

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 440 of 2022 (O&M)

Date of Decision: 02.03.2022

Mohan Dixit

... Appellant(s)

Versus

M/s Devraj Timbers

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Shakti Mehta, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. The defendant calls in question the correctness of the concurrent findings of fact, arrived at by both the Courts below, while decreeing the suit for recovery of ₹ 97,8156/-. The plaintiff claims that the defendant has failed to make payment after receiving the shuttering material (wooden logs).

2 The defendant contested the suit while asserting that the suit is time barred. When the defendant appeared in evidence as DW.1, he admitted having received the shuttering material from the plaintiff on hire. However, he claimed that the amount of rent of the shuttering material has been paid. But he failed to lead any corroborative evidence in support of the aforesaid assertion.

3. The learned counsel representing the appellant contends that the invoices (Ex.P1 and Ex.P3) have been issued in the name of the appellant's

father. But he was never impleaded as a party to the suit. He further submits

that in the appellant's cross-examination, the plaintiff has failed to confront him with his case. On a Court question, the learned counsel representing the appellant admits that the issue of non-impleading of Sh. Laxmi Narayan Dixit (the defendant's father) was never taken before both the Courts below. In such circumstances, the appellant cannot be permitted to take a plea, which is based on the facts, for the first time in the regular second appeal.

4. As regards the second argument, the learned counsel representing the appellant has read over the statement of the appellant. It is evident that the appellant has been cross-examined, at length and he has admitted that he has been taking the shuttering material, on hire, from the plaintiff. He also admits his as well as his brother's signatures on the various invoices, in order to prove that they were having regular business transactions with the plaintiff.

5. Keeping in view the aforesaid facts, no ground to interfere is made out. Consequently, the present regular second appeal is dismissed.

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

(Anil Kshetarpal)
Judge

March 02, 2022

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No