

RSA No. 4403 of 2018 (O&M)

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

RSA No. 4403 of 2018 (O&M)

Date of Decision: July 04, 2019

M/s. Tannu Tools and another

..... APPELLANT(s)

Versus

M/s. Haryana Ispat Udyog and another

..... RESPONDENT(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ankush Chaudhary, Advocate
for the appellants.

LISA GILL, J.

Appellants-defendants have filed this appeal being aggrieved of judgments and decree dated 28.05.2018, passed by the Addl. District Judge, Faridabad as well as judgment and decree dated 15.09.2015, passed by the learned Addl. Civil Judge (Sr. Division), Faridabad.

Brief facts necessary for the adjudication of the case are that respondent-plaintiff filed a suit for recovery of Rs.3,57,633/- along with interest @ 24% per annum. It is pleaded that the plaintiff had business relations with the defendants. The terms and conditions of supply/sale were agreed upon with the defendants. It is pleaded that the plaintiff firm is engaged in the business of trading of all kind of iron HR/CR sheets, coils, strips etc. and was maintaining a proper account of transactions with the defendants in their books of accounts, duly and regularly, in the ordinary course of business. The cost of iron HR/CR sheets etc. supplied to the

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defendants was to be paid for, by the defendants to the plaintiff immediately on receipt of material. Transportation charges were also to be paid to the plaintiff. The plaintiff, it is stated, maintained proper account of all transactions with the defendants in their books of account duly and regularly in the ordinary course of business. Plaintiff alleged that there were some outstanding dues after settlement of the account and the defendants in order to discharge their liability even issued a cheque for Rs.1,00,000/- as part payment, which was, however, dishonored on presentation to the bank. Despite numerous requests, payment was not made by the defendants. Hence, the suit was filed.

The suit was resisted by the defendants/appellants. Various preliminary objections were taken in the written statement. It is pleaded that proper and regular books of account were not maintained by the plaintiff and all the account books of the plaintiff are alleged to be forged and fictitious. It is stated that the plaintiff did not file any bill or statement of account or any other document except a single notice on which the plaintiff is raising the foundation of its claim. It is claimed that while dealing with the plaintiff, the defendants developed friendly relations with the plaintiff. A friendly loan of Rs.1,00,000/- was sought by the plaintiff, which was duly given by defendant no.1. However, plaintiff has mis-used the same and filed a complaint against defendant no.1. In order to avoid litigation, defendant no.1 paid a sum of Rs.1,00,000/- to the plaintiff. It is denied that the said payment was part payment towards discharge of liability towards the plaintiff. Dismissal of the suit was sought. Replication was not filed.

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Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i) Whether the plaintiff is entitled to recovery of Rs.3,57,633/- alongwith interest as prayed for?OPP.
- ii) Whether the suit of the plaintiff is not maintainable in the present form ?OPD
- iii) Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD.
- iv) Whether the suit is barred by limitation? OPD
- v) Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case concluded that the plaintiff successfully proved his case on the basis of the evidence on record. Accordingly, suit was decreed vide the impugned judgment and decree dated 15.09.2015.

Appeal filed by the defendants/appellants was dismissed by the learned Additional District Judge, Faridabad vide impugned judgment and decree dated 28.05.2018. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants-defendants vehemently argues that the plaintiff has miserably failed to prove its case against the present appellants. There is no evidence on record to show that any material whatsoever was delivered or supplied to the defendants for which the liability of the defendants arose. It is further submitted that the books of account relied upon by the learned Courts below are not sufficient to prove

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the case of the plaintiff. Reference is made to Section 34 of the Evidence Act. It is further argued that proper accounts were not maintained by the plaintiff and the account books relied upon are inadmissible in evidence. The original account books, it is contended, were never produced before the learned trial Court. While relying upon the judgment of the Hon'ble Supreme Court in *Ishwar Dass Jain Vs. Sohan Lal (2000) 1 SCC 434*, it is contended that no sanctity can thus be attached to such documents. It is, thus, prayed that the present appeal be allowed and the judgments and decrees of both the Courts below be set aside.

I have heard learned counsel for the appellants and I have gone through the file with his assistance.

It is a matter of record that the present appellants have not specifically denied business relations between the plaintiff and the defendant firm. A perusal of the file reveals that business relations between the plaintiff and the appellant firm cannot be disputed. It is further a matter of record that the defendants/appellants have not come out with a specific and categorical stand to the effect that no material whatsoever was ever supplied to the defendants by the plaintiff at any point of time for a particular cost. It is rightly observed by the learned trial Court that the present is a case where there is evasive denial, which amounts to admission. Reference to Section 34 of the Evidence Act by learned counsel for the appellants is of no avail. This is so for the reason that the evidence on record clearly points to business relations as well as the financial liability of the defendants towards the plaintiff. As per the account statement there are

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admittedly various entries in the debit account as well as the credit account and when the account was settled on 31.03.2011, a sum of Rs.3,57,633/- was found outstanding towards the defendants. There is indeed no evidence on record to show that the said accounts are incorrect or that the documents are forged and fabricated as alleged by the appellants. A sum of Rs.1,00,000/- was issued by way of a cheque, which was dishonored on representation before the bank. The stand taken by the defendants is that during the dealings with the plaintiff, friendly relations had developed and a loan of Rs.1,00,000/- was given to defendant no.1 by way of a cheque but the same was mis-used by the plaintiff and a complaint was filed against defendant no.1 and it is only in order to avoid litigation that defendant no.1 paid a sum of Rs.1,00,000/- to the plaintiff. Such a defence has been rightly discarded by the Courts below. It is correctly observed by the learned trial Court that the case set up by the plaintiff coupled with the stand taken by the defendants in the written statement and the fact that a sum of Rs.1,00,000/- was paid by defendant no.1 to the plaintiff, indicates a credibility attached with the statement of account.

It is a matter of record that despite having practically admitted the business relations, the present appellants chose not to produce their own statement of account for proving that the outstanding amount was nil or that the plaintiff was relying upon the forged documents. Reference has rightly been made by the learned Additional District Judge, Faridabad to the suggestions put to PW-2 to the effect that all the bills Ex.PW2/13 to Ex.PW2/15 were forged and fictitious to indicate that bills Ex.PW2/13 to

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Ex.PW2/15 were considered genuine by the defendants. If this is so, payment qua the said bills was clearly not proved. The judgment of the Hon'ble Supreme Court in *Ishwar Dass Jain's* case (supra) relied upon by learned counsel for the appellants is not applicable to the facts and circumstances of the present case.

Both the learned courts below have rendered concurrent findings of fact against the appellants on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument has been raised.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 15.09.2015, passed by the learned Addl. Civil Judge (Senior Division), Faridabad as well as judgment and decree dated 15.09.2015, passed by the learned Additional District Judge, Faridabad, respectively, which calls for any interference by this Court in second appeal.

Accordingly, this appeal is dismissed in limine with no order as to costs.

As the appeal is finally decided, no separate orders are required to be passed in any pending applications, if any.

July 04, 2019.

Sunil

**(LISA GILL)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No