

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

RSA-414-2012(O&M)

Date of decision:-16.11.2022

Barjesh Grover

...Appellant

Versus

M/s Bathinda Cold Drinks and others

...Respondents

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

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

Mr.Kashish Garg, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Barjesh Grover had brought a suit against defendants i.e. Bathinda Cold Drinks, village Bibiwala, District Bathinda, Satinder Singh, Swami alias Som Nath, Ajay Mathur and Sandeep Kumar, seeking recovery of Rs.1,17,810/- i.e. Rs.76,500/- as principal amount on account of unpaid bills/price of goods supplied/sold and Rs.41,310/- as interest thereon @ 18% per annum till filing of the suit i.e. 21.10.2003.

2. As per the version of the plaintiff, he has been doing business of supplying bottles of Pepsi Soda Water under the name and style of M/s B.J. Suppliers, Goniana Mandi, District Bathinda being its sole proprietor, to various customers in different parts of Punjab; the plaintiff has been maintaining account books i.e. bill book, receipt book, gate

passes/delivery passes in regular course of business, which are produced before Income Tax Department as plaintiff concern is an income tax assessee; the defendants were also dealing in business of Soda Water; defendant No.1 was proprietor of Bathinda Cold Drinks, whereas defendant No.2 – Satinder Singh and defendant No.3 Swami alias Som Nath were employees of defendant No.1 working under its instructions; defendant No.4 Ajay Mathur was Area Sales Manager, whereas defendant No.5 Sandeep Kumar was company representative of Pepsi company at Bathinda; defendant No.1 through its proprietor Darshan Singh approached the plaintiff for the purchase of bottles of Pepsi Soda Water with a request to supply the bottles to defendants No.2 to 5 on behalf of defendant No.1 adding that he would take the delivery through Pepsi company representative in that account of Area Sale Manager of company of Pepsi and other representatives also and further other representatives would take the delivery of Soda water for defendant No.1; the terms and conditions were settled at Goniana Mandi; on 6.4.2002 defendant No.1 had placed order with the plaintiff for supply of bottles of Pepsi Soda; the first order was sent through defendant No.2 in vehicle bearing No.PB-03C-9771 vide gate pass No. 511 and bill No.509; on 7.4.2002 defendant Darshan Singh came to the plaintiff's concern at Goniana Mandi asking for supply of Pepsi Soda Water; Darshan Singh had sent his employee defendant No.3 and Pepsi Soda Water was given to him, which he carried in vehicle No.PB-03F-4243 vide bill No.518; again on 5.6.2000 Pepsi Company representatives i.e. defendants No.4 and 5 contacted the plaintiff and requested for supply of Pepsi Soda Water to defendant No.1;

the plaintiff accordingly made the supply; defendant No.4 himself drove vehicle No.PB-03F-4243; supply was made vide gate pass No.1102 and bill No.809; defendant No.5 had put his signatures on bill and gate pass; similarly on 23.10.2000 defendant No.4 came to the plaintiff requesting for supply of Pepsi Soda Water to defendant No.1; he took the delivery, which was made vide bill No.1091; defendant No.4 himself drove vehicle No.PB-03F-4243; in that way the defendants had been purchasing Pepsi Soda Water from the plaintiff from time to time as per requirements making part payments, sending the gate passes and made endorsements on back side of gate passes, which were sent to defendants with consignment of Pepsi Soda Water in token of receipt of the said material; the bills were also sent to the defendants; in that way after adjusting the debit and credit entries, a sum of Rs.26,500/- was due to plaintiff from the defendants towards supply of Pepsi Soda Water, 200 crates empty, the price of 200 crates came out to be Rs.50,000/- and that of a crate of empty bottles Rs.250/-. According to the plaintiff, as agreed between the parties, the interest was claimed @ 18% per annum. The plaintiff called upon the defendants to make the payment but to no effect, as such he filed the suit before Civil Judge (Sr.Divn.), Bathinda.

