

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.2244 of 2017 (O&M)
Date of Decision: May 27, 2019

ACC Ltd. & another

...Appellants

Versus

M/s Kay Kay Industries & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Ankit Chowdhri, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

The present Regular Second Appeal is at the instance of appellant-defendant Nos.1 & 2 against the judgment and decree of recovery of the amount sought by the plaintiff-respondent No.1.

It was alleged that the plaintiff placed an order to respondent No.3-defendant No.3 to supply the cement at competitive rates, i.e., ₹165/- per bag and in lieu thereof, a cheque dated 03.11.2005 amounting to ₹50,000/- had been handed over to defendant No.3, but the cement was not supplied.

Defendants Nos.1 and 2 opposed the suit and claimed that they were not liable to supply the cement as defendant No.3 was their agent and he had already executed an indemnity.

Both the parties led evidence.

Plaintiff, in support of the pleadings, examined five witnesses, whereas defendant Nos.1 and 2 brought on record one witness.

Mr. Ankit Chowdhri, learned counsel appearing on behalf of the appellants submitted that Ex.D21 is the indemnity between the appellants and defendant No.3 and in such circumstances, the courts below ought to have decreed the suit qua defendant No.3 or given liberty to defendant Nos.1 and 2 to recover from defendant N.3 after satisfaction of claim of plaintiff.

I am afraid, the aforementioned arguments would not be sustainable as the indemnity was amongst the co-defendant and not with the plaintiff. Nothing prevented them to seek recovery in case ₹50,000/- was never been paid by defendant No.3 to defendant Nos.1 and 2 for supply of the material to the plaintiff, for, the cheque was in the name of the appellants.

For the reasons aforementioned, I do not find any illegality or perversity in the concurrent findings under challenge. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed on the ground of delay as well as on merit.

May 27, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No