**In the High Court of Punjab and Haryana at Chandigarh**

**Date of Decision: 18.3.2020**

**RSA- 5149 of 2019 (O&M)**

**Lt. Col. Ajit Singh Malhi**

**---Appellant**

**versus**

**Brig. Gurinderjit Singh (retd.) through Lrs.**

**---Respondent**

**RSA- 5150 of 2019 (O&M)**

**Lt. Col. Ajit Singh Malhi**

**---Appellant**

**versus**

**Brig. Gurinderjit Singh (retd.) through Lrs.**

**---Respondent**

**Coram: Hon'ble Mrs. Justice Rekha Mittal**

Present: Mr. T.S.Doabia, Senior Advocate with
Mr. Shaktipal Singh Mann, Advocate
for the appellant(s)

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**Rekha Mittal, J.**

This order will dispose of RSA Nos. 5149 and 5150 of 2019 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 5149 of 2019.

Challenge in the present appeal has been directed against final decree dated 18.5.2009 passed in pursuance of preliminary decree dated 4.11.2003 by the Civil Judge (Junior Division), Chandigarh (hereinafter referred to as the "trial court") that came to be affirmed in appeal by the Additional District Judge, Chandigarh whereby the respondent-plaintiff is held entitle to Rs. 21,40,000/- with interest @ 9% per annum from the date of filing the application till realization on the basis of rendition of accounts in view of report prepared by Sh. K.B.Sood, Chartered Accountant appointed as local commission, on investigation of books of accounts of Ms. Sanchi Detectives.

Counsel for the appellant has assailed the impugned judgments primarily on two counts. It is argued that the appellant submitted documents to M/s K.B.Sood and Associates, Chartered Accountants and the same finds reference to letter dated 29.9.2005 Annexure A-1 (Colly) available on the records of trial court. A letter dated 23.2.1991 written by respondent to the appellant is also a part of Annexure A-1 (Colly) at pages 291 to 301. It is argued that in the said letter, in para (e), the respondent had admitted that Sanchi Security Company has been in operation for three years and it still needs pumping in money which means that they are running into losses continuously. According to counsel, contents of aforesaid letter amounts to admission of the respondent that Sanchi Security Company was running in losses, therefore, report prepared by the commission that there were profits earned by the partnership firm and entitlement of the respondent to more than Rs. 21 lakh on the basis whereof the final decree has been passed can not be allowed to sustain.

Another submission made by counsel is that the respondent filed the suit for dissolution of firm and rendition of accounts in the year 1992 but the local commission has prepared its report with regard to rendition of accounts upto the year 2006. It is argued that the partnership firm would stand dissolved on the date of filing of suit in the year 1992 and accounts could be rendered only upto the date of filing of the suit and not subsequent thereto. For this purpose, reliance has been placed upon judgment of this Court **Manohar Lal and others vs. Moti Lal and others 1974 PLR 251.** Reference has also been made to judgments of Hon'ble the Supreme court **Saligram Ruplal Khanna and another vs. Kanwar Rajnath 1975 (1) SCR 358** and **Ravi Parkash Goel vs. Chandra Prakash Goel and another 2007 (2) RCR (Civil) 529.**

I have heard counsel for the appellant, perused the paper book and records.

Before adverting to the submissions made by counsel, it is appropriate to note briefly the background of the case. Indisputably, the appellant and respondent entered into partnership for doing the business of supplying security personnel and labour etc. The respondent filed suit for dissolution of firm and rendition of accounts wherein the appellant was proceeded against ex parte. Later, he was allowed to argue the case. The proceedings culminated in judgment and decree dated 4.11.2003 passed by the Civil Judge (Junior Division), Chandigarh. A relevant extract therefrom reads as follows:-

> "............plaintiff has proved that defendant has not rendered the accounts of the partnership firm and he is therefore entitled to a decree of rendition of accounts. Accordingly, a preliminary decree is passed in favour of the plaintiff and against the defendant who is directed to render the accounts of M/s. Sanchi Security firm to the plaintiff and to settle the accounts of the plaintiff in the firm."

Indisputably, the decree dated 4.11.2003 attained finality. The respondent filed application for framing of final decree on the basis of preliminary decree dated 4.11.2003. The appellant filed objections to contest the application for final decree. Sh. K.B.Sood, Chartered Accountant was appointed as local commission and he submitted his report on the basis of investigation of the books of accounts. In view thereof, the appellant-defendant was held liable to pay a sum of Rs. 21,40,000/-. The trial court accepted report of the local commission and passed final decree dated 18.5.2009 that stands affirmed in appeal filed under Section 96 of the Code of Civil Procedure, 1908 (in short “the Code”).

Counsel, in response to a query, has expressed that letter dated 23.2.1991 sought to be pressed into service was not put to the respondent when he was examined as a witness in proceedings for preliminary decree. However, perusal of judgment dated 4.11.2003 would reveal that the respondent-plaintiff had relied upon certain communications and one of the letters is dated 23.2.1991. Counsel has not been able to prove, if letter to which reference has been made by appellant is the same letter that finds reference in the plaint of civil suit No. 228 of 1992. He also failed to point out if during the course of hearing before the trial court or appellate court, the appellant had raised any arguments on the basis of aforesaid letter, a part of document Annexure A-1 (Colly). Counsel for the appellant has not challenged findings of the trial court on the basis whereof an adverse inference has been drawn against the appellant and relied upon report of the commission. In this view of the matter, contention raised by counsel is not meritorious and is accordingly rejected.

This brings the court to second submission that accounts could be rendered only upto the date of filing of suit that culminated in preliminary decree dated 4.11.2003. Counsel has failed to point out any document on record to show that partnership between the parties was a partnership at Will. The appellant raised a plea that partnership firm stood dissolved in the year 1991 even prior to institution of the suit in September 1992 but failed to substantiate the same. In this view of the matter, the appellant can not derive any advantage to his contention from the judgment in **Manohar Lal and others' case (supra)** though in the said case, it was not the issue before the court if accounts could be rendered only upto the date of filing of the suit. This apart, there is nothing on record suggestive of the fact that appellant did not carry on the business of partnership subsequent to filing of the suit.

The Appellate Court, in para 17 of the judgment, has noticed that in the reply filed by the defendant, in response to application for final decree, no such objection has been raised that the firm had already been dissolved prior to filing of the suit and in the objections, objection is with regard to suspension of business since 1991 and not dissolution of partnership. Counsel has not disputed correctness of these factual observations made by the appellate court. The appellant did not produce the complete books of accounts in order to show that the firm did not transact any business subsequent to filing of the suit in the year 1992. In view of the above, the second contention raised by the appellant also sans merit, thus, untenable.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeals fail and are accordingly dismissed in limine. All miscellaneous applications shall be deemed to be disposed of.

**(Rekha Mittal)**
**Judge**

**18.3.2020**
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No