S. No.217

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
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RSA No.5135 of 2016 (O&M)
Date of Decision:14.12.2022

M/s Arora Trading Co. .....Appellant

Vs.

PUNSUP and another .....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. B.S. Sudan, Advocate for Dr. Puneet Kaur Sekhon, Advocate for the appellant.

Ms. Jasleen Kaur, Advocate for PUNSUP.

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DEEPAK GUPTA, J.

This is plaintiff's second appeal against the concurrent findings of the Courts below, whereby suit for recovery has been dismissed.

2. In order to avoid confusion, parties shall be referred as per their status before the learned trial Court.

3. Plaintiff is a partnership firm duly registered under the Indian Partnership Act and filed the suit through one of its partner Rakesh Kumar. The said firm is doing the business of Commission Agent. According to plaintiff, defendants had purchased crops of wheat and paddy during season 2011-2012. Bills for labour & stitching charges and commission (*Aarht*) in respect of wheat crop to the tune of ₹1,96,104/- and similar bills regarding labour & stitching charges and commission (*Aarht)* in respect of paddy crops to the tune of ₹20,810.28, i.e. total ₹2,17,004.28 were submitted for payment to the defendants but they did not pay any heed. Even legal notice dated 25.01.2012 posted on 04.02.2012 was duly served upon the defendants under registered post but to no effect. With these submissions, plaintiff

prayed for decree of recovery of ₹2,17,004.28 along with interest @ 18% per annum from the date of filing of the suit till actual realisation.

4. Defendant (respondent herein) in its written statement denied the plaintiff to be a registered firm or that suit was filed through any authorised person. Sale of wheat and paddy crop by the plaintiff to the defendant- Corporation under the bills, is admitted. However, according to defendant, plaintiff never submitted any bills as alleged. It is further submitted that legal notice sent by the plaintiff was duly replied. Submitting that plaintiff was not entitled to any imaginary amount, prayer was made for dismissal of the suit.

5. Following issues are framed for adjudication:

> "1. Whether the plaintiff is entitled of suit for recovery of Rs.2,17,004.28 paise alongwith future and pendente-lie interest on said amount @ 18% per annum? OPP
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> 2. Whether the plaintiff has not come to the court with clean hands and has filed suit by concealing all the facts and documents?OPD
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> 3. Whether the suit is barred under Section 69 of the partnership Act?OPD
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> 4. Whether the plaintiff is barred by its own act and conduct and is estopped from filing the suit under the law of estopple?OPD
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> 5. Whether the suit is without cause of action?OPD
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> 6. Whether the suit is bad for non-joinder of necessary parties?OPD
>
> 7. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?

8. Relief.

6. After taking evidence produced by the parties, learned trial Court heard the matter and decided Issue No.1 against the plaintiff, after observing that cost of wheat and paddy crops have already been paid to the plaintiff- firm and as far as stitching & labour charges and commission is concerned, plaintiff was not entitled to the same, as it had sold its own goods to the defendant; and not as a commission agent. Other issues were disposed of as not pressed for. With these findings, suit was dismissed vide judgment dated 19.12.2014. Learned First Appellate Court, on the same reasoning, dismissed the appeal filed by the plaintiff. An application moved under Order 41 Rule 27 CPC for production of additional evidence was also rejected.

7. It is contended before this Court by learned counsel for the appellant- plaintiff that both the Courts fell in error by ignoring the bills Ex.P3 to Ex.P10, which included the amount claimed in the suit. As the contract stood concluded on receipt of the bills Ex.P3 to Ex.P10, respondent- defendant was estopped from claiming that it is not liable to make payment in terms thereof. It is contended further that the appellant is admittedly licensed commission agent. The agriculture produce was sold to the defendant through the plaintiff- firm and not directly by an individual producer or farmer. Still further, it is contended that even if it is assumed, though not admitted, that crop was produced by Rakesh Kumar, one of the partner of the firm, that will not deprive the plaintiff- firm from its entitlement to the commission, labour and stitching charges. Apart from this, learned counsel for the appellant drawn attention towards the stand taken by the defendant in the written statement, which is quite contrary to the reply to the legal notice forming part of the trial Court record. With these submissions, prayer is

made to set aside the impugned judgments passed by the Courts below and to decree the suit.

8. Learned counsel for the respondents- defendants defended the impugned judgments and submitted that this is an appeal against the concurrent findings, which deserve to be dismissed.

9. I have considered the submissions of both the sides and have perused the record.

10. Ex.P1 is the copy of certificate regarding registration of the plaintiff-firm issued by the Registrar of Firms under the Indian Partnership Act. Ex.P2 is the acknowledgement of the registration of firm. Ex.P20 is the partnership deed revealing Rakesh Kumar and Smt. Shankuntla Devi as partners of the plaintiff firm. In view of this documentary evidence, the objection of the defendant- respondent that suit has not been filed by the competent person or that plaintiff-firm is not registered, has no merit, as suit has been filed through one of the partners.

11. Ex.P3 to Ex.P10 are the various bills issued during the period 23.04.2011 to 08.11.2011 by the plaintiff-firm to the defendant for cost of wheat/paddy besides commission @ 2.5%, and labour/stitching charges. Receipt of the agricultural produce by the defendant is not disputed. Raising of the bills by the plaintiff to the defendant is also not disputed by the defendant, as is evidence from the cross-examination of DW1 Ajit Lal.

12. Plaintiff has been non-suited on the ground that its partner Rakesh Kumar during his testimony as PW1 admitted that the produce sold to the defendant was grown by one of the partner Rakesh. Merely for this reason, plaintiff-firm cannot be declined the commission or labour/ stitching charges. A firm consisting of two partners is entitled to what is due to it as per law. Simply because

one of the partner sold its produce to the defendant, does not mean that plaintiff firm is not to be paid the commission or the labour/ stitching charges.

13. Apart from above, the stand of defendant is quite contradictory at different stages. In the written statement, the reason to decline the claim of the plaintiff is that it never submitted any bills. It was nowhere pleaded that the plaintiff had sold its own produce and so, it was not entitled to commission charges or labour/ stitching charges. Still further, Ex.P.18 is the legal notice dated 25.01.2012, which was sent by the plaintiff under registered cover to the defendant asking it to make payment of ₹2,17,004.28. As per its written statement, defendant had replied to the said notice. The said reply dated 12.03.2012 (Mark B) is available on the trial Court record, as per which stand was taken by the defendant that there was 30 quintal shortage of wheat and 100 empty jute bags, which were recoverable from the plaintiff. Plaintiff was asked to submit his pending bills so that payment could be released after effecting the recoveries.

14. No such stand, as is taken by the defendant in its reply dated 12.03.2012 has been taken in the written statement so as to contend that any empty jute bags were recoverable from the plaintiff or that there was any shortage of wheat. Taking contradictory stand by the defendant in itself is sufficient to draw adverse inference against it and to come to the conclusion that the stand taken by the defendant is not believable.

15. Having regard to the aforesaid discussion, it is held that both the Courts failed to properly appreciate the evidence on record and fell in error in declining the relief of recovery. Both the impugned judgments as passed by both the Courts below are hereby set aside. The appeal is accepted with costs. Suit of the appellant- plaintiff is decreed with costs. Decree is passed in favour of the plain-

tiff – appellant and against the defendants – respondents for the recovery of the amount of ₹2,17,004.28 along with interest 9% per annum from the date of filing of the suit till the date of decision of this appeal. Plaintiff- appellant will further be entitled to interest @ 6 % per annum on the principal amount of ₹2,17,004.28, from the date of this decision till actual realisation.

December 14 , 2022 **(DEEPAK GUPTA)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No