

RSA No.5487 of 2017 (O&M)

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

RSA No.5487 of 2017 (O&M)

Date of decision:22.05.2019

Sudarshan Kumar Mittal

... Appellant

Vs.

Arjun Singh Rathore

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vijay Rana, Advocate for
Mr. Abhishek Arora, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present regular second appeal at the instance of the appellant-defendant is directed against the judgment and decree of the Lower Appellate Court whereby suit of the respondent-plaintiff for recovery of Rs.1,65,000/- along with interest at the rate of Rs.12% per annum from 22.5.2010 till realization, dismissed by the trial Court, has been decreed.

The respondent-plaintiff alleged that he alongwith defendant established that the firm M/s Jagdambay Builder having the share holding of 50% each. The firm during its existence had taken the loan from one Megma Leasing Company for buying the JCB Machine. As per the terms and conditions of the loan agreement, in case of any dispute contained arbitration clause, sought the intervention of the Arbitrator resulting into passing of the award dated 24.6.2006. The objections were filed which were dismissed and had to pay the entire amount. Since the liability was co-incident, i.e. jointly and severally, sought the recovery of half amount

along with interest.

The defendant opposed the suit and raised the objection qua maintainability. On merit, it was stated that machinery of the firm was taken into possession by Megma Leasing Company due to default of loan amount. In such circumstances, the plaintiff had no right for making the payment and the liability could not have been fastened upon the defendant. The plaintiff neither gave any statement of accounts in execution proceedings.

The plaintiff in support of the pleadings examined two witnesses and brought on record Ex.P1 to Ex.P9 alongwith Ex.P8/A and Ex.P9/A. On the other hand, defendant did not lead any evidence despite availing sufficient opportunities.

Mr. Vijay Rana, learned counsel appearing on behalf of the appellant submitted that the the trial Court dismissed the suit by taking into consideration the provisions of Section 69(1) of Indian Partnership Act as the suit ex facie against the un-registered firm was not maintainable but the Lower Appellate Court has erroneously reversed the findings on the ground that appellant was not a party in the award or execution proceedings, therefore, judgment and decree under challenge is not sustainable.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Rana, for, the factum of existence of the firm, machine having been taken on loan and its payment, is not in dispute. The objection of Mr. Rana, not accepted by the Lower Appellate Court, cannot sustain as from memo of parties. The provisions of Section 69

(1) of Indian Partnership Act, cannot be pressed into service as defendant-appellant is not firm.

As regards non-impleadment, on bare perusal of the copy of the execution application handed over to the Court during the course of hearing, revealed that M/s Jagdambay Builder, partnership firm was respondent No.1. The liability of the parties was of co-extensive, when the partner discharged the liability with regard to loan, it does bar him to seek recovery in accordance with law.

The appeal is also accompanied by an application seeking condonation of delay of 107 days in filing the appeal. The explanation given in the application is bereft of the reasoning.

As an upshot of my findings, arguments of Mr. Rana, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Lower Appellate Court. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed on limitation as well as on merits.

	(AMIT RAWAL)
	JUDGE
May 22, 2019	
savita	
Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No