

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 916 of 1993 (O&M)

Date of decision : 17.2.2023.

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M/s Kimat Rai Harcharan Dass through sole
Prop. Kimat Rai

.....Appellant

vs.

Jarnail Singh

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: None for the parties.

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H. S. Madaan, J.

1. As per report of Process Server, appellant Kimat Rai, has expired, as informed by his son, Parveen Kumar. No application has been filed by his legal representatives to be brought on record. Since the appeal is of the year 1993, I do not find it proper and appropriate to adjourn the case further and I proceed to decide it after going through the record.

2. Briefly stated, facts of the case are that plaintiff – M/s Kimat Rai HarcharanDass, Mansa through sole proprietor Kimat Rai son of Basakhi Ram, resident of Mansa, had brought a suit for recovery of Rs.8,975/- against defendant Jarnail Singh s/o Raja

Singh, resident of Village Meean Police Station, Jaurkian, Tehsil Mansa, District Bathinda, on the averments that the plaintiff is engaged in business of sale purchase of jaggery, Shakar, Khal and cotton seeds etc. The defendant had purchased 4 bags of Khal worth Rs.462/-, four bags of cotton seeds worth Rs.900/-, four bags of Gur worth Rs.757.50 P., eight bags of Jaggery worth Rs.1368, five kgs of tea leaves worth Rs.225/-, total amounting to Rs.3712.50 P., from the plaintiff on credit. He had further purchased 5 bags of jaggery worth Rs. 707.50 P., vide bill No. 1398 dated 31.10.1989, four bags of ruskat jaggery worth Rs.400/-, six bags of cotton seeds worth Rs.1350/-, six kgs of tea leaves worth Rs.360/- and eight bags of Khal worth Rs.952/- total amounting to Rs.3769/- also on credit. These transactions were dully entered in the account books of the plaintiff. The defendant had not made payment to the plaintiff despite repeated requests and demands. Ultimately, the plaintiff brought a suit for recovery of the price of the goods sold to the defendant on credit alongwith interest 2% per month as per the market and custom.

3. Notice of the suit was given to the defendant, who was served and put in appearance, filing written statement, contesting the suit, raising various legal objections, on merits denying having made any purchase from the plaintiff on credit or owing any amount to the plaintiff. He prayed for dismissal of the suit.

4. Plaintiff filed replication to the written statement filed by the defendant, controverting the allegations made therein and reiterating the averments in the plaint.

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

- 1) Whether the plaintiff is Joint Hindu Family Firm whose proprietor is Kimat Rai being Karta? OPP
- 2) Whether defendant purchased on credit the commodities as per para No.2 of the plaint? OPP
- 3) Whether the plaintiff maintains regular account ? OPP
- 4) Whether the plaintiff is entitled to recover the suit amount alongwith interest prayed for ? OPP
- 5) Relief.

6. Parties were afforded adequate opportunities to lead evidence in support of the respective claims.

7. During the course of evidence, the plaintiff appeared himself as PW-1 and closed his evidence after tendering carbon copies of bills Exhibits P-7 and P-8.

8. On the other hand, defendant appeared himself as DW-1 and also examined DW-2 Smt. Jas Kaur, Member Panchayat of village and closed his evidence.

9. After hearing the arguments, the trial Court decided issue No. 1 in favour of the plaintiff firm and against the defendant. Issues No. 2 and 3 were also decided in favour of the plaintiff and against the defendant. Issue No.4 was decided in favour of the plaintiff and against the defendant. Resultantly, vide judgment dated 1.6.1991, the trial Court decreed the suit of the plaintiff for recovery of Rs.7481/- alongwith interest @ 12 ½% per annum from 1.11.1989 till the date

of decree and future interest @ 6% per annum from the date of decree till actual realization.

10. Feeling aggrieved, the defendant had preferred an appeal before the District Judge, Bathinda, which was assigned to Additional District Judge, Bathinda, who vide judgment dated 4.2.1993, accepted the appeal, setting aside the judgment and decree passed by the trial Court and resultantly, dismissing the suit of the plaintiff.

11. Feeling aggrieved, the plaintiff has approached this Court by way of filing the present regular second appeal, notice of which was given to the respondent-defendant

12. Since there is no representation on behalf of the parties, I am proceeding to decide the case after going through the record.

13. The Ist Appellate Court of Additional District Judge, Bathinda, while dismissing the suit of the plaintiff has highlighted that plaintiff has failed to prove Bills Exhibits P-7 and P-8, which were basis of the suit, therefore, it cannot be said that the defendant had ever purchased any goods on credit from plaintiff firm. It has been noticed that plaintiff Kimat Rai, while appearing as PW-1 has not proved the bills or their copies and bills Exhibits P-7 and P-8, which are carbon copies, have simply been tendered in evidence by counsel for the plaintiff. Kimat Rai had not stated anything that bills had been issued by him. The plaintiff had not examined any witness to show that in whose handwriting the original bills have been issued and to whom the original bills had been given. It was further taken

into view that bills Exhibits P-7 and P-8 do not bear signatures of the appellant. Furthermore, the plaintiff had failed to establish the Exhibits P-4 to P-6 are correct copies of the original account books. In that way it was concluded that plaintiff had failed to prove that defendant had purchased items from it on credit or that he was liable to pay the suit amount to it.

14. I find the judgment by the Ist Appellate Court to be detailed, well reasoned and it does not suffer from any illegality or infirmity. The trial Court had conveniently ignored the points highlighted by the Ist Appellate Court, which rendered the version of the plaintiff doubtful. The suit of the plaintiff was rightly dismissed by the Ist Appellate Court. I do not see any reason to differ with the judgment passed by the learned Additional District Judge, Bathinda.

15. No substantial question of law arises in the present appeal.

16. The appeal is found to be without any merit and the same stands dismissed, accordingly.

17.2.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No