

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

RSA NO. 4414 OF 2018 (O&M)

DATE OF DECISION: 09.12.2021

M/s Sound Trading Company through its partners ...Appellants

Versus

Rajesh Bajaj and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Akhilesh Vyas, Advocate,
for the appellants.

Ms. Vanita Sapra, Advocate,
For the respondents.

ARUN MONGA, J. (ORAL)

CM-11688-C-2018

For the reasons stated in the application, same is allowed and delay of 46 days in re-filing the appeal is condoned.

Main Case

For convenience, parties herein are described as per recitals before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, the defendant is in second appeal before this Court assailing the trial Court judgment and decree dated 13.02.2017, as upheld by the learned First Appellate Court vide its judgment and decree dated 24.01.2018.

3. Briefly stated, facts as noticed by Courts below are that the plaintiff No.1 is a HUF and Rajesh Bajaj is the Karta of plaintiff No.1 and proprietor of plaintiff No.2 concern. Plaintiff No.1 is running its business under the name and style of plaintiff No.2, being distributor of electronic goods of different companies like Samsung, Videotex, Electrolux and other reputed companies. Defendant No.1 is a partnership concern and defendants No. 2 to 5 are its partners and responsible for acts of defendant No.1. There was business dealing between defendant No.1 and plaintiff regarding purchase of electronic goods on credit basis, bills of which were paid from time to time. A total sum of Rs.2,74,399.16 along with 24% interest is still outstanding as on 31.12.2009, payment of which has not been made despite repeated requests. The plaintiff served legal notice dated 05.10.2020 but to no avail. Suit for recovery of Rs.3,34,694.16 along with interest @ 24% per annum was filed.

4. Upon notice, defendants appeared and filed written statement taking preliminary objections regarding suit not properly valued for the purpose of Court fee and jurisdiction; plaintiffs have no locus standi to file the suit; suit was not maintainable; suit was bad for mis-joinder and non-joinder of necessary parties. On merits, it was admitted that plaintiffs and defendants have business dealing. However, it was denied that any payment was still pending.

5. Based on the rival pleadings, following issues were framed:

1. Whether the plaintiff is entitled to recovery of Rs.3,34,694.16 along with pendent lite and future interest @ 24% per annum ? OPP.

2. Whether suit has been filed by a duly authorised and competent person? OPP.

3. Whether suit is within limitation ?OPP.

4. *Whether the suit amount stands already paid by the defendants to the plaintiff? OPD.*

5. *Relief.*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues *ibid*.

7. On appraisal of evidence vis-a-vis pleadings, issues No.1 to 3 were decided in favour of the plaintiffs and issue No.4 was decided against the defendants. Consequently, the suit of plaintiff was decreed with costs for recovery of Rs.2,74,339.16 along with interest @ 6% per annum, from the date of filing the suit till its realisation.

8. Feeling aggrieved, defendants preferred first appeal which was dismissed by the First Appellate Court dismissed the appeal. Cross-objections filed by the plaintiffs were partly allowed to the extent that plaintiffs are entitled to interest @ 6% per annum on the amount of Rs.2,74,339.16 paise from 31.12.2009 till the filing of the suit.

9. I have heard learned counsel and perused the judgments of both the Courts below.

10. Relevant part of First Appellate Court judgment, with which, inter alia, I am in agreement, is as below:

“22. The only material plea raised by defendants/appellants is that the bills and account statements have not been proved as per the provisions of Indian Evidence Act but since the plaintiffs have examined PW2 Narinder Kumar who is conversant with the facts of the case and further Banwari Lal due to his death he could not come present for his cross examination plaintiffs have proved that the account books were maintained in due

course of business and there was a running account of the defendants so the said account books are admissible in evidence as per Section 34 of Indian Evidence Act. Apart from the books of accounts there is oral evidence of the plaintiffs also. The defendants have failed to rebut the said evidence inspite of the fact that entire onus was upon the defendants to prove that the payment of due amount has been made. Though some of the payment made by the defendants of the amount of tallies with the bills which were raised against the defendants but it has come on record that whatsoever payment has been made by defendants that has been adjusted against due amount and defendants never instructed the plaintiffs to adjust the said amount against any particular bills. So, in the absence of specific instruction as such the amount 17 being received from defendants was being adjusted against the entire due amount and as per the record on 31.12.2009 total amount of Rs.2,74,399.16 paise was due towards the defendants so the defendants have failed to discharge the entire onus which was upon them.

23. Further it is proved on file that the last payment was made by defendants to the plaintiffs on 31.12.2009. Since there being a running account the suit is to be filed by plaintiffs within a period of three years from the date of last payment received from the defendants acknowledging the liability, therefore, the suit of the plaintiffs was within limitation.

24. Further it is proved that plaintiff Rajesh Bajaj is 'karta' of plaintiff no.1 and sole proprietor of plaintiff no.2 so in view of said circumstances the plaintiff has been able to prove that on 31.12.2009 Rs.2,74,339.16 paise were due towards the defendants. These facts and evidence have been rightly considered by the learned lower Court and it has given a well reasoned finding on all the issues which requires no interference. The case law cited by learned counsel for the appellants is not applicable to the facts of present case. There is

no force in arguments advanced by counsel for appellants. The appeal is without any merit and hence the same stands dismissed.

25. So far as cross-objections are concerned the plaintiffs have claimed that after 31.12.2009 till the filing of the suit the interest at the rate of 24% per annum was due towards the defendants which has not been awarded by the learned Trial Court and even during the pendency of suit and till realization the interest of 24% per annum was required to be awarded but from the perusal of file it reveals that the learned Lower court decreed the suit for a sum of Rs.2,74,339.16 paise which were due towards defendants as on 31.12.2009 and the learned lower Court has granted interest @ 6% pr annum during the pendency of suit and till realization. This Court is of the opinion that award of interest at the rate of 24% per annum during the pendency of suit and even prior to that and till realization will be excessive and exorbitant. The interest awarded by learned Lower Court at the rate of 6% per annum is totally justified but it seems that the learned Lower Court inadvertently has not awarded interest from 31.12.2009 till the filing of suit on the sum of Rs.2,74,339.16 paise. So, even prior to filing of suit also the plaintiff is entitled to interest @ 6% per annum on the due amount which was due on 31.12.2009. So, to that extent the cross-objections are allowed and plaintiff is awarded interest @ 6% per annum on the amount of Rs.2,74,339.16 paise from 31.12.2009 till the filing of suit. With this observation the appeal titled M/s Sound Trading Company and others vs. Rajesh Bajaj and another filed by M/s Sound Trading Company and others stands dismissed and cross objections titled M/s Sound Trading Company and others vs. Rajesh Bajaj 19 filed by Rajesh Bajaj and another stands partly allowed.”

11. To my mind, judgments under challenge have been rendered after due and correct appreciation of evidence adduced by the respective parties.

12. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

13. Furthermore, no question of law, much less substantial one, a sine qua non for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

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

15. Pending application/s, if any, shall also stand disposed of.

16. No order as to costs.

DECEMBER 09, 2021
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No