

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

112

RSA No.756 of 2019
Date of Decision: 26.07.2023

M/S SEHGAL BUILDERS THROUGH ITS PROPRIETORS SHRI
POKHAR DASS

....Appellant

Versus

M/S FORECH INDIA LTD THROUGH ITS MANAGING
DIRECTOR

...Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ram Pal Verma, Advocate for the appellant.

SANJAY VASHISTH, J.(Oral)

1. Plaintiff has filed the present regular second appeal against the concurrent finding of dismissal of his claim for recovery of an amount of Rs.2,69,149/- (Two lacs, sixty nine thousand, one hundred and fourty nine) (inclusive interest upto 30.11.2010).
2. Both the Courts have dismissed the claim of the plaintiff on the point of law that as per Evidence Act, bills issued by plaintiff firm have not been proved and photocopies of the same, would not be admissible in evidence.
3. Even, learned First Appellate Court has found that reliance of the plaintiff that the building material was supplied through vehicle No. HR-69 B-0314 was found to be wrong because as per deposition of DW2- Ramesh Kumar, clerk, RTO Office Sonapat, the said vehicle was registered on 28.11.2008. Similarly, second vehicle No. HR-69C-7294 was registered on 04.03.2009, whereas claim of the plaintiff is with regard to the period of supplying of the

material is 29.02.2008 to 14.04.2009. Thus, the story propounded by the plaintiff was found to be false and unbelievable. Findings recorded by the First Appellate Court in paragraph No.21 and 22 is very much convincing and same does not warrant any interference. For the sake of convenience, paragraph Nos.21 and 22 are reproduced here under:

'21. I have given thoughtful consideration to the arguments put-forth by both sides and meticulously perused the record. It is pertinent to note that it is settled proposition of law that plaintiff has to stand on his own legs and he cannot take the advantage of the weakness of the case of defendants. Therefore, it is incumbent upon the plaintiff to prove that he supplied building material of worth 2,25,864/- to the defendants from 29.02.2008 to 14.04.2008. It is also noteworthy that in order to establish his case the plaintiff has relied upon his self serving testimony and bills and invoices Ex.P1 to Ex. P42 and register of supplies of defendants Ex. P48 & Ex. P49. It is further imperative to note that bills Ex. P1 to Ex. P42 are merely photo- copies and the original bills and receipts were not produced by the plaintiff during the trial despite the objection of the defendants since the very beginning that the bills are forged and fabricated. It is also relevant to note that it is no more res-integra that mere marking of exhibit over a document does not prove the same. In given scenario, am of the considered opinion that bills Ex. P1 to Ex. P42 are inadmissible in evidence.

22. It is also significant to note that the defendants have categorically pleaded that they have made the payment of the material supplied by the plaintiff through cheques. However, subsequently it came to the knowledge of the defendants that the plaintiff had raised false and fabricated bills by introducing false vehicles and

false measurements of the vehicle and material supplied. It is further important to note that as per bills and receipts Ex. P3, Ex. P4, Ex. P17, Ex.P18, Ex. P23, Ex.P24, Ex.P25, Ex.P26 & Ex.P39, Ex.P40, the plaintiff supplied the alleged building material on dated 03.03.2008, 15.03.2008, 24.03.2008, 27.03.2008 & 07.04.2008 through vehicle no. HR-69B-0314. Moreover, as per bills Ex. P15, Ex. P16, Ex. P21, Ex. P22, Ex. P27, Ex.P28, Ex.P35, Ex.P36 & Ex. P37, Ex.P38, the plaintiff supplied alleged building material to the defendants on dated 13.03.2008, 24.03.2008, 27.03.2008, 06.04.2008 & 07.04.2008 through vehicle no. HR-69C-7294. However, as per deposition of DW2 Ramesh Kumar, Clerk in RTA Office, Sonapat, the vehicle no. HR-69B-0314 was registered on 28.11.2008 while vehicle no. HR-69C-7294 was registered on 04.03.2009. It is also imperative to note that the statement of DW2 Ramesh Kumar, Clerk regarding registration of above-said vehicles much after the alleged transactions has not been rebutted by the plaintiff in any manner. Consequently, it is well proved that the vehicle no. HR-69B-0314 and vehicle no. HR-69C-7294 were not in existence at the time of alleged transactions. Thus, it appears that the entries regarding delivery of building material by plaintiff to defendant no. 1 through vehicles no: HR-69B-0314 & no. HR-69C-7294 on afore-mentioned dates were made in the supply register Ex. P48 & Ex. P49 by some official of defendant Company in collusion with the plaintiff. Therefore, the entries in the supply register cannot be relied upon. '

4. Since, plaintiff has failed to prove his case through any admissible evidence and just relied upon the oral evidence produced

before the Court, I find that the suit filed by the plaintiff has been rightly dismissed by both the Courts below, accordingly, the judgment and decree passed by the Courts below, dismissing the suit, are maintained and the present appeal stands dismissed.

[SANJAY VASHISTH]
JUDGE

July 26, 2023
rashmi

Whether speaking/reasoned	Yes/no
Whether reportable?	Yes/no