2023:PHHC:089178

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1382-2020
Decided on : 17.07.2023

M/s Amarvir Sanitary Store

. . . Appellant(s)

Versus

Ranjit Singh

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Tribhuwan Singla, Advocate
for the appellant(s).

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SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal (RSA), is directed at the instance of appellant/plaintiff, against the judgment and decree dated 16.11.2019, passed by Ld. District Judge, Barnala (for brevity 'Ld. Lower Appellate Court'), whereby, findings of decreeing of suit by Ld. Trial Court vide its judgment & decree dated 22.04.2019, were reversed/set-aside.

2. The appellant/plaintiff - M/s Amarveer Sanitary Store is, in fact, running a sanitary store. As per the pleaded case, the respondent/defendant had purchased certain sanitary articles from appellant/plaintiff, but the due payment was not paid, and therefore, a suit for recovery of Rs.2,59,793/- was filed, which was decreed in favour of the appellant/plaintiff.

3. The respondent/defendant, preferred appeal before the Ld. Lower Appellate Court against the judgment & decree dated 22.04.2019 of the Ld. Trial Court. In appeal, Ld. Lower Appellate Court examined the record, and made observation that the plaintiff has substantially relied upon the '**cash/credit memo**' i.e. bills (Ex.P1 to Ex.P7), however, none of these bills carried signatures of the respondent/defendant, who allegedly

purchased those articles. Even on the top of the bills, word “credit” has been crossed. Therefore, taking note of the fact that the bills appear to be as “cash memo”, plea of the appellant/plaintiff was held to be un-tenable.

4. Further, reliance of the appellant (plaintiff) is only upon the ledger account. Regarding the copy of ledger account, which is available on record as Ex.P8, and is a computer generated statement, Ld. Lower Appellate Court has made a specific observation that said statement of ledger account, has been just tendered in the evidence without proving on record that, who had prepared it. Thus, no reliance can be placed upon the un-proved document(s).

5. While holding findings given by Ld. Trial Court, as incorrect, observations made by Ld. Lower Appellate Court, in Para Nos. 16, 17, 18 & 19, are reproduced herein-below:-

> *“16. Learned lower court has lost sight of the fact that it was for the plaintiff to prove its case and learned lower court has ignored the well settled legal position that the plaintiff in order to prove his case has to stand on his own legs and he can not take advantages of weakness of the case of defendant. The plaintiff has proved on record bills Ex.P1 to Ex.P7. These bills shows that on top of the bills Ex.P1 to Ex.P7, “cash/credit memo” has been written and 'credit' word has been crossed in all the bills Ex.P1 to Ex.P7. It is a normal business practice that whenever a particular term has been crossed that means that term does not bind the party and other alternative is applicable in the case. So, in the present case, when word 'credit' in 'cash/credit' has been crossed, then these bills appears to be of cash. Though it is not the case of the defendant that he has purchased any goods from the plaintiff and has paid for the same.*
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> *17. Further more, it is general business practice that whenever goods are purchased on credit and credit memo is issued, then the party taking goods is made to sign credit memo, but in Ex.P1 to Ex.P7, there is neither signature of the defendant nor signatures of any person, who has obtained the delivery of articles from the plaintiff firm on behalf of the defendant. Bills Ex.P1 to Ex.P7 have been issued by the plaintiff and there is nothing on record that the defendant has purchased the articles from the shop of the plaintiff. The plaintiff has alleged so and defendant has denied the same while appearing in the witness box as his own witness. So, merely on the basis of*

these bills Ex.P1 to Ex.P7, no liability can be fasten upon the defendant. If it could have been done in such a manner then anybody can issue such like bills and claim the amount from others. In absence of any act by the defendant or on his behalf by any authorised person, bills Ex.P1 to Ex.P7 would not create any liability towards the defendant.

18. The plaintiff has proved copy of ledger account Ex.P8. This is a computer generated statement, but the plaintiff while tendering the same into evidence has nowhere deposed that who is maintaining this computer and as to if the computer was properly maintained. No certificate as required U/s.65-B of Indian Evidence Act has been appended on Ex.P8. Further more perusal of Ex.P8, it does not show that the accounts are maintained in routine as it is with regard to bills issued to defendant alone. No account book in which daily sales have been recorded by the plaintiff firm has been produced and proved on record. Hon'ble Madhya Pradesh High Court in case titled "Jethanand and Company vs M/s Mohan and Company", 2008(1) C.;C.C., 2016 has held as under:

> *"No person can be charged with liability merely on the basis of entries in books of account, even where such books of account are kept in the regular course of business. The Supreme Court has further laid down the law that there has to be further evidence to prove payment of the money which may appear in the books of account in order that a person may be charged with liability thereunder, except where the person to be charged accept the correctness of the books of account and does not challenge them."*

19. Hon'ble Punjab and Haryana High Court in case titled in case titled "Randhir Singh vs Ram Kumar", 2015(40 C.C.C., 356 has held as under:

> *"A book which merely contains entries of items of which no account is made at any time, is not a book of account for the purpose of Section 34. The legislature did not intend to include in that category any record in which there is no process of reckoning."*

So, in the present case, this document Ex.P8 can not be considered to be a book of account as required U/s.34 of Indian Evidence Act as there is no process of reckoning shown in that document Ex.P8. So, in such circumstances merely on the basis of bills Ex.P1 to Ex.P7, liability can not be fastened upon the defendant. Bills Ex.P1 to Ex.P7 are not signed by the defendant. Further word 'credit' in 'cash/credit' memo stood striked out in all the memos. So, it appears that these memos were of cash and thus findings recorded by the learned lower court on issues no.1 to 3 are not sustainable."

6. I have heard learned counsel for the appellant and perused the relevant material available on record.

7. Considering the reasoning given by the Ld. Lower Appellate Court, this Court is also fully satisfied that the appellant/plaintiff has failed in proving the pleadings raised by him in the plaint by way of producing required documentary as well as oral evidence on record. Just on vague assertions, money decree could not be passed in favour of the appellant/plaintiff.

Therefore, I do not find any reason to interfere in the well reasoned factual findings given by the Ld. Courts below. Even, counsel for the appellant has failed to refer, any law point or perversity arising from the impugned judgment passed by the Ld. First Appellate Court.

Thus, for the reasons recorded herein-above, instant appeal being devoid of merits, stands dismissed. Judgment & decree passed by Ld. First Appellate Court is affirmed.

(SANJAY VASHISTH)
JUDGE

July 17, 2023
J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No