

S.No.114

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

RSA No.4826 of 2019 (O&M)

Date of Decision:16.01.2020

Aman Deep and another

.....Appellants

Vs.

Krishan Kumar

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Sumit Jain, Advocate for the appellants.

Rajbir Sehrawat, J.(Oral)

This is appeal filed by the defendant in a suit for recovery, challenging the concurrent findings recorded by both the Courts below, whereby the suit filed by the plaintiff was decreed against the appellants.

The brief facts of the case are that the plaintiff/ respondent filed the instant suit with the averment that he was doing the business of selling bath towels under the name and style of M/s Monika Enterprises at Panipat. The appellant was doing his business at Delhi under the name and style of M/s Blessings Advertisement Pvt. Limited. The defendant- appellant approached the plaintiff- respondent for supply of 35,000 bath towels of 550 grams per piece and demanded quotations from the plaintiff. The plaintiff supplied the quotation dated 01.05.2011. Being satisfied with the said quotation, the appellant- defendant ordered the supply of 20,000 pieces of towels on 04.05.2011 by coming at Panipat. The delivery of the material was to be made at Meerut with the specified terms of purchase and payment, as mentioned in the plaint. Accordingly, the plaintiff had supplied 20,000 towels in three lots. Accordingly, the part payments were also made on three different occasions, except for the 2040 towels. The appellant/

defendant raised a dispute with the plaintiff that 2040 pieces of towels were defective. Hence, a debit note was raised by defendant for adjustment of the amount of the bills. Accordingly, the said amount was adjusted as per the debit note raised by the appellant- defendant. However, despite the above-said part payment having been made, the amount of Rs.14.5 lakhs was still outstanding against the defendant/ appellant. The plaintiff served a legal notice dated 03.10.2011 upon the defendant to make the payment. Thereafter, another legal notice dated 13.06.2013 was also served upon the defendant. Despite that, on not getting the payments, the plaintiff had preferred the suit.

In the written statement, the appellant- defendant raised various objections regarding maintainability. However, on merit, it was specifically pleaded by the defendant that the agreement was for supply of 35,000 towels and the agreed rate was Rs.75/- per towel. It was to the knowledge of the plaintiff that the towels were to be supplied to the client namely “Mankind Pharma Limited”. However, the towels supplied by the plaintiff were of defective quality. Therefore, on account of defective towels, the defendant had to suffer loss of reputation, income and other losses; including the money spent on transport and arranging the another product for that client. So, a counter-claim of Rs.2 lakhs was also filed. Additionally, the defendant had specifically pleaded in his written statement that out of the total supply of 20,000 towels, 2040 towels were found to be totally defective.

The respective parties led their evidence. After appreciating the respective evidence of the parties, the trial Court decreed the suit filed by

the plaintiff and dismissed the counter claim filed by the appellant-defendant. The appellant- defendant preferred an appeal against the judgment passed by the trial Court. However, the Lower Appellate Court also dismissed the appeal filed by the appellant. That is how the present appeal has been filed.

While arguing the case, learned counsel for the appellant-defendant has submitted that the documents being relied in the suit are not the original copies of the documents. Only photostat copies have been placed on record. Although the same have been shown as exhibited, however, mere exhibition of the documents does not dispense with the requirement of the proof of the same, in accordance with law. Counsel has relied upon judgment of the Supreme Court rendered in **2015(4) RCR (Civil) 1023 – Rakesh Mohindra v. Anita Beri and others,** and accordingly, it is submitted by the counsel that since the documents in evidence have not been proved in accordance with law, therefore, the same could not be read against the defendant. Still further, it is submitted that the pleadings in the plaint itself show that no specific rate of supplied towels has been mentioned in the plaint. Therefore, there was no basis for plaintiff to raise a claim by presuming the piece rate of Rs.147.50 per towel. It is also submitted that the entire claim has to be proved by the plaintiff and he cannot rely upon the weakness of the evidence of the defendant. Still further, it is submitted that to substantiate his claim, the account books of the plaintiff have not been produced on record.

