

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

RSA No.4021 of 2017 (O&M)

Date of decision : 01.02.2019

The District Manager HAFED and others

...Appellants

Versus

M/s N.K. Trading Company

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.K. Dwivedi, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.10272-C of 2017

Deficiency in the Court fees has already been made good. Delay,
if any is condoned.

Application is allowed.

CM No.10273-C of 2017

For the reasons stated in the application, which is duly supported
by an affidavit, delay of 608 days in filing the present appeal is condoned.

Application is allowed.

Main case

Defendants-appellants are in the Regular Second Appeal against
the concurrent findings of fact arrived at by both the Courts below.

Dispute which requires determination is whether a recovery which
is due against the firm run by the father can be recovered from a different firm
which is run by the son as a proprietor. It is not in dispute that father of the
plaintiff is proprietor of M/s Karan Rice Mills against which there are some
dues pending. Now under the garb of that recovery payment due to the plaintiff

who is proprietor of M/s N.K. Trading Company, has been deducted.

Both the Courts on appreciation of the evidence have found that since both the firms are distinct and independent identities having no inter se connection, decreed the suit filed by the plaintiff.

Learned counsel for the appellants submitted that there was undertaking given by M/s N.K. Trading Company in writing. However, it is not disputed that the undertaking was given by Satpal Singh namely father who was proprietor of M/s Karan Rice Mills. The plaintiff had never signed the aforesaid undertaking.

Learned counsel for the appellants further submitted that the suit for mandatory injunction was not maintainable. In this regard, it may be noted that before the trial Court, issue No.5 was framed. However, learned counsel appearing for the appellants-defendants did not press the aforesaid issue. Learned counsel for the appellants could not draw attention of the Court to any paragraph of the judgment passed by the First Appellate Court where this issue was ever raised. Hence, the objection with regard to Court fee had already been given up by the defendants.

Accordingly, there is no merit in the present Regular Second Appeal.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

01.02.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No