

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

RSA-1678-1992(O&M)

Date of decision:-20.12.2022

Prem Parkash

...Appellant

Versus

M/s Des Raj Vinod Kumar Main Bazar (Cloth Merchants) and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.R.K. Gupta, Advocate
for the appellant.

Mr.Kanwar Goyal, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly summed up, the facts of the case are that plaintiff Prem Parkash son of Sh.Hargobind Rai, resident of Jind had brought a suit for recovery of Rs.6,500/- against defendants M/s Desraj Vinod Kumar Main Bazar (Cloth Merchants) Jind through its partner Desraj as well as Desraj impleading S/Sh. Om Parkash, Sat Parkash, Jain Parkash, Narinder Kumar sons and Smt.Reshma Devi, Smt.Ram Devi, Smt.Krishana Devi, Smt.Sona Devi, Smt.Shanti Devi,

Smt.Savitra Devi, Smt.Saroj Rani, Smt.Usha Devi and Smt.Savita Rani daughters of Sh.Hargobind Rai as proforma defendants.

2. As per the case of the plaintiffs Lala Hargobind Rai, since deceased father of the plaintiff was carrying on business of sale of cloth in Jind Mandi under the name and style of M/s Prabhu Dayal Hargobind Rai, which was joint Hindu family business and Lala Hargobind Rai was Karta of that Hindu undivided family; he used to maintain the regular accounts and struck balance daily; the firm used to issue bills to the purchasers; after death of Lala Hargobind Rai, the plaintiffs and proforma defendants are his legal heirs, who had entered into a family settlement in terms of which plaintiff became owner of joint Hindu family business; the defendants had purchased cloth worth Rs.4324.64 on credit from the plaintiff on 20.6.1983 vide bill No.65; the defendant had appended his signatures on the bill admitting the same to be correct and carbon copy of the bill was given to defendant; on the basis of such bill entries were made in the regular account books of the concern of the plaintiff; the bill amount along with interest has been outstanding against the defendants, which had not been paid, giving rise to a cause of action to the plaintiff to bring the suit for recovery of Rs.6,500/- i.e. Rs.4324.64 as principal amount and Rs.2175.36 interest thereon. The plaintiff had served a legal notice upon the defendants to pay this amount but to no effect, as such suit in question was filed.

3. On getting notice, defendants No.1 and 2 appeared and filed a joint written statement contesting the suit, whereas defendants No.3 to 15 did not appear despite service, as such were proceeded against ex-parte.

4. In the joint written statement filed on behalf of defendants No.1 and 2 many assertions in the plaint were denied. The defendants denied having purchased any cloth on credit from the plaintiff on 20.6.1983. According to the defendants in ordinary course of the business, the original bill is given to the purchaser and duplicate is kept by the seller and it was so stated by the plaintiff in his original plaint, thereafter the plaintiff by amending the plaint has taken plea contradicting the matter in defence by the defendants in their previous written statement; the carbon copy of the bill was torn by Hargobind Rai on 20.6.1983 and thrown away, which was collected by answering defendants and then attached with the previous written statement. According to the defendants, suit had been filed playing fraud with them. Neither any cause of action had arisen to the plaintiff to bring the suit nor the suit was within limitation; as a matter of fact, no amount was due from the defendants to the plaintiff. The defendants denied their liability to pay any amount to the plaintiff. The defendants had taken up a plea that defendant Desraj had gone to the shop of Hargobind Rai in Jind Mandi on 20.6.1983 and selected clothes for purchase for a

consideration of Rs.4844.76; on checking, he found that Hargobind Rai had prepared the bill of some items at higher rates than actual sale price disclosed to the defendant; that gave rise to a dispute; Desraj did not accept the cloth worth Rs.520.12 paise and he wrote about it on the bill No.65 dated 20.6.1983, as such Hargobind Rai lost tamper and threw back the selected cloth inside his shop and tore the carbon copies of the bill Nos.62, 63, 64 and 65 dated 20.6.1983 and threw the pieces thereof; defendant No.1 collected those carbon copies of the bills and produced the same with the written statement; Hargobind Rai had cleverly kept the original bills No.62, 63, 64 and 65 dated 20.6.1983 with him and if the defendants had purchased the cloth as alleged then the original said bill should have been with him and not with Hargobind Rai. In the end, the defendants prayed for dismissal of the suit.

5. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

6. On the pleadings of the parties, following issues were framed:

1. Whether Lala Hargobind Rai was carrying on a joint Hindu Family business in the name of M/s Prabhu Dayal Hargobind Rai and he was the karta of the joint Hindu family? OPP.
2. Whether the plaintiff and proforma defendants are the legal

heirs of deceased Lala Hargobind Rai? OPP.