3. Notice of the suit was given to the defendants. Only defendant No.1 appeared to contest the suit, whereas defendants No.2 to 5 failed to put in appearance despite service, as such were proceeded against ex-parte.

4. In the written statement filed by defendant No.1, various legal objections were taken that the suit was not maintainable, no cause of

action arose to the plaintiff to file the suit; the plaintiff lacked locus standi to file the suit; the suit being bad for non-joinder of necessary parties; the plaintiff being estopped by his own act and conduct from filing the present suit; the plaintiff not complying with the provisions of Order 7 Rule 17 CPC etc., the suit was barred by limitation etc. On merits, such defendant contended that no order was placed by the answering defendant with the plaintiff and no supply was made by the plaintiff to such defendant, therefore, no payment from such defendant was due to the plaintiff; defendants No.2 and 3 were not employees of the answering defendant and the entire record was forged and fabricated. Such defendant denied its liability to pay any amount to the plaintiff while praying for dismissal of the suit.

5. From the pleadings of the parties, following issues were framed:

- 1. Whether plaintiff is entitled for the recovery of Rs.1,17,810/- along with interest at the rate of 18% p.a. from the date of institution till realization of the amount? OPP.*
- 2. Whether the plaintiff has no locus standi and cause of action to file the suit? OPD.*
- 3. Whether suit is not maintainable in the present form? OPD.*
- 4. Whether the suit is bad for non-joinder of necessary parties? OPD.*
- 5. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.*
- 6. Whether plaintiff has not complied with the provisions of Order 7 Rule 17 CPC? OPD.*

7. *Whether suit is barred by limitation? OPD.*

8. *Whether the defendant is entitled to special costs to the tune of Rs.5,000/- U/S 35-A CPC? OPD.*

9. *Relief.*

6. The parties were afforded opportunities to lead their evidence.

7. During the course of his evidence, the plaintiff got his own statement recorded as PW1 producing his affidavit as Ex.PW1/A along with documents Ex.P1 to Ex.P9. The plaintiff further examined Sunil Kumar as PW2, who tendered in evidence his affidavit Ex.PW2/A. Thereafter, the evidence of the plaintiff stood closed.

8. In rebuttal Darshan Singh, proprietor of defendant No.1 concern appeared as DW1, tendering his affidavit Ex.DW1/A. Thereafter, evidence of contesting defendant No.1 was closed.

9. After hearing arguments, the trial Court decided issue No.1 in favour of the plaintiff and against the defendants. Issues No.2 to 8 were decided against the defendants. As a result of findings on issues, the suit of the plaintiff was decreed with costs finding the plaintiff entitled to recover the suit amount of Rs.1,17,810/- along with interest @ 8% per annum from the date of filing of the suit till its realization.

10. Feeling aggrieved by the said judgment and decree, the defendant No.1 had filed an appeal in the Court of District Judge, Bathinda, which was assigned to Additional District Judge (Fast Track Court), Bathinda, who vide judgment dated 24.8.2011 accepted the appeal, resultantly the judgment and decree passed by the trial Court were

set aside and the suit for recovery brought by the plaintiff was dismissed.

11. The plaintiff is feeling dissatisfied with the said judgment recorded by Additional District Judge (Fast Track Court), Bathinda and 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 (Fast Track Court), Bathinda be set aside.

12. Notice of the appeal was given to respondent No.1, who put in appearance through counsel.

13. I have heard learned counsel for the parties besides going through the record and I find that the judgment passed by the trial Court is result of proper appraisal of evidence and correct interpretation of law. The trial Court was justified in decreeing the suit of the plaintiff. It has properly analysed and appreciated the evidence adduced by the parties and correctly interpreted the law while decreeing the suit of the plaintiff.

