IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5051-2013(O&M)
Date of decision:-6.9.2019

Kashmir Singh

...Appellant

Versus

M/s PKF Finance Ltd.

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vijay Rana, Advocate
for the appellant.

****

H.S. MADAAN, J.

CM-13591-C-2013 &
CM-13592-C-2013

Heard.

For the reasons mentioned in the applications, the same are allowed and delay of 143 days in refiling of the appeal and the delay of 5 days in filing of the appeal stand condoned.

RSA-5051-2013(O&M)

Briefly stated, the facts of the case are that plaintiff – M/s

PKF Finance Ltd., G.T. Road, Jalandhar through Sh.Nirmal Singh, Senior Section Officer of Legal Department had brought a suit for recovery of Rs.2,70,000/- along with interest @ 24% per annum w.e.f. 2.8.2002 till its realization against defendant Kashmir Singh son of Dalip Singh, Proprietor M/s Zimidara Tractors, village Wadala Adda Boli, P.O. Naringarh, District Amritsar.

As per the case of the plaintiff, plaintiff is engaged in business of hire, purchase and leasing of all types of vehicles and finance thereof; a sum of Rs.2,70,000/- was paid to the defendant vide demand draft No.972901 dated 31.7.2002 drawn on Oriental Bank of Commerce payable at Amritsar for the purchase of vehicle tractor Balwan-500; the price of the vehicle after its total assembly was Rs.4,10,000/-; an amount of Rs.2,70,000/- was duly received by defendant on 2.8.2002 but he failed to deliver the vehicle to the plaintiff despite repeated requests and demands since the plaintiff was to deliver the vehicle to its client Makhan Singh son of Pritam Singh, resident of VPO Raja Sansi, District Amritsar on the basis of Hire Purchase Agreement, the plaintiff had served a legal notice upon the defendant through its counsel dated 5.2.2003 but the defendant neither sent any reply to the notice nor delivered the vehicle or refunded the amount. Feeling aggrieved the plaintiff had brought the suit in question.

On notice, the defendant appeared and filed written statement contesting the suit raising various preliminary objections i.e. that the suit was bad for misjoinder and non-joinder of necessary parties; that no cause of action had arisen to the plaintiff to bring the suit against the defendant; that the suit was not maintainable and the plaintiff was estopped by its own act and conduct from filing the suit etc. On merits, the defendant denied that he had received a sum of Rs.2,70,000/- from the plaintiff company, rather came up with a plea that there was no contract whatsoever between the plaintiff and answering defendant. The defendant did not admit receipt of legal notice sent by the plaintiff through its counsel to him. Refuting the remaining allegations in the plaint, the defendant prayed for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether plaintiff is entitled to recovery of Rs.2,70,000/- along with interest @ 24% P.A. as prayed for? OPP.
2. Whether plaintiff has got no cause of action to file the present suit? OPD.
3. Whether civil Court at Jalandhar has got no jurisdiction to entertain and try the present suit? OPD.

4. Whether suit is not maintainable in the present form? OPD.
5. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
6. Whether suit is not properly valued for the purpose of Court fee and jurisdiction? OPD.
7. Relief.

In order to prove its case, the plaintiff- company had examined Sh.Dilip Kumar, Senior Section Officer as PW1, Sh.Nishant Sharma, Assistant Manager IDBI Bank as PW2, Sh.Raminderjit Singh Makkar as PW3 and Sh.Vijay Verma as PW4.

On the other hand, defendant got his statement recorded as DW1 and further examined Sh.Ajit Kumar as DW2.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff and against the defendant, issues No.3 to 6 against the defendant and in favour of plaintiff. Resultantly, the trial Court vide judgment and decree dated 4.1.2011 decreed the suit of the plaintiff with costs for recovery of Rs.2,70,000/- and the plaintiff was held entitled to pre institution interest at the rate of 9% per annum along with *pendente lite* interest @ 6% per annum on the principal amount from the date of filing of the suit till the date of decree and future interest @ 6% per annum from the date of decree till the date of actual realization of decretal amount.

Feeling aggrieved by the said judgment and decree, the defendant had filed an appeal before District Judge, Jalandhar, which was assigned to Additional District Judge, Jalandhar, who vide judgment and decree dated 16.1.2013 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees passed by the Courts below, the defendant has filed the present regular second appeal before this Court, notice of which was issued and the respondent, who initially put in appearance but subsequently did not turn up.

