

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

**RSA No.6071 of 2017 (O&M)
Date of Decision.08.05.2019**

ACC Ltd. and another
Vs
...Appellants

M/s Satish Steels Works and another
..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

-:-

AMIT RAWAL J. (ORAL)

C.M. No.15888-C of 2017

For the reasons stated in the application, delay of 174 days
in re-filing of the appeal is condoned.

Application is allowed.

Main case

The appellants-defendants No.1 and 2 are in regular
second appeal against the concurrent finding of fact whereby the suit
for recovery of ₹97000/- (₹50,000/- as principal amount and remaining
as interest and damages) has been decreed to the extent of Rs.50,000/-
along with interest @12% per annum from the date of payment till the
date of realization.

Plaintiffs alleged that defendant No.3 agent of defendants
No.1 and 2 was placed an order for purchase of cement and had paid a
sum of ₹50,000/- as advance through banker's cheque dated 03.11.2005
but the said goods were not supplied and therefore, the suit was filed.

Defendants No.1 and 2 contested the suit and admitted that
defendant No.3 is representative but feigned ignorance of the cheque

issued by plaintiff and stated that they did not supply material direct to the consumer but through dealers.

Defendant No.3 stated that he had already supplied cement bags against the bills and he was ready to furnish copy of the bills of cement bags supplied to the plaintiff.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled to recovery as prayed for from the defendants? OPP*
- 2. Whether the plaintiff is entitled to pendente lite and future interest on the principal amount? If so at what rate? OPP*
- 3. Whether the suit of the plaintiff is not maintainable? OPD*
- 4. Whether the suit is barred by they limitation? OPP*
- 5. Whether no privity of contract exists between the plaintiff and defendants No.1 and 2? OPD 1 & 2*
- 6. Whether the plaintiff has concealed the material facts from the court? OPD*
- 7. Relief.”*

The plaintiff examined two witnesses whereas defendants examined two witnesses and tendered bills Ex.D3 to D5, receipt of bills Ex.D3/A to Ex.D5/A.

Mr. Ankit Chowdhri, learned counsel appearing on behalf of the appellants submitted that the aforementioned bills and the receipts established that defendant No.3 had supplied cement bags to the plaintiff but the Courts below have rejected the aforementioned documents in the absence of any ledger account or account book of firm. Respondent-plaintiff did not discharge the onus of non-receipt of

the goods as no gate pass was produced. At the best, recovery right should be granted to defendants No.1 and 2 from defendant No.3.

I am afraid aforementioned argument is not sustainable, for, the aforesaid receipts did not establish receipt of goods. Though the receipt showed name of the firm but name of person who received the goods was not mentioned. If at all there was some truthfulness, nothing prevented the defendant No.3 or defendants No.1 and 2 to insist upon him to place on record the ledger books or account books to establish that actually bills have been issued for the bags of cement supplied to the plaintiff. Since the relationship of defendant No.3 with defendants No.1 and 2 is of an agent, recovery rights cannot be given to defendants No.1 and 2 in the absence of any contract of liability or indemnity being placed on record. It is also matter of record that aforementioned receipts were not confronted to the witnesses of the appellants, thus, the onus laid upon defendant No.3 remained undischarged.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 08, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No