

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 2791 of 2014 (O&M)
Date of Decision:24.9.2019

Dashmesh Dental College

---Appellant

vs.

Ashok Kumar and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. B.S.Sidhu, Advocate
for the appellant

Mr. Surinder Garg, Advocate
for respondent No. 1

Ms. Rimjhim Mahajan, Advocate
for Mr. Sanjiv Pandit, Advocate
for respondent No. 2

Mrs. Jarnail Kaur Dhaliwal, Advocate
for respondents No. 3 and 4

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgment and decree dated 11.3.2014 passed by the Additional District Judge, Faridkot whereby appeal filed by the plaintiff (respondent No. 1 herein) was allowed against defendants No. 1 to 3 and suit of the plaintiff against defendant No. 4 was dismissed.

The plaintiff-respondent No. 1, admittedly, was given contract

of collection of octroi of Faridkot Municipal Limit by defendants No. 1 and 2 for the period 2003-04 that expired on 8.9.2004 but the time was extended till fresh auction takes place for the next financial year. The plea of plaintiff-respondent No. 1 is that defendants No. 1 and 2 did not cooperate with the plaintiff in collection of octroi. Dashmesh Dental College, Talwandi Road, Faridkot committed evasion of payment of octroi as the institute brought Ventilator Make Viasys Vela Health Care T-Bird Series Model, 16186 by concealing the same in a transport vehicle so as to avoid payment of octroi. The aforesaid machine was allegedly supplied by defendant No. 4 being brought by Enstromedics India (Pvt.) Limited, Chandigarh. The plaintiff-respondent No. 1 claimed recovery of Rs. 3,83,985 i.e. Rs. 18,285/- as octroi and Rs. 3,65,700/- as composition fee on account of evasion of octroi by defendants No. 3 and 4. It is also averred that defendants No. 1 and 2 failed to act to gather the said amount by initiating action under Section 76 to 78 of the Municipal Act (in short “the Act”).

The trial court partly decreed suit of the plaintiff-respondent No. 1 for recovery of Rs. 18,285/- along with interest @ 6% per annum and liability to pay decretal amount was fastened against defendant No. 4. However, defendant No. 4 was given right to recover the said amount from defendant No. 3 in due course of law, if otherwise entitle to recover the same. At the same time, claim of the plaintiff-respondent No. 1 with regard to recovery of composition fee of Rs. 3,65,700/- was rejected by the trial court.

Ashok Kumar plaintiff-respondent No. 1 filed an appeal to

express his grievance with regard to not allowing composition fee of Rs. 3,65,700/- as defendant No. 4 failed to pay octroi to the tune of Rs. 18,285/- in respect of the aforesaid machine supplied by it to Dashmesh Dental College.

Counsel for the appellant would argue that defendant No. 4 (respondent No. 2 herein) did not file appeal to challenge decree and judgment passed by the trial court holding that it is the liability of defendant No. 4 to pay octroi in respect of the aforesaid machine supplied by the company to the appellant-college on FOR basis. It is further argued that even Ashok Kumar did not prefer appeal to express grievance with regard to liability qua payment of octroi having not been fastened against the appellant or the same has been fastened only against defendant No. 4. It is vehemently argued that since the decree and judgment passed by the trial court with regard to liability of defendant No. 4 to pay octroi had attained finality for want of challenge either by defendant No. 4 or by defendant No. 3 or even the plaintiff, the Appellate Court has committed a serious error by exonerating defendant No. 4 of liability to pay octroi as well as composition fee which has been held to be liability of defendants No. 1 to 3 including the present appellant. It is further argued that judgment and decree passed by the First Appellate Court needs modification by imposing entire liability to pay octroi as well as composition fee upon defendant No. 4.

Counsel for respondent No. 1 has submitted that respondent No. 1 is primarily concerned with recovery of octroi and composition fee irrespective of the person who is held liable to pay the same. He has

conceded that respondent No. 1-plaintiff did not challenge the judgment and decree passed by the trial court allowing his claim with regard to recovery of octroi, held to be payable by defendant No. 4 with some rider qua entitlement of defendant No. 4 to recover the same from defendant No. 3 if the law so permits.

Counsel representing respondent No. 4, though has conceded that defendant No. 4 did not prefer an appeal against the decree and judgment passed by the trial court to challenge its liability to pay octroi of Rs. 18,285/- along with interest but she has supported decree and judgment passed by the Court in Appeal with the submission that there was no agreement between defendants No. 3 and 4 to the effect that liability to pay octroi would be of defendant No. 4.

I have heard counsel for the parties, perused the paper book and records.

Be that as it may, it is undisputed position of the case that decree and judgment passed by the trial court partly allowing suit of respondent No. 1-plaintiff for recovery to the extent of Rs. 18,285/- along with interest in respect of octroi, held to be payable by defendant No. 4 was not challenged before the First Appellate Court by any of the parties to the litigation meaning thereby that the same had attained finality. Respondent No. 1-plaintiff approached the First Appellate Court to express his grievance only in respect of rejecting his claim with regard to composition fee i.e. 20 times of octroi amounting to Rs. 3,65,700/-. The Appellate Court without appreciating that defendant No. 4 has not challenged his liability to pay octroi nor respondent No. 1-plaintiff has expressed his grievance with

regard to decreeing his suit only against defendant No. 4 proceeded in a different direction and set aside the decree passed by the trial court with regard to entitlement of the plaintiff to recover octroi from defendant No. 4 and liability to pay octroi and composition fee has been imposed upon defendants No. 1 to 3. As findings of the trial court with regard to liability of defendant No. 4 to pay octroi had attained finality for want of challenge to those findings by any of the parties, decree passed by the First Appellate court exonerating defendant No. 4 of liability to pay octroi can not be allowed to sustain and accordingly set aside. At the same time, once defendant No.4 is held liable to pay octroi, liability to pay composition fee which is a by-product of failure to pay octroi would also be that of defendant No. 4. In this view of the matter, it would be defendant No. 4 who is liable to pay octroi as well as composition fee to plaintiff-respondent No. 1. However, since defendant No. 4 has been left at liberty to recover the amount of octroi from defendant No. 3 in due course of law, by the trial court, defendant No. 4 shall also be entitle to recover the composition fee from defendant No. 3, in terms of the judgment and decree passed by the trial court qua octroi.

In view of what has been discussed hereinbefore, the appeal is allowed. Judgment and decree passed by the First Appellate Court is set aside. Suit filed by respondent No. 1-plaintiff is decreed for recovery of octroi of Rs. 18,285/- and composition fee of Rs. 3,65,700/- payable with interest @ 6% per annum from the date the amount became due till realization against defendant No. 4. Defendant No. 4 would be at liberty to recover the same from defendant No. 3, in view of liberty aforesaid. In the

peculiar facts and circumstances, the parties are left to bear their own costs.

(Rekha Mittal)
Judge

24.9.2019
paramjit

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