

RSA-1866-2016 (O&M)

223

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1866-2016 (O&M)

Date of decision: January 23, 2023

M/s Hindustan Distributors

....Appellant

versus

Tamil Nadu Newsprint and Papers Limited

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Hemen Aggarwal, Advocate for the appellant.

Mr. G.S. Sidhu, Advocate for the respondent.

ARUN MONGA, J. (ORAL)

CM-4947-C-2016

Despite availing numerous opportunities, reply to the application has not been filed.

For reasons stated in the application, same is allowed. Delay of 174 days in filing the appeal is condoned.

Main case (O&M)

For convenience, parties herein are addressed as per the recitals before learned trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, appellant-plaintiff is in second appeal before this Court assailing the trial Court judgment and decree dated 22.03.2013, as upheld by learned First Appellate Court vide its judgment and decree dated 04.05.2015.

3. Briefly stated, facts as noticed by Courts below, are that defendant-respondent approached plaintiff through Enquiry No.MM/SS/03895/2004 dated 30.09.2004 and demanded quotation for supply of 50,000 nos. of Cello Tape 2 through its Manager (Purchase). Plaintiff sent quotation vide letter dated

RSA-1866-2016 (O&M)

16.10.2004. Defendant demanded sample of the material to be supplied which were sent on 18.10.2004. Plaintiff quoted the rate of Rs.24.13 per roll inclusive of basic rate, excise duty, cess on excise duty and Central Sales Tax. Thereafter, vide letter dated 23.12.2004, defendant asked plaintiff to confirm the rate at Rs.20.50 per roll net of CENVET.

3.1. After negotiations and getting the acceptance of rate from plaintiff, defendant placed a trial order on 19.01.2005 for the supply of 2000 tape rolls. Thereafter vide fax message dated 20.01.2005, defendant again ordered the dispatch of 1000 tape rolls immediately. Vide letter dated 28.02.2005, defendant again ordered purchase of 3000 tape rolls from the plaintiff. Plaintiff dispatched 20 cartons containing 2160 rolls of the tape through transport invoice No.481 dated 01.02.2005 which was accepted by defendant. Defendant again requested for supply of 3000 tape rolls vide purchase order dated 08.03.2005. Plaintiff sent a supply of 3060 rolls vide invoice No.518 dated 11.03.2005. Thereafter, vide amended purchase order dated 30.03.2005, defendant demanded the supply of 20,000 roll and also emphasized that the other terms and conditions shall remain the same. The plaintiff supplied 18,000 tape rolls against this order vide invoice No.18 dated 23.04.2005. Defendant intimated telephonically to the plaintiff that someone else has agreed to supply the same material to the defendant @ Rs.17/- (net of CENVET) per roll and defendant will make the payment to plaintiff at that rate only for the supplies already made. Defendant also threatened the plaintiff that in case plaintiff did not agree to receive payment @ Rs.17/- per roll, defendant will not accept the material lying with the transporter at Chennai.

3.2. Beleaguered plaintiff, as it then was, left with no choice succumbed to the pressure tactics and financial blackmailing by defendant as plaintiff knew that in case the material is sent back, it will be damaged during the transportation.

Plaintiff suffered huge financial loss of Rs.53,234/- due to forcible and illegal

RSA-1866-2016 (O&M)

reduction in the rate and also suffered financial loss of Rs.63,442/- for non-purchase of balance 26,780 rolls out of total 50,000 units. Thus, plaintiff filed civil suit against defendant seeking recovery of Rs.1,16,676/- with interest @ 18% per annum.

4. Upon notice, defendant appeared and filed written statement raising preliminary objection of jurisdiction; maintainability of suit and plaintiff not approaching the Court with clean hands.

4.1. On merits, averments of the plaintiff-appellant were denied. It was also stated that there was no financial blackmailing on the part of defendant as it is the fault of plaintiff, who dispatched the material without the delivery schedule of defendants. Defendant was stated to be not liable to pay anything to plaintiff. Dismissal of the suit was prayed for.

5. Based on the rival pleadings, following issues were framed:

- “1. *Whether the plaintiff is entitled for recovery of Rs.1,16,676/- along with interest if yes then interest at what rate and on what amount and for which period? OPP*
2. *Whether this Court has no jurisdiction to try the present suit? OPD*
3. *Whether the suit is not maintainable in the present form? OPD*
4. *Whether the plaintiff has not disclosed the true and material facts to Court and has not come to the Court with clean hands, if yes its effect? OPD*
5. *Relief.”*

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, learned trial Court decided issues No.1, 3 & 4 against plaintiff. Issue No.2 was decided in favour of plaintiff. Consequently, learned trial Court dismissed the suit of plaintiff-appellant vide impugned judgment and decree dated 22.03.2013.

