

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-3949 of 2018 (O&M)
Date of decision: 02.03.2020

M/s Kamla Engineers through its Proprietor & Anr.

... Appellants

versus

M/s M.C.S. Auto Components through its proprietor

... Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Gaurav Singla, Advocate,
for the appellant.

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ARUN MONGA, J.

CM-10495-C-2018

Application is allowed, as prayed for and delay of 17 days in
filing the appeal stands condoned.

RSA-2915 of 2018

1. The defendant is before this Court in second appeal against the judgments and decrees passed by both the Courts below whereby plaintiff's suit for recovery of Rs.4 lacs along with interest has been decreed by the trial Court vide judgment and decree dated 31.08.2015 and appeal filed by the defendant/ appellant has been dismissed by the first Appellate Court vide judgment dated 20.01.2018.

2. Succinct facts as pleaded by the plaintiff are that there were business transactions between the plaintiff and defendant firms and an amount of Rs.4 lacs was outstanding against the defendant. A cheque was issued by the defendant, but that was not encashed. A legal notice was sent to the defendant, but no payment was made. Hence, the suit was filed.

3. The defendant admitted that there were business transactions between the parties, but denied that there was any outstanding liability. According to the defendant, against the unrealized cheque of Rs.4 lacs, the plaintiff was issued another cheque of the same amount, which he got encashed.

4. Based on the pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether plaintiff is entitled to a decree for recovery of an amount of Rs.4,00,000/-OPP*
- 2. Whether the plaintiff is entitled for the interest, if so at what rate?OPP*
- 3. Whether the suit is not maintainable in the present form?OPD*
- 4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*
- 5. Relief.”*

5. Both the parties adduced their respective oral and documentary evidence in support of their case and to discharge their respective onus as per issues *ibid*.

6. After analyzing the oral as well as documentary evidence adduced by the parties, the trial Court allowed the suit and granted decree in favour of the plaintiff for recovery of Rs.4 lakhs along with interest @ 6% per annum from the date of accrual till realization. Two months' time was granted to the defendant to make the payment. The first Appellate Court upheld the judgment and decree under challenge before it and dismissed the appeal filed by the defendant. Hence, this regular second appeal.

7. I have heard learned counsel for the appellant and have perused the judgments under challenge vis-a-vis the grounds of appeal raised before this Court.

8. It is apparent that issuance of first cheque in question and its non encashment were not disputed by the defendant. However, his stand was that against this cheque, the plaintiff was given another cheque, which he had encashed. This stand of the defendant was negated by the learned trial Court, on the basis of material on record and it was held as under:-

“19. In crux the plaintiff has alleged that the amount which was to be paid by the defendant to the plaintiff was a sum of Rs.106634/- and qua the said aspect in lieu of the part payment cheque No. 875904 dated 22.7.2011 was issued for a sum of Rs.4.00 lacs drawn on ICICI Bank, Faridabad.

20. On the contrary, the conspicuous stance of the defendant is that qua the said cheque No. 875904 dated 22.7.2011 another fresh cheque No. 875908 dated 27.7.2011 was issued and the plaintiff has also got the same encashed. The limited question which has to be deciphered by the court in the present case is that as to whether cheque No. 875908 can be taken to be in lieu of cheque No. 875904. One fact cannot be lost sight of is that the cheque No. 875904 dated 22.7.2011 was still valid on the date when the fresh cheque was issued and the earlier cheque also pertains to the same account. Moreover, there was no impediment in the fresh presentation of the cheque. So, issuance of fresh cheque by the defendant to the plaintiff was to be explained by the defendant. With these observation, in the backdrop if the evidence led on record by the plaintiff is scrutinized, what transpires from the same is that during the course of her cross-examination Sonia has explained the fact that the present suit has been filed by her qua the cheque which was dishonoured and has alleged that the defendant had given her three cheques. Two cheques were for a sum of Rs.4.00 lacs each and another cheque for a sum of Rs.2,40,000/-. Now if her version during the course of cross-examination is scrutinized vis.a.vis the goods supplied by them, the same stands duly explained. It is a specific stance of the plaintiff in the plaint that the said amount pertaining to Rs.4.00 lacs was on account of the part payment and the defendant has not established that he has made the payment of sum of Rs.10,40,000/- to the plaintiff as has been alleged by the plaintiff in the plaint. He has taken a simplicitor plea that qua the cheque No. 875904 dated 22.07.2011 which was not honoured, a fresh cheque bearing No. 875908 dated 27.7.2011 was issued. The act of issuance of fresh cheque despite the subsistence and validity of the earlier cheque has not been explained. The defendant did not ask for the return of the earlier cheque. The said act also does not appeal to natural conscious. Ambiguous pleas have been taken by the defendant alleging that the invoice does not bear any Tan number or Sales Tax Number but the said pleas are totally ambiguous.

The defendant had to explain the issuance of the said cheque No. 875904. A perusal of the written statement on record shows that in para No.2 of the written statement the defendant has not disputed the same. As per para No.2, the plaintiff has alleged that he has alleged that defendant was liable to make the payment of Rs.10,66,334/- but the defendant has not explained the said aspect that he has made the remaining payment and only a sum of Rs.4.00 lacs were due and qua which the said amount stands already satisfied. Except for the payment of Rs.4.00 lacs pertaining to cheque No. 875908, he has not been able to establish that qua the remaining payment as claimed by the plaintiff, he has made the same. In light of the said discussion, it can be said that the cheque No. 875908 was not in substitution to cheque No. 875904 rather the same was in addition to the said cheque. Although the defendant has tried to dispute the validity of the invoices on the basis of which the goods were supplied by the plaintiff to the defendant but once the said aspect has been admitted in the written statement, a fresh plea cannot be taken by the defendant in challenging the validity of Ex.P-1 to Ex.P-4. A perusal of the same shows that the same bears the signature of Hemant. Once the plaintiff has established that the said goods were supplied to the defendant and the defendant has failed to establish by producing his statement of account that the total payment stands cleared, he cannot be allowed to merely allege that he has made the payment of Rs.4.00 lacs as full and final payment. The very conduct of the defendant is not asking for the return of the cheque No. 875904 and issuing a fresh cheque during the validity of the earlier cheque does not inspire confidence and it has to be construed that cheque No. 875904 cannot be substituted qua the payment made on cheque No. 875908.”

9. The appellate Court below also arrived at the same conclusion and to my mind rightly so.

10. In my opinion, the conclusions drawn by the learned trial Court and affirmed by the learned first Appellate Court are in consonance with the record and facts of the case. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below by appreciation of evidence. No interference is thus called for to disturb the said concurrent findings. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

11. Furthermore, neither any question of law much less substantial

question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

13. Pending applications stand disposed of.

14. No order as to costs.

(ARUN MONGA)
JUDGE

March 02, 2020

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Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No