Having heard the learned counsel for the appellant and perusing the case file, this Court does not find any substance in the argument raised

by counsel for the appellant. Although counsel for the appellant is right in submitting that only the photostat copies of the documents have been placed on record by the plaintiff, however, the said documents have been held to be not proved in accordance with law even by the Lower Appellate Court and the same have not been relied upon, per se, by the Court. Therefore, the argument being raised by counsel for the appellant qua the admissibility of the said documents is irrelevant in the first place.

The dispute involved in this case, as specified by the Courts below; is only regarding the rate of the towel being supplied by the plaintiff. A bare perusal of the plaint shows that the plaintiff had not specified the rate per towel; as such; and to establish his claim, he has relied upon the bills of cumulative amounts; which were raised by him upon the defendant. However, in his pleadings, although supplies of 20,000 towels were not disputed by the defendant, but, defendant/ appellant has pleaded a specific rate i.e. Rs.75 per towel; for the supply involved in this case. Since it was the defendant who had claimed a specific rate of supply of the towels, therefore, it was a duty cast upon the defendant to prove this fact in accordance with law. However, undisputedly; no evidence has been led by the defendant to substantiate his claim that the agreed rate of the supplied towels was Rs.75 per towel. Hence, the assertion of the defendant that the rate of the towel supplied was Rs.75/- per towel remains not proved. The next question is; whether the rate of Rs.147.50 per towel, at which the bill is raised by the plaintiff was agreed rate or not? Although the counsel for the appellant has pointed out that even the pleadings raised in the plaint itself are suggestive of variations in the rates as compared to the claim made in

the plaint, however, the fact remains that it is not disputed that 20,000 towels were duly supplied by the plaintiff. The plaintiff claims that he had raised the bills at the rate of Rs.147.5 per towel. The defendants have not even disputed that they have made the part payments of the amounts raised in those bills. Still further, it is not denied that the defendant had never raised any dispute qua the rate as such while making part payments. The dispute, if at all, was raised was only qua quality of the towel. Hence, per se, it cannot be said that the plaintiff was wrong in raising the bill at the rate of Rs.147.50 per towel.

One more fact which deserves to be noted, and which has been heavily relied upon by the Courts below is; that while raising a dispute qua the quality of the towels supplied by the plaintiff, the defendants raised a dispute regarding quality of 2040 towels specifically. The defendants claimed an adjustment of the price of those towels; by raising a debit note dated 10.08.2011. Although the counsel for the appellant- defendant has also submitted in this regard that the said debit note, Ex.P.12, has not been proved on record, however, the Court below has rightly relied upon the testimony of the witnesses in this regard. It has come in evidence that during the cross-examination of the plaintiff, the defendant/ appellant himself has put a suggestion to the plaintiff qua raising this debit note, which was not denied by the plaintiff. In this way, the Court below has not committed any illegality in taking this document; as a document as having been admitted, or, at least; having not been disputed by the defendant/ appellant. Even leaving aside all other bills raised by the plaintiff; but by seeing this debit note only, it is clear that in this debit note, the defendants

themselves have stated the rate of towels to be Rs.147.5 per towel and had claimed adjustment of payments at this rate per towel. Hence, it is clear that although the defendants claimed in the written statement that the rate of towel was Rs.75 per towel, however, they had raised the debit note at the rate of Rs.147.50 per towel, which is the rate claimed by the plaintiff as well. Accordingly, this Court finds that the Courts below have not committed any irregularity or illegality in taking the agreed rate to be at the rate of Rs.147.50 per towel.

No other argument was raised.

In view of the above, the concurrent findings recorded by the Court below are pure findings of fact, requiring no interference from this Court.

Accordingly, finding no merit in the present appeal, the same is dismissed.

January 16, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No