

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 2840 of 2011 (O&M)

Date of Decision: 25.02.2020

Maxorama Private Limited

... Appellant(s)

Versus

ITC Limited and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Bhriagu Dutt Sharma, Advocate
for the appellant.

Mr. Adarsh Jain, Advocate
for respondent No.3.

Anil Kshetarpal, J.

The plaintiff/appellant has filed the present regular second appeal against the judgement passed by the learned first Appellate Court reducing the amount decreed by the learned trial Court. The learned trial Court decreed a sum of ₹ 12,09,023.68 ps. along with interest at the rate of 6% per annum from the date of submission of bills till realization. Whereas the learned first Appellate Court has modified the decree and held that a sum of ₹ 5,76,630/- out of ₹ 12,09,023.68 ps. is not recoverable.

In a nutshell, the facts are that the respondent company manufactures cigarettes. Whereas the plaintiff/appellant was appointed as Carrying and Forwarding Agent as well as the Transport Contractor. In February, 2003, there was theft in the premises of the appellant for which FIR was registered on 09.02.2003. Ultimately, the Manager of the appellant company was arrested and 19 cartons of cigarettes along with ₹ 5,00,00/- in

cash was recovered from the said Manager. The defendant/respondent company applied for release of the goods as well as cash on *sapurdari*, which was allowed vide order dated 25.04.2003.

The contract in favour of the plaintiff/appellant company was terminated in May 2003. The plaintiff, thereafter, filed a present suit for recovery of ₹ 18,98,166/- including the amount of interest i.e. ₹6,89,143/-.

The defendants contested the suit and pleaded that no amount is payable as it was the C&F Agent who was liable for loss and damages suffered by the company as a result of any stock being lost, damaged or destroyed because of their or their employees, agents or contractors negligence, whilst the goods are under the custody of carrying and forwarding agents.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the judgements passed by the Courts below and the record.

Learned counsel for the appellant, on the one hand, submitted that once the possession of the cigarettes has been taken on *sapurdari* by the defendant/respondent company, therefore, the learned first Appellate Court erred in not awarding an amount of ₹ 3,54,000/- to the plaintiff. He submitted that there is no evidence to the effect that the aforesaid cigarettes, interim custody whereof was taken by the defendant company, were damaged or have been rendered useless resulting in loss to the defendant company. He, hence, submitted that the learned first Appellate Court has erred on this count.

On the other hand, learned counsel for the respondent has

submitted that as per the contract between the parties, it was the C&F Agent who was liable to compensate the defendants of any loss. He further submitted that the representative of the plaintiff, when appeared in evidence, has admitted that the cigarettes are delivered to the retailers within one or two months. He, hence, submitted that since the cigarettes remained in custody of the police for more than two months, therefore, they became worthless for the company and had to be destroyed.

This Court has considered the submissions of learned counsel for the parties and with their able assistance, has gone through the judgements passed by the Courts below and the record.

In the considered view of this Court, there is no evidence to prove that 19 cartons of cigarettes, interim delivery whereof was granted in favour of the defendant company, had suffered any damage or had to be destroyed. No doubt, as per the policy of the company, the cigarettes are normally delivered to the retailers within a period of one or two months, however, that itself would not be sufficient to assume that the cigarettes had suffered damage and had to be destroyed in absence of any categorical evidence to that effect. The appellant had, on coming to know of the theft, immediately lodged an FIR and got recovered the stolen material along with a sum of ₹ 5,00,000/-. When the defendant/respondent company filed an application for release of the cigarettes on *sapurdari*, the plaintiff/appellant had supported the same and had given no objection to the said application. The first application filed by the company was dismissed for non-prosecution, whereas the second application was allowed by the Court. Thus, the delay, if any, was on the part of the defendant/respondent company. Still

further, in absence of any evidence that the 19 cartons cigarette packets had suffered any damage or the defendant company was forced to destroy the same, the appellant cannot be deprived of the aforesaid amount.

Keeping in view the aforesaid facts, the judgement & decree passed by the learned first Appellate Court is modified and it is held that apart from what has been decreed by it, the appellant shall also be entitled to recover a sum of ₹ 3,54,0000/- from the defendant company along with the interest as awarded by the learned trial Court. Hence, the present regular second appeal is partly allowed.

The miscellaneous application(s), if any, shall also stand disposed of.

(Anil Kshetarpal)
Judge

February 25, 2020
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No