

RSA-4828 of 2019

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

**RSA No.4828 of 2019(O&M)
DATE OF DECISION:31.10.2019**

Nachattar Singh @ Bhola Singh

...Appellant/plaintiff

Vs.

Gram Panchayat village Sehna

...Respondent/defendant

CORAM:- HON'BLE MR.JUSTICE LALIT BATRA

Present: Mr. Preetwinder Singh Dhaliwal, Advocate
for the appellant/plaintiff.

LALIT BATRA, J. (Oral)

CM No.13773-C of 2019

For the reasons recorded in the application, the same is
allowed.

Delay of 05 days in re-filing the appeal is condoned.

CM No.13774-C of 2019

For the reasons recorded in the application, the same is
allowed.

Delay of 02 days in filing the appeal is condoned.

RSA No.4828 of 2019

Appellant-plaintiff has preferred instant regular second appeal
against the concurrent findings of fact arrived at by both the Courts
below dismissing the suit filed by him for recovery of ₹9,52,630/- from

respondent-defendant on account of supply of bricks to respondent-defendant.

2. Brief facts of the case are that appellant-plaintiff is owner of Sehna BKO and it was ordered by the Gram Panchayat of village Sehna through its Sarpanch Harjit Singh @ Jeeta to supply bricks for pavement of the streets and street drains and to this effect order was issued on 9.7.2010. The supply of bricks as ordered continued up to 14.10.2010. During above said period, bricks having quantity of 3,52,825 as per rate of ₹2700/- per thousand bricks were supplied and the said bricks were actually used for the pavement of the streets and street drains. Resolution to this effect was passed by Gram Panchayat, Sehna, on 10.11.2010. Though many a times demands were raised before respondent-Gram Panchayat for payment of ₹9,52,630/- by appellant-plaintiff in respect of supply of bricks already made but to no avail, which led to the filing of civil suit for recovery, as detailed above, by appellant-plaintiff against respondent-defendant.

3. Upon notice, respondent-defendant appeared in Court and filed written statement and took the stand that Gram Panchayat had never issued any order to appellant-plaintiff for supply of bricks for construction of pavement of streets and street drains. As a matter of fact, no such bricks were ever supplied and the impugned resolution dated 10.11.2010 was got passed by the appellant-plaintiff and that too in connivance with Harjeet Singh, the then Sarpanch of Gram Panchayat. It

is further contended that alleged resolution dated 10.11.2010, is a forged document. In this manner, respondent-defendant has categorically denied the claim of appellant-plaintiff.

4. Both the Courts below on appreciation of the evidence have found that appellant-plaintiff has failed to establish his case.

5. Learned counsel for the appellant-plaintiff while reiterating the stand of appellant-plaintiff as set up in the plaint has urged that once in terms of supply order dated 09.07.2010 issued by respondent-defendant, bricks worth ₹9,52, 630/- were supplied by appellant-plaintiff in favour of respondent-defendant for pavement of streets and street drains and especially the fact that above said transaction was duly acknowledged by respondent-defendant, vide its resolution dated 10.11.2010, in this scenario learned Courts below did not appreciate the matter in controversy in right perspective and, thus, wrongly dismissed the claim of appellant-plaintiff. He further urged that once after furnishing written statement, respondent-defendant did not pursue the matter and especially the fact that evidence led by appellant-plaintiff remains unrebutted, thus, in a given scenario claim of appellant-plaintiff is entitled to succeed.

6. Regarding aspect of controversy as to whether resolution dated 10.11.2010 was actually passed by the Gram Panchayat (respondent-defendant) or not, it is relevant to point out here that though PW-1 Buta Singh, Secretary, Gram Panchayat, Sehna, had put in appearance in Court but since he was not scribe/signatory to said resolution (Ex. PW-1/A), the

fact that Proceedings Book was initiated on 25.01.2010, the fact that a bare perusal of Proceedings Book as maintained by Gram Panchayat, alleged resolution (Ex.PW-1/A) claimed to be passed on 10.11.2010 actually bears the date as 10.01.2010, the fact that resolution (Ex.PW-1/A) bearing date 10.01.2010 finds mention at page No.45 of that Book, the fact that in the said Proceedings Book resolution dated 30.08.2010 finds mention at page No.36, especially the fact that Proceedings Book was initiated on 25.01.2010, then as to how the resolution which has been passed on 10.01.2010 was entered at page No.45 and resolution dated 30.08.2010 was entered at page No.36 and as such authenticity of Proceedings Book has come under cloud. As mentioned earlier, once PW-1 Buta Singh is neither scribe nor signatory of alleged resolution (Ex.PW-1/A), the fact that no effort was made by appellant-plaintiff to examine Sarpanch or any other member of Gram Panchayat before whom alleged resolution was passed, in this scenario, learned Courts below have categorically observed that authenticity of alleged resolution (Ex. PW-1/A) has not been proved on record and as such appellant-plaintiff cannot derive any benefit qua that document.

7. Learned Courts below while taking into account testimony of PW-2 Nachattar Singh (appellant-plaintiff) have pointed out that during cross-examination above said witness though specifically admitted that his firm used to maintain account books but copies of said account books were not attached with the plaint and even otherwise copies of account

books were not produced during the course of evidence. Apart from that neither any bill nor any receipt on behalf of Gram Panchayat or on behalf of appellant-plaintiff has been proved on the record to show liability of respondent-defendant (Gram Panchayat) qua alleged supply of bricks in its favour.

8. Appellant-plaintiff has pressed into service testimony of PW-3 Balraj Singla, Chartered Accountant, who had brought ledger account (Ex.PW-3/A), but it is pertinent to mention here that above said witness did not come forward for cross-examination at the instance of respondent-defendant and as such part testimony of above said witness cannot be read in evidence. It is relevant to point out here that though ledger account (Ex.PW-3/A) depicts that bricks were supplied to respondent-defendant, vide bills No.201, 230, 247, 252, 260, 267, 290 and 293 etc. but for want of production of said bills and especially for want of cross-examination of PW-3 Balraj Singla, relevance of ledger account (Ex.PW-3/A) to show any transaction has paled into insignificance. In terms of provisions of Section 34 of Indian Evidence Act, entries in books of account, including those maintained in an electronic form, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. In a given situation, as material evidence, as detailed above, has been withheld by appellant-plaintiff, no benefit qua

ledger account (Ex.PW-3/A) can be extended to appellant-plaintiff.

9. As a sequel to above, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below and resultantly instant regular second appeal is dismissed.

10. At this juncture, it is relevant to point out here that since appellant-plaintiff did not deposit the *advalorem* Court fee alongwith appeal and moved Civil Miscellaneous No.13775-C of 2019 alongwith appeal seeking extension of time under Section 149 CPC to deposit Court fee of ₹57,365/-, Registry is directed to get the above said Court fee recovered from appellant-plaintiff in accordance with law.

(LALIT BATRA)
JUDGE

31.10.2019
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No