

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

**SAO No.59 of 2018 (O&M)
Date of Decision: March 19, 2019**

Riva Industries Limited

.....APPELLANT

VERSUS

M/s V.Gupta Associates and another

....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Anil Kumar Aggarwal, Advocate
for the appellant.

Mr. Mohit Jaggi, Advocate
for the respondents.

SURINDER GUPTA, J.(Oral)

Heard.

In the civil suit filed by Veena Gupta Proprietor of M/s V. Gupta Associates against Riva Industries Limited following issues were framed:

1. Whether the plaintiff is entitled to recovery of Rs. 1,38,336.60 as principal amount along with Rs. 41,490/- as interest from the defendant? OPP.
2. Whether the plaintiff is entitled to any future interest?? OPP.
3. Whether the plaintiff is estopped from filing the present suit by her own act and conduct? OPD.
4. Whether the plaintiff has no cause of action to file the present suit? OPD.

5. Whether the suit is not maintainable in its present form? OPD.
6. Whether the present suit is false, fabricated and fictitious and filed with malafide intention? OPD.
7. Relief.

In the civil suit filed by Riva Industries Limited against M/s V.Gupta Associates and another following issues were framed:

1. Whether the plaintiff is entitled to recover the suit amount as prayed for? OPP.
2. Whether the plaintiff is entitled to claimed interest? OPP.
3. Whether the suit is not maintainable? OPD.
4. Whether the suit is liable to be stayed as per Section 10 CPC? OPD.
5. Whether the suit is within limitation? OPP.
6. Whether the plaintiff has not properly verified the facts of the present case? OPD.
7. Relief.

In the civil suit filed by M/s Veena Gupta Associates, the findings on issues No. 1 and 2 were recorded against the plaintiff and in favour of defendants and findings on issues No. 3 to 6 were recorded against the defendants and in favour of the plaintiff.

In the civil suit filed by Riva Industries Limited, the findings on issues No. 1 and 2 were partly recorded in favour of plaintiff and findings on issues No. 3 to 6 were recorded against the defendants and in

favour of plaintiff.

In appeal, the Ist Appellate Court set-aside the judgment of lower Court on the ground that the trial Court has not discussed the contention raised by M/s Veena Gupta Associates regarding reference of matter to Arbitrator and regarding non-maintainability of suit on that account.

Learned counsel for the parties submit that earlier the matter was referred to the Arbitrator, who disposed of the same on the ground that it was barred by limitation.

Learned counsel for the appellants submits that Riva Industries Limited filed appeal under Section 34 of Arbitration Act which was allowed on 17.09.2010 with the observations that the matter referred to the arbitrator was within limitation and directions were given to the arbitrator to proceed further and decide the case on merits.

M/s V.Gupta Associates and another filed appeal against the order of the Ist Appellate Court (FAO No. 7184 of 2010) under Section 37 of Arbitration Act. In the meanwhile, both the parties filed separate civil suits claiming recovery of the amount from the other party. The suit filed by Veena Gupta Proprietor of M/s V.Gupta Associates was dismissed while suit filed by Riva Industries Limited was partly allowed and this fact is not disputed by both the parties that before filing the written statement, none of parties had moved any application seeking reference of the dispute to the arbitrator.

Learned counsel for M/s V.Gupta Associates submits that objections to this effect were taken in the written statement filed in civil

suit instituted by M/s Reeva Industries Limited.

The question which arises for consideration is as to whether the Ist Appellate Court was correct while setting aside judgment of the trial Court on the ground that reference of matter to the arbitrator and non-maintainability of the suit on that account is required to be seen by trial Court. The entire record was before the Ist Appellate Court and it could decide the matter on merits after hearing learned counsel for the parties in both the appeals. It appears that the Ist Appellate Court adopted a short-cut method of disposing of both the appeals by observing that the trial Court should see the effect of the pendency of the matter before the Arbitrator. Effect of pendency of the matter before the Arbitrator could be seen and commented upon by the Ist Appellate Court, if so required or pressed by counsel for the parties. Order passed by Ist Appellate Court remanding the case to trial Court is not as per the spirit of provisions of Order 41 Rule 23, 23-A or 25 CPC.

In view of the above, the order passed by the Ist Appellate Court is set aside. The parties are directed to appear before the Ist Appellate Court/Successor Court, Patiala on 11.04.2019. The Ist Appellate Court will take up the files of both the appeals on Board and proceed to decide the same after hearing learned counsel for the parties in accordance with law.

March 19, 2019
Jyoti-II.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No