I have heard learned counsel for the appellant besides going through the records and I do not find any merit in the appeal.

The trial Court by proper appreciation of the factual position and analysis of the evidence adduced before it had come to the conclusion that suit had been filed by a duly authorized person and from the testimony of PW1 Dilip Kumar, it stood established that the defendant company had issued receipt after receiving the demand draft of Rs.2,70,000/- Ex.P3. PW2 Nishant Sharma from IDBI Bank, Amritsar had deposed that Kashmir Singh (defendant) had opened an account in the name of M/s Zimidara Tractors with their bank as sole Proprietor of that concern. The said witness had proved on record account opening form Ex.P7 and account statement Ex.P8 stating in his cross examination that at the time of opening of account, they had verified all the original documents produced by Kashmir Singh including ration card etc. The witness had further proved on record document regarding deposit of draft in question in account of Kashmir Singh as Ex.P10 to Ex.P12. The trial Court had noticed that though Kashmir Singh appearing as DW1 in his examination-in-chief had stated that he had no concern with M/s Zimidara Tractors and he had not received any draft No.972901 dated 31.7.2001 from the plaintiff company and had not issued any receipt thereof, however in his cross examination he had admitted his photographs on the account opening form Ex.P7 with IDBI Bank, Amritsar, though he had denied his signatures on the abovesaid form but admitted sale deed attached with the account opening form in his favour as Ex.PX, though stating that it had been taken out fraudulently by plaintiff – company. Therefore, the trial Court had concluded that the plaintiff has proved payment of Rs.2,70,000/- by way of demand draft to the defendant rejecting the version set up by the defendant. It being so, since the defendant had failed to account for this amount and no tractor Balwan-500 had been supplied to the company, he was liable to pay an amount with interest to the plaintiff.

Learned Additional District Judge, Jalandhar had rightly affirmed the findings recorded by the trial Court upholding the judgment and decree passed by the trial Court. No fault can be found with the judgments passed by the Courts below.

Though learned counsel for the appellant has contended that connected RSA-4422-2012, which was ordered to he heard along with the present appeal has since been decided on 9.5.2019 by a Co-ordinate Bench; that appeal was filed by M/s Punjab Kashmir Finance Ltd. against Kashmir Singh and others. However, a perusal of that judgment goes to show that it had altogether different facts and that related to a different transaction. Therefore, the decision therein does not have any bearing on this case. Similarly, the judgment dated 1.6.2018 passed by a Co-ordinate Bench in RSA-291-2011 titled M/s PKF Finance Ltd. Jalandhar Versus Kashmir Singh, vide which the appeal had been dismissed does not have any affect on this case since in this case Kashmir Singh being Proprietor of M/s Zimidara Tractors, village Wadala Adda Boli, P.O. Naringarh, District Amritsar has been duly established. Similarly, it is proved that the defendant had received a sum of Rs.2,70,000/- from the plaintiff in the form of bank draft, which was deposited in his account and he could not explain the said transaction. Therefore, such judgments do not help the present appellant in any manner.

Learned counsel for the appellant has placed reliance upon judgment ***Daya Nand Versus The State Bank of India, 2009(5) RCR(Civil) 224*** by a Single Judge of this Court. That had entirely different facts. A loan had been advanced by a bank to a customer for purchase of tractor. It was observed that in a suit for recovery of loan by bank against the loanee, the dealer was not a necessary party to the suit and no relief could be granted against the dealer, who was not a party to the suit. There cannot be any dispute with such proposition of law. However, the facts of the present case are not even remotely similar. Similarly, other judgment i.e. ***State Bank of Travancore Versus M/s Kingston Computers(I) P. Ltd., 2011 AIR SC(Civil) 786*** referred to by learned counsel for the appellant is not applicable since in the present case it stands duly proved that Nirmal Singh, Senior Section Officer of Legal Department of plaintiff company was duly authorized to file the suit.

No substantial question of law arises in this appeal.

It being so and in view of the concurrent findings returned by the Courts below with which I do not see any reason to disagree, I conclude that the appeal is without merit and is dismissed accordingly.

6.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No