3. Whether the plaintiff is entitled to recover all the debts owed by the said Joint Hindu Family by virtue of family settlement? OPP.

4. Whether the defendant purchased on credit the cloth worth Rs.4324.64 paise from M/s Prabhu Dayal Hargobind Rai and appended his signatures on the bills? OPP.

5. Whether the suit has been filed by the plaintiff by playing a fraud over the defendant as alleged by defendants? OPD.

6. Whether the plaintiffs entitled to recovery any interest, if so, at what rate and to what amount? OPP.

7. Whether the suit is time barred? OPD.

8. Relief.

7. The parties were given opportunities to lead evidence in support of their respective claims.

8. After hearing learned counsel for the parties, the trial Court decided issue No.1 in favour of plaintiff and against the defendants, issues No.2 and 3 in favour of the plaintiff and against defendants No.1 and 2, issue No.4 in favour of the plaintiff, issue No.5 against the defendants No.1 and 2 and in favour of the plaintiff, issue No.6 in favour of the plaintiff and against the defendants No.1 and 2, issue No.7 against defendants No.1 and 2 and in favour of the plaintiff. Resultantly, suit of the plaintiff was decreed and a decree

for recovery of RS.6500/- along with costs of the suit and future interest at the rate of Rs.1.50% per mensem from the date of filing of the suit till realisation was passed in favour of the plaintiff and against defendants No.1 and 2. This was so done vide judgment and decree dated 16.8.1991.

9. Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Jind, which was assigned to Additional District Judge, Jind, who vide judgment and decree dated 22.5.1992 accepted the appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit of the plaintiff.

10. Now it was the turn of the plaintiff to feel dissatisfied with the judgment and decree passed by Additional District Judge, Jind and he has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree passed by Additional District Judge, Jind be set aside and the suit filed by them be decreed.

11. On getting notice of regular second appeal, the respondents have appeared before this Court through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. I find that the judgment passed by the First Appellate Court of learned Additional District Judge, Jind is much more

convincing than the judgment by the trial Court. Learned Additional District Judge, Jind has gone into depth of the matter and considering various doubts and suspicious circumstances came to the conclusion that case of the plaintiff was not proved. It has been noticed in para No.10 that facts pleaded by defendants that when defendant No.1 had gone to the shop of plaintiff where some dispute had arisen as a result of which the plaintiff had torn the original bills throwing of the pieces which had been collected by the defendant and plaintiff had thrown back the selected cloth inside the shop, have not been specifically denied in the replication. It was observed that the version of the defendants inspires confidence since normally original bill is given to customer, who purchased the cloth and carbon copy is retained but in this case in one breath it is stated that the carbon copy had been given to defendant purchaser while in another breath, it is stated that original bill had been given to the defendant and further no notice of demand was ever served by the plaintiff upon the defendant. It was further observed that bill Ex.P2 to Ex.P5, which have been made basis by the trial Court to decree the suit of the plaintiff were not properly proved since those were not signed by PW2 Yash Pal, who had proved the bills stating that he had issued the same. Furthermore, there is no reference in the plaint that it was PW2 Yash Pal, who is real nephew of the plaintiff, who had prepared those bills and issued the same to defendants thereafter making

entries in the account books. It was also noticed that Desraj defendant appearing as DW1 had stated that writings Mark A, Mark B and Mark C were prepared by him regarding return of cloth worth Rs.520/12 Naya Paisa and regarding striking out balance of Rs.4324/64 naya paisa. Corroboration to the version of defendants also came from the evidence adduced by the plaintiff that original bills Ex.P2 and Ex.P3 were affixed in the bill book with supporting chits whereas it is not so with regard to other bills, which showed that some objection was raised by defendants when the original bill was being torn from the bills book for the purpose of giving to defendant purchaser and then there took place a dispute between the two and consequently delivery of cloth was not given. It is also explained by the defendant that he took away carbon copies of the bills because he had put his signatures on the original bill.

14. After discussing the various factors and the evidence learned Additional District Judge, Jind has come to the conclusion that PW2 Yashpal was not present at the time of transaction and he was introduced later on after death of Lala Hargobind Rai. Therefore, purchase of clothes by defendants from the plaintiff is not proved. Therefore, finding recorded by the trial Court on issue No.4 were reversed and the issue was decided in favour of the defendants against the plaintiff. Findings on issue No.5 were also reversed. The judgment passed by the trial Court is based upon assumptions and

presumptions as well as conjectures. Whereas, the judgment passed by Additional District Judge, Jind is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which might have called for interference by this Court by way of accepting the regular second appeal.

15. No substantial question of law arises in this appeal.

16. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

20.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No