14. The approach of the First Appellate Court was wrong and erroneous. Without considering the facts and circumstances of the case properly and analysing evidence adduced by the parties in an appropriate manner, it went on to dismiss the suit filed by the plaintiff. It has adopted a hyper technical approach non-suited the plaintiff for non-compliance of Order 7 Rule 17 CPC. This provision is procedural in nature and has to be interpreted in context of the facts and circumstances of the case and not in a very narrow and strict manner.

15. Learned counsel for the appellant has referred to judgment **Smt.Sushil Rani Versus Attam Parkash, 2007(3) RCR(Civil) 396** by a

Single Judge of this Court wherein discussing various judgments by the Apex Court, it was observed that the procedure is handmaid and not the mistress, a lubricant, not a resistant in the administration of justice and the plaintiff cannot be denied an opportunity of participating in the justice only because the original bahi entries were not produced along with the plaint. It was further observed that by non-production of the original bahi entries, no right of the defendant has been infringed and it was rule of procedure and such rule of procedure is always subservient to and is in aid of justice; it is not to be a tyrant but a servant, not an obstruction but an aid of justice. It was categorically observed that substantive right of the plaintiff to recover the amount due in accordance with law, cannot be defeated on the basis of procedure, which is prescribed only to advance the cause of justice.

16. The First Appellate Court has not considered the yardstick, which is used for deciding dispute of a civil nature, which is to say is preponderance of probabilities. If the instant case is examined on the touchstone of preponderance of probabilities then it is much more in favour of the plaintiff than the defendants. The plaintiff deals in supply of bottles of Pepsi Soda Water. The suit filed is for recovery of small amount of Rs.1,17,810/-. The plaintiff would not have indulged in any forgery or fabrication for such an amount risking facing criminal action and loss of reputation in business circles, if the alleged forgery was detected. It has further been not explained by the defendants as to why the plaintiff should select them particularly out of huge population of the country. The plaintiff has given necessary details of the transactions of supply of Pepsi

Soda Water etc. to defendant No.1 through other defendants. The dates of supply, the name of defendant, who came to collect the consignment, the vehicle number in which it was carried along with bill number and gate pass number have been mentioned.

17. On the other hand, the defendants No.2 to 5 did not opt to put in appearance despite service and were proceeded against ex-parte, which means they had nothing to say in the matter and they were not desirous of challenging the assertions made in the plaint. Only defendant No.1 had put in appearance. Most of the objections taken by it are legal in nature and there is bald denial of transactions as claimed by plaintiff, which does not seem to be convincing. The plaintiff had adduced enough oral as well as documentary evidence to prove his case. The plaintiff Barjesh Gover getting his own statement recorded as PW1 tendering in evidence his affidavit Ex.PW1/A narrating the entire facts of the case. He had brought the original account books, receipt books, gate passes, delivery passes and ledger, attested photocopies thereof being Ex.P1 to Ex.P9. PW2 Sh.Sunil Kumar has tendered his affidavit Ex.PW2/A.

18. In rebuttal, there is statement of DW1 Darshan Singh, proprietor of Bathinda Cold Drinks. The contentions in the affidavit are on lines of the pleas as taken in the written statement. In his cross-examination, he stated that they had purchased material from the plaintiff in cash, which was on 2-3 occasions, in that way, he admitted business dealings between the parties. In his cross-examination, Darshan Singh does not come to be in good light.

19. The plaintiff had proved his case by bringing enough cogent

and convincing evidence on record and the trial Court was justified in decreeing the suit of the plaintiff, whereas the judgment delivered by First Appellate Court reversing the judgment and decree passed by the trial Court dismissing the suit is not sustainable since it cannot stand judicial scrutiny for the reasons detailed above.

20. As such, the appeal which has got merit stands accepted. The judgment and decree passed by Additional District Judge (Fast Track Court), Bathinda dated 24.8.2011 are hereby set aside, whereas the judgment and decree passed by the trial Court are restored. The appeal is allowed with costs throughout.

16.11.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No