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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1960 of 2018(O&M)
Date of decision: 18.10.2019

K.M. Textile, 3 M.D., New Cloth Market, Bathinda, through its proprietor Suraj Bhan … Appellant

Versus

Veena Creations and another … Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. G.L. Bajaj, Advocate,
for the appellant.

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ARUN PALLI, J. (Oral)

The suit filed by the plaintiff-appellant was dismissed by the trial court, vide judgment and decree dated 19.10.2015. And, as even the appeal preferred against the said decree failed and was dismissed on 11.10.2017, it is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

A declaration was prayed for that plaintiff was entitled to replace the defective clothing material, i.e. sarees and lehangas, supplied by the defendants through consignment and for compensation on account of business loss and harassment, owing to non-replacement of the articles, and also for mandatory injunction requiring the defendants to replace the defective material.

In brief, the case set out by the plaintiff was that it was running a business of clothing material under the name and style of K.M.Textile, 3 M.D., New Cloth Market, Bathinda. Defendant No.2, being an agent of defendant No.1, used to visit the plaintiff for selling sarees and lehangas and

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the plaintiff had purchased these articles through him on various occasions. But, as the defendants supplied defective and substandard articles, plaintiff snapped all business dealings with the defendants. For, even certain complaints were made by the customers of the plaintiff qua the defective articles, i.e. sarees and lehangas, plaintiff repeatedly approached the defendants to replace the defective goods, but to no avail. Thus, the suit.

In the written statement filed by the defendants, it was pleaded that plaintiff had filed the present suit as a counter-blast to Civil Suit No. 18 of 2013, titled as Veena Creations Vs. Suraj Bhan, filed by the defendants for recovery of Rs.2,69,202/- pending before the Senior Civil Judge, District North, Delhi. It was denied if defendant No.2 ever visited plaintiff at Bathinda to sell the merchandise. In fact, the plaintiff himself had been coming to the defendants at Delhi for purchasing clothes on credit and he had also been purchasing sarees etc. It was denied if any defective or substandard material was ever sold to the plaintiff. Accordingly, it was prayed that suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record, both the courts concurrently concluded that none other than Suraj Bhan, proprietor of the plaintiff firm, conceded in his cross-examination that amount that plaintiff was obliged to pay to the defendant firm was shown as due in its income tax returns. Accordingly, the defendant firm had filed a suit for recovery, which was pending at New Delhi, wherein he was appearing through his counsel. He did not possess any acknowledgment or receipt to prove its claim that the alleged defective articles were returned to the defendants. The entries relied upon by the plaintiff as regards return of goods did not bear the signatures of any person, nor G.R. number or even

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vehicle number, thus, could not be relied upon. No evidence was brought on record either to show that the articles/merchandise supplied by the defendants were, indeed, defective. In fact, a notice of recovery was served upon the plaintiff, which was responded to by his counsel vide reply dated 30.8.2012, wherein he never raised any concerns as regards quality of the articles supplied by the defendants. The bills brought on record by the plaintiff in support of its claim could not be connected to the alleged defective material supplied by the defendants and subsequently returned assuring replacement. Likewise Krishan Lal (PW2) examined by the plaintiff, produced accounts of plaintiff firm and conceded that he was not conversant with the material that was supplied by defendants or returned to them. Apparently, the plaintiff failed to lead any evidence to prove that any defective or substandard articles were supplied by defendant No.2, which he subsequently returned to claim replacement. That being so, the only and the inevitable conclusion that could be reached: claim of the plaintiff remained unsubstantiated for lack of evidence. Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

October 18, 2019
AK Sharma

Whether speaking / reasoned: YES
Whether Reportable: YES/NO