial Court is directed to proceed with the matter from the stage the preliminary decree has been passed as and when application for passing final decree is filed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

13.02.2019 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**