

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1337 of 2021 (O&M)

Date of Decision: 29.09.2022

Arun Gupta

... Appellant(s)

Versus

Ashok Gupta and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Surinder Gandhi, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The filing of Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. While assailing the concurrent findings of facts, arrived at by both the Courts below, the plaintiff has filed the present appeal. The plaintiff's suit for directing the defendants to render the accounts with a consequential relief of mandatory injunction has been dismissed by both the Courts below.

3. While filing the suit, the plaintiff has claimed that he was awarded the work of dismantling the plant and machinery of some portion

of the factory of Hindustan Copper Limited. He was also authorized to

remove its scrap after dismantling the plant and machinery. The plaintiff has claimed that he sub-contracted with the defendants and authorized them to dismantle and remove the scrap. However, the defendants, even on the completion of the work, have not rendered the accounts.

4. The defendants, while contesting the suit, have submitted that they were never authorized to dismantle or remove the scrap. It was the plaintiff who was managing the affairs through his Manager. The defendants claim that they financed the entire work, however, the plaintiff has failed to repay the amount which was invested by them.

5. Both the Courts below, on appreciation of evidence, have found that the plaintiff has neither produced the contract executed between him and the defendants nor any other sufficient evidence for coming to a conclusion that it was the defendants who were given the exclusive rights to carry out the work. The plaintiff has also failed to produce the original contract before the Court. Both the Courts below have also found that the work of removal of the scrap was completed on 30.06.2008, whereas, the suit was filed on 16.04.2013. Keeping in view the aforesaid facts, both the Courts below have concluded that the plaintiff has failed to make out a case for passing a decree for rendition of accounts.

6. Heard the learned counsel representing the appellant, at length and with his able assistance, perused the paper-book.

7. The learned counsel representing the appellant submits that from the deposition of PW.5-Sh.Virender Kumar Gupta, Chief Manager, Hindustan Copper Limited, as well as the reading of para 3 of the written statement filed by the defendants, it is evident that the defendants do not

dispute that they were assigned to carry out the work.

8. This Court has carefully read the deposition of PW.5- Sh.Virender Kumar Gupta, which has been reproduced in the grounds of appeal. He deposed on the basis of record. He has produced the document Ex.P2 and certain other documents which were taken by the police. However, in para 3 of the written statement, the defendants have specifically taken a stand that it was the plaintiff who, through his Manager, dismantled the plant and removed the scrap. Undoubtedly, it has been stated that the authority letter was issued by the plaintiff in their favour in the month of April/May, 2008, however, that was on account of a settlement which the plaintiff never honoured. As already noticed, it is the case of the defendants that they have invested a huge amount in the project, but the plaintiff, being a clever person, is trying to usurp the amount.

9. Keeping in view the aforesaid facts, both the Courts below have taken a plausible view of the matter. The scope of interference in the regular second appeal is limited. At the cost of repetition, it would be noted that the plaintiff has failed to produce sufficient evidence to prove that he ever executed a sub-contract in favour of the defendants. Consequently, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

September 29, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No