IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-6150-2017 (O&M)
Date of decision: 25.09.2019

M/s Aggarwal Feed Mill and another

...Appellants

Versus

Dinesh Bansal

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

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

Mr. Harish Sharma, Advocate for the respondent.

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H.S. MADAAN, J.

CM-5141-C-2019

This is an application under Order 41 Rule 27 read with Section 151 CPC for producing additional evidence to prove the bills, vide which the defendants/appellants had purchased molasses from various sugar mills/traders. The appellants want to produce original bills, original transport receipts, original excise receipts etc., with regard to those purchases to show that the appellants had purchased molasses from different sources during the year 2004-05 and not from the respondent. According to the appellants, these documents are necessary to assist the Court to arrive at a just decision and to pronounce the judgment.

The application is being opposed vehemently on behalf of the respondent/plaintiff, contending that such document have no relevance at all to the present controversy; the application filed is highly belated and if allowed, would result in a new trial. Even otherwise, these documents were within knowledge of the appellants/defendants from the beginning and could have been produced by them before the trial Court. They could have moved similar application before Ist Appellate Court but they did not do so. Therefore, the application cannot be allowed at this stage.

After hearing learned counsel for the parties and going through the record, I find that the application is doomed for failure. It does not come within four corners of Order 41 Rule 27 CPC. There appears to be little relevance of such documents to the controversy between the parties. The transactions between the parties were independent. The defendants might have been purchasing molasses from other sources also but that does not go to show that they had not purchased molasses from the plaintiff. The application is highly belated. If allowed, it would put the clock back, amounting to reopening of the trial. The documents proposed to be placed on record by way of additional evidence are certainly not required by this Court for arriving at a just decision. The application is without merit and is dismissed accordingly.

Main Case

Briefly stated facts of the case are that plaintiff-Dinesh Bansal, proprietor of Dinesh & Company, Molasses Dealers, Ludhiana had brought a suit for recovery of Rs.1,21,612/- against defendants i.e. M/s Aggarwal Feed Mill, Moga and its proprietor Rajiv Aggarwal Pappi on the averments that there had been business transactions between the parties during the course of which, the plaintiff supplied molasses to the defendants as per details below:-

Bill No.	Date	Weight	Amount
99553	16.02.2015	162.15 quintals	Rs.1,21,612/-

The defendants had not paid the said amount to the plaintiff despite repeated requests and demands and issuance of a legal notice dated 29.05.2007 giving rise to a cause of action to the plaintiff to bring the suit for recovery in the Civil Court.

On notice, the defendants appeared and filed written statement, contesting the suit, taking various legal objections, contending that the suit was not maintainable; that the plaintiff had suppressed the material and true facts from the Court; that the suit was barred under Order 2 Rule 2 CPC; that the plaintiff did not have any locus standi to bring the suit. On merits, the defendants denied having purchased any molasses from plaintiff or being liable to pay any amount to the plaintiff in that regard. According to the defendants, the plaintiff had brought the suit on the basis of forged and fabricated documents. As a matter of fact, the plaintiff had purchased cattle feed from the defendants and in discharge of his liability as part payment, issued cheques in favour of the defendants, drawn at PNB, Mukerian. However, on presentation, the cheques were dishonoured. The defendants brought complaints under Section 138 of the Negotiable Instruments Act against the plaintiff in the Court of JMIC, Moga and the plaintiff had filed the civil suit as a counter blast to those complaints. Refuting the remaining assertions, the defendants prayed for dismissal of the suit.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled for relief of recovery of Rs.1,21,612/- from the defendant? OPP
2. Whether the plaintiff is entitled to charge interest if so and what rate. OPP
3. Whether this suit is not maintainable in the present form? OPD
4. Whether the suit of the plaintiff is barred under Order 2 Rule 2 CPC? OPD
5. Whether the plaintiff has concealed the material facts from the Court? OPD
6. Whether the plaintiff has no locus standi to file the present suit? OPD.
7. Relief.

Parties were afforded adequate opportunities to lead evidence in support of their respective claims. During the course of evidence of plaintiff, he examined PW-1-Mohinder Singh, Senior Tax Assistant, Income Tax Department, Moga and PW-2 Rakesh Joshi, Accountant, Patiala Distillers and Manufacturers Ltd.

In rebuttal, the defendant No.1 Rajiv Aggarwal examined himself as DW1 and produced on record copy of judgment Ex.D1.

After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.) Moga decided issues No.1 & 2 in favour of plaintiff and against the defendants, issue Nos.3 to 6 were decided against the defendants and in favour of the plaintiff and vide judgment and decree dated 20.05.2014, suit of the plaintiff was decreed for recovery of Rs.1,21,612/- with interest @ 6% p.a. from the date of filing of suit till realization, besides costs of the suit.

Feeling aggrieved by the said judgment and decree, the defendants had preferred an appeal before District Judge, Moga, which was assigned to Addl. District Judge, Moga, who vide judgment and decree dated 21.08.2017, had dismissed the appeal, affirming the judgment and decree passed by the trial Court.

