

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

RSA-2513-2012(O&M)

Date of decision:-24.2.2023

M/s Sonu Cloth Store, Bawal

...Appellant

Versus

M/s Balaji Synthetics

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sanjay Mittal, Advocate
for the appellant.

Mr.J.S. Bedi, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff M/s Sh.Balaji Synthetics Bajaja Bazar, Narnaul through its owner Smt. Madhu had brought a suit for recovery against defendant M/s Sonu Cloth Store, Bawal through Sh.Om Parkash, on the averments that defendant had been purchasing cloth from the plaintiff on credit basis and plaintiff had maintained regular account of the defendant, which was a running one, however, the defendant did not pay any amount to the plaintiff after 15.2.2003 and at that time Rs.34,596/- was due from the defendant to the plaintiff; when the defendant failed to pay the said amount to the plaintiff firm, it filed a suit for recovery of the said amount along with interest @

18% per annum, coming to Rs.16,096/-.

2. On getting notice, the defendant appeared and filed a written statement contesting the suit denying that it had been purchasing any cloth from the plaintiff, that too, on credit basis, further contending that it being so there was no question of the defendant owing any amount to the plaintiff towards unpaid price of the cloth purchased. As per the version of the defendant, he i.e. Om Parkash, Prop. had raised a loan of Rs.57,000/- from Punjab National Bank, Dogri Ahir for the purpose of running cloth business and he used to purchase cloth material from M/s Shyam Sunder – Manoj Kumar, Narnaul; the payment for the same was made by Punjab National Bank, Dogri Ahir through cheque. According to the defendant, shop is lying closed for last two years and it is no longer in cloth business. The defendant prayed for dismissal of the suit.

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

1. Whether the plaintiff deserve for the recovery of Rs.50,692/- from the defendant? OPP.
2. Whether the suit is not maintainable? OPD.
3. Whether the plaintiff has no locus standi to file the suit? OPD.
4. Whether the plaintiff has no cause of action to file the suit? OPD.
5. Whether the suit is barred by limitation? OPD.
6. Whether the suit has not been properly valued for the purpose of Court fee? OPD.
7. Relief.

4. Both the parties were afforded adequate opportunities to lead

their evidence in support of their respective claims.

5. After hearing the learned counsel for the parties, the trial Court decided issue No.1 against the plaintiff in favour of the defendant holding that the plaintiff was not entitled to recover the suit amount; issues No.2 to 6 were not pressed by counsel for the defendant, as such were decided against the defendant.

As a result of findings on the issues, the suit of the plaintiff was dismissed with costs vide judgment and decree dated 27.1.2009.

6. Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Narnaul, which was assigned to Additional District Judge, Narnaul, who vide judgment and decree dated 3.1.2012 accepted the appeal, set aside the judgment and decree passed by the trial Court and passed a decree for recovery of Rs.50,692/- along with costs in favour of the plaintiff with pendente lite and further interest at the rate of 12% per annum.

7. Being dissatisfied with the judgment and decree passed by Additional District Judge, Narnaul, the defendant had filed the present regular second appeal before this Court, notice of which was given to respondent/plaintiff, who had put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record and I find that the appeal is absolutely without merit.

9. The approach of the trial Court in deciding the civil suit was erroneous and wrong. It failed to understand and appreciate the pleadings of the parties and to analyze the evidence adduced by the parties in a careful and analytical manner, in the process, rejecting the claim of the

plaintiff. Whereas the First Appellate Court of learned Additional District Judge, Narnaul by proper appraisal of evidence and correct interpretation of law had drawn a conclusion that there had been business dealings between the parties inasmuch as the defendant had been purchasing cloth on credit basis from the plaintiff, making payments from time to time and plaintiff had maintained a running account of the defendant in proper course of business, in that way, the suit amount was due from the defendant to the plaintiff. While arriving at this conclusion the First Appellate Court has considered various factors, which are as under:

- (i) It stood established on the record that plaintiff was a registered cloth merchant firm doing business in cloth on credit basis and maintaining its regular account in that regard in due course of business.
- (ii) The defendant had started purchasing cloths on credit basis from the plaintiff firm w.e.f. 6.12.1997 in the form of SAREES and suitings etc. and had been making payments in respect of the cloths purchased on credit from time to time to plaintiff firm and whatsoever cloths were purchased on credit and whatsoever payments were made by the defendant in that regard, had been entered into the account of the plaintiff firm, in that way an amount of Rs.34,596/- was due against the defendant on 31.3.2004. The prevalent rate of interest in the market was 18% per annum.
- (iii) The accounts of plaintiff were audited periodically as per Ex.P4 report of Auditors and accounts were being maintained in due course of regular business and as per report Ex.P4 amount of

Rs.10,979/- was due against the defendant, which was among 11 firms mentioned therein against whom different amounts were shown as outstanding.

(iv) The accounts of plaintiff vide Ex.P18 to Ex.P21 show that an amount of Rs.10,979, 74,702, 21,586 and 34,596 was due against the defendant as on 31.3.1998, 31.3.2000, 31.3.2002 and 31.3.2003, respectively and that account books had been subjected to scrutiny by statutory authorities including the income tax department.

(v) Income tax statements of plaintiffs for the year 2001-02 Ex.P8 and 2003-04 Ex.P9 submitted to income tax authorities show that an amount of Rs.21,586/- and Rs.34,596/- was outstanding against the defendant in the credit list of creditors among a number of other firms in those statements.

(vi) Failure of defendant to bring on record any evidence to shatter the credibility and authenticity of the entries in the account books of the plaintiff.

10. The trial Court clearly fell in error in dismissing the suit of the plaintiff, which error was rectified by the First Appellate Court of Additional District Judge, Narnaul by accepting the appeal and decreeing the suit of the plaintiff with costs.

11. No reason is found to differ with such observations made by the First Appellate Court and to take a contrary view in light of the facts and circumstances of the case.

12. No substantial question of law or fact arises in this appeal.

13. Therefore, I do not find any merit in the present appeal and

do not see any reason to disturb the legal, valid and well reasoned judgment passed by the Additional District Judge, Narnaul.

14. The appeal stands dismissed accordingly.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

24.2.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No