

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

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RSA No. 2473 of 2022 (O & M)

Date of decision : 17.11.2022

M/s Sahni Carpets, Sadhaura**.....Appellant****Vs.****Suresh Kumar and another****.....Respondents****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Ashwani Talwar, Advocate, for the appellants

TRIBHUVAN DAHIYA, J. (Oral)

1. This is defendant's appeal against the concurrent findings of both the Courts below.

2. The facts of the case in brief are, the respondents/plaintiffs (hereinafter referred to as 'the plaintiffs') filed a suit for recovery of Rs.5,50,612/- as on 1.4.2016 by pleadings that the appellant/defendant no.1 (hereinafter referred to as 'the defendant') was previously a sole proprietorship firm of Chunni Lal Sahni (defendant no.2) doing business of manufacturing carpets. The defendants used to purchase dyes and chemicals from the plaintiffs for the last more than twenty years. The defendants had been making payments through cheques. Record of accounts was being maintained by the plaintiffs for the sale of dyes and chemicals in the ledger books, and, as per the accounts maintained, an amount of Rs.5,50,612/- was found due and payable.

3. The suit was contested by the defendants by filing a joint written statement. Defendant no.2, who was sole proprietor of defendant no.1/firm died during pendency of the suit on 12.6.2016. Accordingly, suit *qua* him was

dismissed in default under Order IX Rule 2 CPC by the trial Court vide order dated 12.10.2016. It was pleaded that Arvind Sahni son of defendant no.2, through whom defendant no.1 has been sued, and defendant no.3 are sons of the deceased defendant no.2- Chunni Lal Sahni. And that they had nothing to do with defendant no.1 firm, except that Arvind Sahni was an authorised signatory of the proprietary firm. It was also pleaded that to the knowledge of Arvind Sahni, there was dispute between his father and the plaintiffs with regard to supply of sub-standard/inferior quality goods which culminated in rejection of orders. Therefore, a compromise had been affected between defendant no.2 and the plaintiffs' firm in March 2014, and according to which a sum of Rs.1,25,000/- was to be paid by the defendant firm against the total payment of Rs.2,50,000/-; fifty per cent of the amount was adjusted against the supply of inferior quality goods. The remaining amount was paid by the defendants between April 2014 and November 2015 except the remaining amount of Rs.7500/-.

4. On these pleadings, the trial Court settled the following issues between the parties:

1. Whether the plaintiff is entitled to the recovery of Rs.5,50,612/-, as prayed for? OPP
2. Whether the plaintiff has no cause of action to file the present suit? OPD
3. Whether the suit is liable to be dismissed being barred by limitation? OPD
4. Relief.

5. While recording findings on Issue no.1, the trial Court partly decreed the suit by holding that the plaintiffs were entitled to recover an amount of Rs.1,37,500/- along with interest at the rate of 12% per annum from the

defendant firm. The decree was passed only on account of admission made in para no.2 of the written statement, that in the year 2014 the defendant firm owed Rs.2,50,000/- to the plaintiffs and the liability was reduced in terms of the settlement arrived at between the parties due to inferior quality of goods supplied by the plaintiffs. Therefore, the defendants were held liable to pay the remaining part of their admitted liability, i.e., Rs.1,37,500/-. Arvind Sahni was made liable to pay the amount. Jitender Sahni/defendant no.3 was held not liable for the debts and liabilities of defendant no.1 on the ground that he had no roll in the affairs and business of the firm. Suit against defendant no.2 had already been dismissed. Regarding remaining amount of recovery, it was held that the plaintiffs have failed to prove liability of the defendant to pay the amount. So far as findings on Issue no. 2 are concerned, it was decided against the defendants as they failed to show that the plaintiffs did not have any cause of action to file the suit. Issue no.3 was also decided against the defendants as they themselves had agreed to make the payment in installments within one and a half years in March 2014.

6. Both, the plaintiffs and the defendant, filed appeals against the judgment and decree of the trial Court dated 24.9.2019. The appeals were decided by a common judgment and decree passed by the lower Appellate Court dated 22.7.2022, whereby the defendant's appeal was dismissed with costs; and the plaintiffs' appeal was also dismissed by modifying the amount, on the basis of correct calculation, and holding that the outstanding amount payable by the defendants in terms of the decree was Rs.1,47,500/-, instead of Rs.1,37,500/-.

7. Learned counsel for the appellant/defendant has been heard and judgments perused.

8. Learned counsel has contended that it is a case of non-joinder of necessary parties, as all the partners of the defendant firm have not been impleaded as parties to the suit, which renders it not maintainable. He states that even legal representatives of the deceased defendant no.2/sole proprietor of the defendant firm were not impleaded by the plaintiffs, which was fatal for the case. Secondly, learned counsel has contended that the Courts below have partially relied upon the admission of liability pleaded by the defendant, and the admission in its entirety has not been taken into account which is illegal. Therefore, the findings become unsustainable.