Still feeling dissatisfied, the defendants have approached this Court, by way of filing Regular Second Appeal, notice of which was given to plaintiff-respondent who has put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Both the Courts below, considering the pleadings of the parties and analyzing the evidence brought on file by the contestants, have come to the conclusion that the plaintiff had supplied molasses, total weighing 162.15 quintals to the defendants, vide various bills and the defendants owed that much amount to the plaintiff. Therefore, the plaintiff was entitled to recover that amount from the defendants. The defendants had raised various objections which were properly dealt with by the Courts below and then rejected. It was specific case of the plaintiff that the defendants had purchased molasses from the plaintiff for supply to Patiala Distillers and Manufacturers Ltd. and original bills were sent to defendants along with supply of molasses, whereas, carbon copies were retained. The defendants had supplied that material to Patiala Distillers and Manufacturers Ltd., receiving payment by way of demand drafts but did not make any payment to the plaintiff. That explains the reason that why the original bills were not placed on record by the plaintiff. Though, the defendants had taken up a plea that the plaintiff had purchased cattle feed from them and had issued cheques to discharge his liability for the price of cattle feed, those cheques had bounced and the defendants had brought five complaints under Section 138 of the Negotiable Instruments Act against the plaintiff, where the matter was compromised and the plaintiff had paid a sum of Rs.4 lacs to them; the present suit is a counter blast to those complaints. However, the Courts below had rightly rejected the said contention for the reason that it was a different transaction which stood compromised and the plaintiff had independent cause of action to recover the price of molasses, weighing 162.15 quintals, supplied by him to the defendants. Though the defendants have dubbed those bills as forged and fabricated documents but they have failed to prove that it was so. Admittedly, the defendants have not initiated any action against the plaintiff for indulging in any alleged forgery or fabrication to slap wrong pecuniary liability upon the defendants. While accepting the claim of plaintiff against defendants, the trial Court has noticed that DW-1 Rajiv Aggarwal had identified his signatures on copies of income tax returns Ex.P1 and Ex.P2 as well as balance sheet filed by defendant's company which corroborate the case of the plaintiff. PW-2 Rajesh Joshi, Accountant of Patiala Distillers and Manufacturers Ltd. had brought the ledger account statement for the period from 01.04.2004 to 31.03.2005 with regard to the purchase of molasses besides other record deposing that their company had purchased molasses from M/s Aggarwal Feed Mills and had made payment vide seven demand drafts, the total amount of which being Rs.12,77,023/-. The trial Court has further taken notice of the fact that during the pendency of the suit, plaintiff had moved an application for directing the defendants to produce sale tax return, balance sheet and bank statement of defendant's firm for the year 2004-05 and 2005-06 but the defendants refused to do so. Thereafter, the plaintiff had summoned the record from income tax authority. PW-1 Mohinder Singh, Senior Tax Assistant, Income Tax Department, Moga had brought attested copy of income tax return filed by the defendants for assessment years 2005-06 Ex.P1 and 2006-07 Ex.P2. He further placed on record copy of audit report prepared by Aggarwal Ashok Kumar and Associates. The trial Court has observed that the plaintiff had sold molasses to defendants worth Rs.12,80,323/-, vide bill Nos.00545 to 00553 dated 25.03.2005 to 30.03.2005 and in all those bills, the vehicles used for transportation of molasses were certainly the same which were mentioned on the bills of Patiala Distillers and Manufacturers Ltd. However, as stated by PW-2, the price of molasses supplied had been received by the defendants, vide various demand drafts. The plaintiff had successfully proved his case by bringing enough cogent, convincing and reliable oral as well as documentary evidence on record, whereas, the defendants could not establish their version satisfactorily.

Learned counsel for the appellants has referred to judgment by the Apex Court title **Vishwanath Vs. Sau. Sarla Vishwanath Agrawal** in Civil Appeal No.4905 of 2012 decided on 04.07.2012, wherein it was observed that when the Courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the Court below are sustainable in law while hearing an appeal under Section 100 of CPC. There cannot be any dispute with such proposition of law but here there is nothing on record to show that the Courts below have wrongly rejected and disbelieved the evidence, which should have been taken into consideration, rather, the Courts below have properly analyzed the evidence and the findings recorded by them are appropriate. Those are certainly not perverse. Therefore, this judgment does not help the case of the defendants.

With regard to the next judgment by the Apex Court i.e. **Sebastiao Luis Fernandes (Dead) thr. LRs & Ors. Vs. K.V.P. Shastri (dead) thr. LRs and Ors** in Civil Appeal No.6183-2001, decided on 10.12.2013, it was observed therein that the general rule is that the High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions had been enumerated:-

> *(i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no*

evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding." We have to place reliance on the afore-mentioned case to hold that the High Court has framed substantial questions of law as per Section 100 of the CPC, and there is no error in the judgment of the High Court in this regard and therefore, there is no need for this Court to interfere with the same.

Again this judgment does not help the appellants since their case is not covered by any of the exceptions given in the judgment.

Similarly, the other judgment referred to by learned counsel for the appellant i.e. **Ashok Kumar Vs. Aman Kumar & Ors.** 2010(2) ICC 211, **Ram Niwas Vs. Kalu Ram & Anr.** 2012(3) PLR 190, **Darshan Kaur Vs. The Amritsar Primary Cooperative Agricultural Development Bank Ltd., Amritsar & Anr.** in RSA-4108-2007, decided on 01.12.2009, **M/s Khushal Chand Jagdish Rai of Jalabad Vs. Hakam Singh** in RSA-439-1986 decided on 14.01.2014 and **Sudir Engineering Co. Vs. Nitco Roadways Ltd.,** 1995(34) DRJ 86, are not helpful to the case of appellants due to different facts and circumstances and the context in which such observations had been made.

The judgments passed by the Courts below are detailed and well reasoned, based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein. No reason is there to upset the concurrent findings recorded by the Courts below to the effect that defendants owe the suit amount to the plaintiff as price of the molasses supplied by the plaintiff to the defendants. The defendants are naturally liable to pay that amount. They are further liable to pay interest for withholding the said money due to the plaintiff. The interest awarded @ 6% p.a. is very proper and appropriate and can certainly be not taken to be on higher side. There is absolutely no merit in the appeal. No substantial question of law arises. Therefore, the appeal stands dismissed.

25.09.2019 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No