Dl. 25. December 14, 2020

S.A.T. 175 of 2014

Mr. Madan Mohan Verma,
…for the appellant.

In a suit for recovery of money, the trial judge as well as the learned judge in the first appellate court have passed a money decree against the present appellant.

The second appeal is directed against the appellate decree. The appellate decree is one of affirmation of the decree passed by the trial court. However, the appellate decree while affirming the decree of the trial court although do not subscribe to the views expressed by the trial court with regard to the provisions of Order XII Rule 6 of the Code of Civil Procedure, but on the analysis of the facts and evidence on record affirmed the decree of the trial court.

The plaintiff/respondent filed the suit for recovery of a sum of Rs. 1,41,948.21 p. under two bills followed by two several letters of demand. The claim has arisen out of goods sold and delivered.

The case of the plaintiff/respondent, in short, is that the plaintiff supplied high speed diesel and other petroleum products to the defendant/appellant. The defendant although have dealt with the said products but did not pay off the bills. The two credit vouchers aggregating to a sum of Rs. 1,12,657/- (Rs. 55,417/- and Rs. 57,240/-) had remained unpaid in spite of demands. Hence, the suit.

The defendant/appellant contested the said suit by filing written statement. The defendant alleged that the plaintiff introduced one Subrata Sarkar, who used to carry business of construction of building and requested the defendant to supply materials as might be required by him. The plaintiff assured to be a guarantor on behalf of Sri Subrata Sarkar. Sri Sarkar had failed to pay a sum of Rs. 7,00,000/- to the defendant arising out of a transaction which the defendant had with Sri Sarkar. The defendant further alleged that he sought intervention of the plaintiff and that the plaintiff advised Sri Sarkar to clear the dues of the defendant. On such advice, Sri Sarkar agreed to pay Rs. 3,00,000/- within March 1, 2001 and the balance Rs. 4,00,000/- within April 2001. Thereafter the plaintiff persuaded the defendant to allow it to avail the said amount of Rs. 3,00,000/- to be paid to the defendant against the fuel bills as the plaintiff required the said amount for its yearly realisation and the defendant also agreed to such proposal of the plaintiff. Sri Sarkar, accordingly, paid Rs. 3,00,000/- through banker's cheque drawn in the name of the plaintiff with intimation to the defendant over phone. Sri Sarkar further paid Rs. 3,00,000/- to the defendant by way of another cheque dated April 2, 2001, but the said cheque was dishonoured.

On behalf of the plaintiff, two witnesses gave evidence. One power of attorney holder, however, deposed on behalf of the defendant.

It transpires from the evidence adduced before the court below and as recorded by the appellate court that although the credit vouchers bear all rubber signatures and there is no ink signature of the defendant, Exhibit 3-series, showing the demand of the plaintiff on account of the goods supplied for which a sum of Rs. 1,12,657/-

was due, stands admitted. The defendant did not respond to the said letters. However, before the trial court as well as the first appellate court for the first time the defendant had made out a case of liquidation of the said amount is dependent upon discharge of liability by Subrata Sarkar for whom the plaintiff stood guarantor. This fact has to be proved by the defendant. The defendant had not come to the witness box. The defendant was represented by his power of attorney holder.

The learned trial judge has rightly relied upon the decision of the Hon'ble Supreme Court reported in A.I.R. 2005 S.C. 439 to the effect that the power of attorney holder can only depose as to facts which he performed in discharge of his duties under the power of attorney and not any other facts which are within the knowledge of the defendant. The defendant has failed to establish that the release of the aforesaid amount in favour of the plaintiff is dependent upon Subrata Sarkar fulfilling his obligation towards defendant in respect of contract entered into between the plaintiff and Subrata Sarkar. The privity of contract between the plaintiff and Subrata Sarkar in relation to the present transaction is not established, nor it is established that the plaintiff has any obligation to ensure payment by Subrata Sarkar to the defendant as a condition precedent for payment of the outstanding dues of the plaintiff. The claim of the plaintiff cannot be denied.

It was on such consideration, we feel that the appellate court was justified in affirming the judgment and decree passed by the trial court.

This second appeal is, therefore, summarily dismissed under Order XLI, rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

(Soumen Sen, J.)

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(Saugata Bhattacharyya, J.)