9. So far as first argument of learned counsel is concerned, a perusal of the judgments of the Courts below establish that the liability to pay the amount has been fastened on Arvind Sahni, the present partner of the defendant firm and one of the legal heirs of deceased Chunni Lal Sahni (who was sole proprietor of defendant no.1 when it was a proprietary firm). The reasoning given in para 19 of the lower Appellate Court judgment in that regard is as under:

19. Now here the question is as to whether learned trial Court was right, while fastening the liability solely on Shri Arvind Sahni absolving all other legal heirs of deceased Chunni Lal (sole proprietor of M/s Sahni Carpets) from such liability? The answer to this question comes in “affirmative” due to three prime reasons. Firstly, he has admitted in para no. 9 of the preliminary objections of the written statement that he was authorized signatory of the firm, though with a rider that he never remained associated with the day to day affairs of M/s Sahni Carpets and his father proprietor Chunni Lal always handled the daily affairs of M/s Sahni Carpets. However, this caveat to his admission cannot be entertained because no evidence has been put forth by the defendant no.1 to prove that he was authorized signatory merely to sign the cheques since his father was a decrepit man. In the absence of any such evidence, defendant no.1 would be construed to be authorized handler of M/s Sahni Carpets for all intents and purposes. Secondly, the defendant no.1, while appearing as DW1, has admitted in his cross-examination that after the

death of his father, M/s Sahni Carpets has been converted into partnership firm. He stated that his wife had become a partner in the said firm. He himself produced on record Mark DA photocopy of partnership deed showing his wife Smt. Seema Sahni and daughter Jagriti Sahni as having become partners of defendant no.1 firm. He has also admitted that all the assets and liabilities of Sahni Carpets have been transferred to the newly constituted partnership firm. Thirdly, no other evidence has come on record to prove that any other legal heir of Chunni Lal including defendant no.3 was or is connected with the affairs of the M/s Sahni Carpets. Owing to these three conspicuous reasons, this Court is of the view that learned trial Court rightly fixed the liability solely on Shri Arvind Sahni excluding all other legal heirs of Shri Chunni Lal, earlier sole proprietor of Sahni Carpets.

10. There is no error of law in these findings as the assets and liabilities of the erstwhile proprietary firm under sole proprietorship of defendant no.2 have been transferred to the defendant firm, of which Arvind Sahni remains the authorised signatory, besides being legal heir of the deceased proprietor. And there is no evidence on record that any other legal heir of Chunni Lal Sahni has any connection with the affairs of the firm. Therefore, no exception can be taken with the findings recorded.

11. So far as the second submission of learned counsel is concerned, it has been held by the Courts below that the defendant did not lead evidence to prove as to how it's admitted liability of Rs.2,50,000/- to the plaintiffs was reduced to Rs.1,25,000/- as per settlement arrived at between the parties due to inferior quality of goods supplied. Defendants also claimed that out of the agreed amount they had already paid Rs.1,17,500/- to the plaintiffs, and only an amount of Rs.7500/- remained due. Despite the admission of liability to the aforesaid extent, the defendant did not prove the compromise or that the goods supplied to the plaintiffs by the defendants were of inferior quality. The documentary evidence Ex.P-6 to P-8, which are excerpts of plaintiffs books of

accounts, also recorded payment made by the defendants from March 2014 onwards; a sum of Rs.1,12,500/- (corrected to Rs.1,02,500/- by the lower appellate Court) was recorded as paid through cheques out of the admitted liability of Rs.2,50,000/-. Therefore, the defendants were held liable to pay the remaining part of their admitted liability, i.e., Rs.1,37,500/- (corrected to Rs.1,47,500/- by the lower Appellate Court). There is nothing wrong about the same. The finding is based on admitted liability and preponderance of probabilities. The liability has been held to have been discharged to the extent supported by the evidence on record. It is not a case of believing the admission in part, as stated by the learned counsel. Rather, the defendant's assertion that the remaining liability stood adjusted against inferior quality of goods supplied, was not believed in the absence of any evidence to that effect. Bald pleadings cannot be relied upon as they have no legs to stand upon. Therefore, the defendant cannot escape liability to pay the entire amount of settlement as per its own admission.

12. In view of the aforesaid, there is no error of law in the findings recorded by both the Courts below. No substantial question of law arises for consideration either.

13. Dismissed.

14. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

17.11.2022

Ashwani

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No