

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

**RSA No.3883 of 2019 (O&M)
Date of Decision:13.12.2019**

Suresh Mehra

.....Appellant

Versus

OCM India Limited and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Veneet Sharma, Advocate
for the appellant.

LISA GILL, J.

Appellant (arrayed as defendant no.2) before the learned trial Court has filed this appeal being aggrieved of judgement and decree dated 23.01.2018, passed by the learned Civil Judge (Jr. Division), Amritsar, as well as judgement and decree dated 26.04.2019, passed by the learned Additional District Judge, Amritsar.

Brief facts necessary for the adjudication of the case are that plaintiff (respondent no.1 in this appeal), filed a suit for recovery of ₹11,71,273/- i.e. ₹9,38,943.50 as principal amount and ₹2,32,330/- as interest thereon calculated at the rate of 13.5% per annum, while pleading that the plaintiff and defendants had business dealings. Defendants were purchasing goods from the plaintiff on credit from time to time. Part payment was made to the plaintiff as per the account books. It is pleaded that on 30.06.2010, the defendants made the last payment of ₹10,000/- to the

plaintiff through cheque and thereafter the goods were returned by the defendants to the plaintiff for the month of August 2010, which are stated to be duly mentioned in the accounts. Thereafter, on 31.01.2011, turnover discount was given to the defendants, thereby leaving a sum of ₹9,38,943.50 due from the defendants towards the plaintiff. Defendants failed to deposit the same, despite request. Thus, suit for recovery of ₹11,71,273/- i.e., ₹9,38,943.50 as principal amount and ₹2,32,330/- as interest thereon calculated at the rate of 13.5% per annum, was filed.

It is only the present appellant-defendant no.2, who contested the suit. Remaining defendants did not appear despite service and they were proceeded *ex parte*. Written statement taking various preliminary objections was filed by appellant-defendant no.2. It is stated that it is defendant no.1, who was the working partner of the firm functioning in the name and style of M/s OCM Retail Shop. Appellant-defendant no.2, claimed to be a mere sleeping partner, whereas all the affairs of the firm were handled by defendant no.1, who is liable to make the payments of even the share of defendant no.2 from the income of the partnership firm. Defendant no.2, claimed to have no concern whatsoever with the business dealings of the firm, thus not liable to pay in any case. Dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to the relief of recovery along with interest as prayed for?OPP
2. Whether the suit is not legally maintainable?OPD
3. Relief.

Evidence was led by the plaintiff as well as defendant no.2 in

support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case, concluded that the plaintiff successfully proved the amount of ₹9,38,943.50 to be due from the defendants. Defendant no.2, it is concluded was unable to prove that he was a mere sleeping partner and not liable to discharge the liability. Suit for recovery of ₹9,38,943.50 along with interest at the rate of 6% per annum from the date of suit till its realisation, was decreed.

Appeal filed by defendant no.2 was dismissed by the learned Additional District Judge, Amritsar, vide impugned judgement and decree dated 26.04.2019.

Aggrieved therefrom, present appeal has been filed by appellant-defendant no.2.

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred in decreeing the suit filed by the plaintiff-respondent. It is submitted that the plaintiff-respondent has been unable to prove the existence of any liability qua the firm. The documents proved on record, it is submitted are woefully insufficient to prove that the plaintiff firm, is entitled to the recovery of the amount as claimed. Moreover, the appellant, being a sleeping partner, it is contended, cannot be made liable. It is thus prayed that the present appeal be allowed and the impugned judgements and decrees passed by the learned Courts below be set aside. Consequently suit filed by the plaintiff be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the photocopy of the record produced by him in Court today with

his assistance.

Plaintiff in order to prove his case has led clear and cogent evidence to show the liability towards the plaintiff. Copies of the relevant bills i.e. Ex.P-2 to Ex.P-143, attested copy of the statement of account, Ex.P-144, have been proved by PW-1-Raj Kumar, General Manager, OCM India Limited. Summary of account, Ex.P-151, has been proved by PW-1. It is a matter of record that defendants no.1 and 3, did not even contest the suit. It is only defendant no.2, who contested the same and that too taking a ground that he was a mere sleeping partner, with all the affairs and dealings of the firm being handled by defendant no.1. It is the case of the appellant himself, that he is a partner in the firm to the extent of 28.5%, though clarifying that he is a sleeping partner. A copy of the partnership deed, Mark D-1, contains a recital that the present appellant has 28.5% share in the profit and loss of the partnership business. In the said partnership deed, party to the first part is mentioned as Suresh Mehra i.e., defendant no.2-appellant. Liability of the partners is clearly joint and several. It is rightly held by both the learned Courts below that defendant no.2, present appellant, has failed to prove that he is not liable to pay the amount towards the plaintiff firm, despite being a partner to the extent of 28.5%. There is indeed no evidence on record to indicate that the present appellant is merely a sleeping partner.

Though, learned counsel for the appellant sought to argue that the amount in question is not proved to be due towards the plaintiff firm, learned counsel for the appellant is unable to deny that defendant no.2, has not in-fact raised any challenge to the liability of the firm to pay the amount in question. Copy of the written statement filed on behalf of the appellant

furnished in Court today, reveals that no such stand has been taken by the appellant. The plea taken by the defendant is that defendant no.1-Shiv Mehra, owes a huge amount towards defendant no.2 being a share holder of OCM Retail shop. In this respect, learned trial Court has rightly held that, in case, there is any dispute between partners *inter se*, a separate remedy is available to the appellant.

The Hon'ble Supreme Court in **Gurnam Singh (D) By Lrs and others Vs. Lehna Singh (D) By LRs 2019 (7) SCC 641** has observed as under:-

“Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to reappraise the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal.”

In my considered opinion, no question of law much less a substantial question of law arises for consideration in this appeal, challenging the concurrent finding of facts by the learned Courts below. Neither is there any ground for interference in terms of Section 41 of the Punjab Courts Act.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, impugned judgments and decrees dated 23.01.2018 and 26.04.2019

passed by the learned Civil Judge (Jr. Division) Amritsar, and learned Additional District Judge, Amritsar, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

13.12.2019
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.

[LISA GILL]
Judge