

343 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2266-1991

Date of Decision :07.02.2023

M/s Durga Sales Corporation, New Delhi ...Appellant

versus

Jagdish Prasad Aggarwal and anotherRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Ravi Kumar Girdhwal, Advocate for the appellant.

None for the respondents.

B.S. Walia, J. (Oral)

1. Challenge in the Regular Second Appeal is to the judgment rendered by the learned District Judge, Bhiwani, dated 27.08.1991, partly allowing the appeal filed by the respondents / defendants against the judgment and decree passed against them by the learned Sub Judge, First Class, Charkhi Dadri, decreeing the suit of the appellant/plaintiff for recovery of Rs.9672/-.

2. Learned counsel contends that Civil Suit No.279 of 01.05.1989/12.05.1989, was filed for recovery of Rs.14224/-, out of which, Rs.9672/- was on account of price of the material, Rs.4352/- on account of loss of interest and Rs.200/- on account of legal expenses for serving a registered legal notice.

3. On the pleading of the parties, the following issues were framed:-

1. Whether the plaintiff firm is a registered partnership firm?OPP

2. If issue No.1 is proved, then who are the partners of this

firm and whether Govind Ram is authorized to institute the suit?OPP

3. Whether the goods were handed over to defendant No.1 with the conditions stipulated in para No.3 and 4 of the plaint and the transporter has contravened these conditions? OPP

4. Whether the plaintiff suffered damages to the tune of Rs.14224/- and is entitled to recover the same from the defendants ?OPP

5. Whether defendant No.1 was in collusion with defendant no.2 and as such both of them are liable for payment and thus misappropriated goods and are thus liable for the damages?OPP

6. Whether any security of Rs.7000/- was deposited by defendant no.2 with Industrial Gas Distributors?OPD

7. If above issued is not proved then whether the representative of the plaintiff firm got adjust this amount in lieu of the goods sought to be supplied to defendant No.2 through defendant no. 1 by the plaintiff?OPD

8. Whether the suit is not maintainable in the present form?OPD

9. If it is proved that security amount of Rs.7000/- was deposited by defendant No.2. then whether any endorsement on a cheque was obtained by the representative of the plaintiff from defendant no.2 for getting it transferred in favour of the plaintiff, as alleged?OPD

10. What is the effect of not disclosing the name of all the partners of the plaintiff firm in the suit?OPD

11. Whether the suit is false and frivolous and the defendants are entitled to special costs?OPD

12. Relief.”

4. A perusal of the file reveals that on the basis of the evidence led by the parties, the learned trial Court held that the plaintiff firm had proved that a consignment was booked by it with defendant No.1 with a direction to deliver the same to defendant No.2 in terms of document Ex.P-3, after receiving the bilty but defendant No.1 did not collect the bilty and handed over the consignment to defendant No.2 without receiving payment or bilty, therefore, the consignment had been delivered in derogation of the express conditions contained in Ex.P-3 and there was no cogent evidence of the defendants to show that the articles were handed over by defendant No.1 to defendant No.2 on the request of the representative of the plaintiff firm without getting the bilty. In the aforementioned background, the learned trial Court held that since defendant No.1 did not obtain bilty from defendant No.2 but the plaintiff had failed to show damages if any suffered, the plaintiff was entitled to recover only the sale price of the consignment i.e. Rs.9672/- from the defendants. The learned trial Court further held that since defendant No.2 had failed to prove that he deposited Rs.7,000/- as security with the plaintiff firm and also failed to prove that said amount was adjusted as security with the plaintiff firm, therefore, all the issues were decided in favour of the plaintiff firm and a decree was passed in favour of the appellant/plaintiff and against the respondents/defendants for recovery of Rs.9672/- along with interest @ 6% per annum w.e.f. the date of filing of the suit till actual realization with costs.

5. Learned Counsel contends that despite the well reasoned judgment and decree passed by the learned trial Court, the learned Appellate Court modified the judgment and decree by holding that the security deposit of Rs.7,000/- made by the respondents/defendants stood adjusted in sale price of Rs.9672/-, therefore, balance due to the plaintiff firm was Rs.2672/-, therefore the judgment and decree of the learned trial Court was modified by decreeing the suit of the plaintiff to the extent of Rs.2672/- with proportionate costs and interest as against the judgment and decree for Rs.9672/- passed by the learned trial court.

6. Sole argument of learned counsel for the appellant is that the judgment and decree passed by the learned District Judge, Bhiwani, modifying the judgment and decree passed by the learned trial Court, has been passed contrary to the evidence on record.

7. I have considered the submissions of learned counsel.

8. A perusal of the record reveals that the learned Appellate Court held that the defendants in order to prove the deposit of security, placed on file copies from their account books which were maintained by them in the regular course of business reflecting an entry in the account books of the defendants receiving a cheque from the old firm Industrial Gas Distributors and endorsing the same in favour of the plaintiff as security besides, a statement of the defendant to prove said fact whereas the plaintiff-partner Gobind Ram who was admitted to be doing business and looking after the business and was also admitted to be a partner in Industrial Gas Distributors, the previous firm did not enter the witness box, instead deputed his attorney, who showed utter ignorance about deposit of security by defendant with the old firm and refund of the said security or about the accounts of the plaintiff's

firm, and since admittedly the plaintiff firm was maintaining account books and had not been produced before the learned trial Court, the learned Appellate Court drew a presumption against the plaintiff that if the account books had been produced, the same would have gone against the plaintiff. The learned Appellate Court held that sending the attorney, who had no knowledge about the case amounted to withholding a material witness, therefore, not only had the plaintiff been remiss in not filing replication but it had also withheld documentary evidence i.e. the account books besides its partner, Gobind Ram who was well conversant with the facts of the case did not enter the witness box to admit or deny the allegations, so presumption would be drawn that the defendant did deposit the security of Rs.7,000/- and further that said security stood adjusted in the sale price of Rs.9672/-, therefore, the balance due to the plaintiff rightly worked out to Rs.2672/-.

9. In the light of the position noted above, the learned Appellate Court modified the judgment and decree passed by the learned trial Court by holding the appellant-plaintiff entitled to a sum of Rs.2672/- only. Learned counsel for the appellant-plaintiff candidly conceded that no replication was filed to the written statement to controvert the stand of the defendant of cheque of Rs.7,000/- received from Industrial Gas Distributors having been endorsed to the appellant-plaintiff-firm and of the said security having been adjusted in the sale price of Rs.9672/-.

10. In view of the position noted above, the findings recorded by the learned Appellate Court accepting the stand of the defendant of cheque of Rs.7,000/- received from Industrial Gas Distributors having been endorsed to the appellant-plaintiff firm as security and the said

amount having been adjusted in the sale price of Rs.9672/- and thereby the balance amount due to the appellant-plaintiff firm rightly having been worked out at Rs.2672/ does not warrant any interference. No question of law much less substantial question of law arises for consideration in the instant regular second appeal.

11. Accordingly, finding no merit in the instant appeal, the same is dismissed.

(B.S. Walia)
Judge

07.02.2023
ps

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>