

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

**RSA 2500 of 1993
Date of Decision: February 14, 2020**

M/s Arya Brothers and others ...Appellants
Versus
M/s Bhai Santokh Singh and Co. and others ... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. C.B. Goel, Advocate
for the appellants.

None for the respondents.

FATEH DEEP SINGH, J. (Oral)

The Court of learned Senior Sub Judge, Jagadhri vide judgment and decree dated 06.04.1993 decreed the suit of the plaintiff M/s Bhai Santokh Singh and Co. Timber Merchants awarded against the then defendants present appellants M/s Arya Brothers and others a decree of the recovery of Rs. 4,98,55/- as principal amount, Rs. 2,48,50.83/- as interest totaling to Rs. 7,47,05.83/- Alongwith this amount, the plaintiff was awarded interest @ 18% per annum w.e.f. 27.04.1987 till

the recovery. The plaintiff and the defendants were having business relationship, whereby, the plaintiff used to supply to the defendants goods against bills and during the course of presentation some of the cheques of the defendants firm were dishonored by their bankers and when the defendants failed to make payment, the plaintiff filed the suit for recovery of the amount.

The defendants in this stand though admitted, *inter-se*, relationship that they were running a business but claimed that the plaintiff was supposed to give discount at the rate of 4% on the bill amount and, thus, denied the averments of the plaintiff.

The trial Court on the basis of pleading framed the following issues:-

1. Whether the plaintiff firm is a registered firm and Shri Kuldeep Singh is authorised to file and verify the plaint on behalf of the plaintiff firm being its partner?OPP.
2. Whether the plaintiff firm agreed to sell timber on the market rate prevailing on the date of purchase less 3% discount on all purchases to the defendant firm as alleged in para No. 3 of the plaint?OPP.
3. If issue No.2 is proved whether the plaintiff firm supplied timbers to the defendants as alleged in

para No. 4 of the plaint? OPP.

4. If issues No.2 and 3 are proved whether the plaintiff firm is entitled to recover a sum of Rs.99711-09 paise as principal amount as alleged in the heading of the plaint? OPP.
5. Whether the plaintiff is entitled to interest. If so at what rate and to what amount?OPP.
6. Whether the suit is not maintainable in accordance with the provisions of Order 37 CPC? OPD.
7. Whether the suit is barred by limitation? OPD.
8. Whether defendant No. 1 had not ever conducted business through defendant No. 2 with the plaintiff. If so to what effect? OPD.
9. Relief.

Plaintiff examined PW1 Kuldeep Singh one of the partners of the plaintiff firm and proved their stand on the basis of documents Ex.P1 to P37. The defendants did not lead any evidence and consequent thereupon, the impugned findings were passed.

Heard Mr. C.B.Goel, Advocate the appellants and perused records of the case.

It is well settled principle that the pleadings are the very foundation of a case of the party. It is duly admitted in the written statement of the appellants as to the business

transaction being carried on between them. The plaintiff through its partner PW1 Kuldeep Singh has duly proved on record the bills Ex.P3 to P37 as to the supply of goods and the amount due towards defendants which remained unpaid by them. The defendants have not led any evidence to rebut the stand of the plaintiff and, therefore, irrefutably leads to the conclusion that they invariably accepts the case of the plaintiff.

The lone point raised before this Court by Mr. C.B. Goel, learned counsel for the appellants is as to suit was being barred by limitation having been filed after the period of limitation of 03 years. Heard the appellant side as none appeared for others. Section 19 of the Limitation Act, 1963 holds that by virtue of these provisions any person, who makes acknowledgment of an amount due and makes part payment and acknowledges the liability, the limitation needs to be commuted when the last payment was made.

Reverting back to the instant case, it shows that the statement of the account establishes beyond any doubt that the defendants had issued a cheque of Rs.10,000/- dated 30/31.07.1984 and, therefore, acknowledges the outstanding amount, in respect of which, this cheque was issued. The suit has been filed on 27.04.1987 and clearly within three years of this acknowledgment, the learned Senior Sub Judge while adjudicating on issue No. 7 held it so and so the Court of

Additional Sessions Judge, which dismissed the appeal through the impugned findings dated 05.06.1993 has shown concurrence with the trial Court findings on issue No. 7 and as while partly allowing the appeal had partly decreed the suit to the extent of Rs.3,37,11/- with proportionate costs and interest @ 12% from the date of institution of the suit till the realization of the amount. The same has never been challenged by the plaintiff who did not even appear. No other point was raised before this Court by any of the parties.

Thus, in the light of the above discussion, there appears to be no illegality or perversity in the impugned findings of the learned first appellate Court, which needs to be upheld and the appeal being without any merits stands dismissed.

February 14, 2020
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No