RSA-1866-2016 (O&M)

8. Feeling aggrieved against the said judgment and decree dated 22.03.2013, appellant-plaintiff preferred first appeal.

9. Learned First Appellate Court dismissed the appeal, resulting in instant Regular Second Appeal before this Court.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

“11. It is vehemently contended by learned counsel for the appellant that the learned trial Court has misread, misinterpreted and misconstrued the mandatory provisions of law and also the documents that have come on record. It is further averred that there are so many cuttings, additions, alterations in the authority letter issued in their favour and signed by Mr. V.K. Parameshvaran, allegedly authorized signatory of the defendant company. It is further submitted that the learned trial Court has also erred in returning the findings that the plaintiff himself agreed to accept the rate of Rs.17/- per roll and, therefore, cannot now demand the original amount of Rs.20.50. In fact, the plaintiff accepted the rate under duress and coercion at that time and later on filed the present case for the redressal of his grievance. The legal position was required to be seen when the amended purchase order dated 30.03.2005 Ex.DW1/6 was placed by the defendant with the plaintiff. On that date the settled rate between the parties was Rs.20.50 per roll. The trial Court has committed a grave mistake in relying upon the documents Ex.DW1/7 to Ex.DW1/9, which are mere photo copies.

12. However, these contentions put forth by the learned counsel for the appellant are misconceived.

13. On the strength of oral as well as documentary evidence available on the file, the learned trial Court has rightly dismissed the suit of the plaintiff. Concededly, the tender was invited for 50,000 numbers of cello tape rolls vide Ex.PW1/1. And vide Ex.PW1/2 the plaintiff company was asked to supply the samples and the samples were supplied at the negotiated rate of Rs.20.50 per roll. Copy of the general terms and conditions is on the file, in which it has been clearly stated that delivery must be effected as per the delivery schedule given by TNPL from time to time. The defendant has been able to prove that the plaintiff had sent the delivery without delivery schedule and specific intimation was given by the defendant to the plaintiff vide letter Ex.DW1/9. The plaintiff-appellant has also tendered this letter as Ex.PW1/10 and, therefore, by exhibiting such correspondence the plaintiff has, in a way, admitted that supply was made to the defendant without delivery schedule. The document i.e., correspondence/letter Ex.PW1/11 depicts that the plaintiff has accepted the option given by the defendant whereby it was requested to the defendant to accept the material at the rate the defendant can accept and release the payment. Therefore, the learned trial Court has rightly come to the conclusion that once the plaintiff has sent the acceptance letter qua the rate quoted by the defendant with regard to

the material sent without delivery schedule, the plaintiff could not ask the defendant to pay the difference price. In such a scenario, the plaintiff-appellant cannot be heard saying that the plaintiff accepted the rate under duress or coercion at that time. The plaintiff-appellant was not supposed to come under any pressure, duress or coercion while accepting the rate. Consequently, it is found that the learned trial Court has rightly returned its findings on Issue No.1 against the plaintiff and in favour of the defendant.

14. In the light of what is discussed above and without elaborating further, it is found that the learned trial Court has rightly returned its findings on all the issues, therefore, the same are hereby affirmed. Consequently, the judgment and decree rendered by the Court of first instance, are up-held and as a result thereof, the instant appeal fails and the same is hereby dismissed with costs.

15. Decree-sheet be prepared accordingly. Record of trial Court be returned along with copy of this Judgment. File be consigned to the Record Room.”

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the Courts below are misread the evidence and wrongly concluded that the plaintiff had agreed to accept the rate of Rs.17/- per roll and the impugned judgments are contrary to law and evidence on record.

12. Having perused the impugned judgments, my considered opinion is that the same submissions made before the Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with those conclusions. There seems no substance in the submissions that the impugned judgments were passed on conjectures and surmises.

13. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

14. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

15. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate

RSA-1866-2016 (O&M)

jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

16. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

17. Pending application(s), if any, shall also stand disposed of.

18. No order as to costs.

(ARUN MONGA)
JUDGE

January 23, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No