

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 2192 of 2014 (O&M)
Date of decision : 13.2.2023

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Virender Singh

.....Appellant

vs.

Pankaj Ahlawat

.....Respondent

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

Present: None for the appellant.

Mr. Satyawar Ahlawat, Advocate for the respondent.

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H. S. Madaan, J.

1. There has not been any representation on behalf of the appellant despite notice having been served upon him. Since the appeal relates to the year 2014, I do not find it proper and appropriate to adjourn it further and I proceed to decide it, after hearing Mr. Satwant Ahlawat, counsel for the respondent and going through the record.

2. Briefly stated, facts of the case are that, plaintiff – Pankaj Ahlawat, had brought a suit for recovery of Rs.5,22,900/- against

defendant Virender Singh, on the averments that defendant was dealer of L & T John Deers Tractor in the name of Hercules Motors at Jhajjar Model Town, Jhajjar, District Jhajjar. An agreement regarding the appointment of plaintiff as Sub-Dealer of L & T John Deere Tractor under Hercules Motors at Bahadurgarh District, Jhajjar, was executed between the plaintiff and the defendant on 15.9.2004, which was got duly attested from a Notary Public on 17.9.2004. In terms of the said agreement, the plaintiff had deposited a sum of Rs. 3,80,000/- with the defendant as security money. The plaintiff was appointed as a Sub-Dealer for a period of one year starting from 20.9.2004 to 19.9.2005. It was agreed that after expiry of period of one year, both the parties would be free to continue or bring to an end that Sub Dealership and in case the Sub Dealership was not continued, then the defendant would refund the security amount to the plaintiff within a week. The agreement of Sub Dealership between the parties continued for one year, thereafter the plaintiff did not got it extended. He asked the defendant time and again to refund the security money deposited by him to the tune of Rs.3,80,000/- with interest @ 24% per annum. But the defendant put off the matter on one pretext or the other giving rise to the plaintiff to bring the suit.

3. On getting notice, the defendant appeared and filed written statement, contesting the suit. However, the defendant admitted that the agreement with regard to sub dealership had been entered into between the parties for having agency of the defendant at Bahadurgarh and such agreement was executed on 15.9.2004. It is further admitted that a sum of Rs.3,80,000/- was deposited on behalf

of plaintiff by his father Lt. Col. Kadam Singh Ahlawat as security and that agreement was not extended after completion of period of one year. According to the defendant plaintiff could not run such dealership at Bhahadurgarh successfully and it was closed in the month of June 2005, which was prior to the date of expiry of the agreement. It was so done with mutual understanding. Now the Sub Dealership is continuing in a different showroom near to the previous one, which is being run by the defendant himself and being managed by Sombir son of Than Singh r/o Kherka, Tehsil Bahadurgarh, District Jhajjar. According to the defendant on 7.6.2005, the plaintiff had received Rs. 2 lacs from one Satpal through cheque No. 328442 drawn on HKG Bank, Nuna Majara. The defendant after withdrawing the cash from the bank gave the entire sum of Rs. 2 lacs to the father of the plaintiff. Therefore a sum of Rs.2 lacs were returned on account of refund of security and remaining payment of Rs.1,80,000/- was made by the defendant to the father of the plaintiff on 16.9.2005 vide cheque No. 993411 dated 16.9.2005 drawn on Oriental Bank of Commerce, Jhajjar. That cheque was deposited by the father of the plaintiff in his account in the Oriental Bank of Commerce and he had issued a receipt for acknowledging the payment of that amount, as well as receipt of entire payment. Defendant denied liability to pay Rs.3,80,000/- as principal amount and Rs.1,42,900/- as interest thereon. In the end, defendant prayed for dismissal of the suit.

4. In the replication filed by the plaintiff, the averments made in the written statement filed by the defendants were denied and those made in the plaint were reiterated.

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

1) Whether the plaintiff is entitled to the recovery of suit amount alongwith interest as prayed or to what extent?

OPP

2. Whether the suit of the plaintiff is within limitation of time ? OPP

3. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD

4. Whether the suit of the plaintiff is not maintainable in the present form? OPD

5. Relief.

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

7. After hearing the arguments, the trial court of Civil Judge (Senior Division), Jhajjar, decided issue No. 1 against the plaintiff. Issue No. 2 was decided in favour of the plaintiff. Issues No. 3 and 4 were decided against the defendant being not pressed. Vide judgment dated 20.4.2012, the suit of the plaintiff was dismissed with no order as to costs.

8. Feeling aggrieved by the said judgment and decree, the plaintiff had preferred an appeal before the District Judge, Jhajjar, which was assigned to Additional District Judge, Jhajjar, who vide judgment dated 31.1.2014, set aside the judgment and decree passed by the trial Court and decreed the suit of the plaintiff partly, holding

that the plaintiff is entitled to the decree for recovery of Rs. 2 lacs from respondent-defendant alongwith interest @ 15% per annum from the date of filing of the suit till realization.

9. Feeling aggrieved by the said judgment and decree passed by the Ist Appellate Court of Additional District Judge, Jhajjar, the defendant has approached this Court by way of filing the present regular second appeal, notice of which was given to the respondent-plaintiff, who had put in appearance. Subsequently, there has not been any representation on behalf of the appellant.

10. I have heard learned counsel for the respondent, besides going through the record.

11. In this case, the parties are not at variance with regard to defendant having appointed the plaintiff as Sub-Dealer for Bahadurgarh, for a period of one year and a security of Rs.3,80,000/- having been deposited by the plaintiff with defendant. According to the plaintiff, this amount has not been refunded to him by the defendant, whereas according to defendant, the entire amount has been paid to the plaintiff /his father and nothing remains due.

12. The trial Court had non-suited the plaintiff mainly for the reason that the plaintiff had not examined his father to disprove the claim of the defendant and to prove his own claim, as mentioned in Exhibit P-1. Whereas the defendant had tried to summon and examine father of the plaintiff, though his presence could not be procured and his statement got recorded by the defendant.

13. The approach of the trial Court in declining the entire claim of the plaintiff was not correct. However, in appeal, the learned

Additional District Judge, rectified that error, decreeing the suit of the plaintiff partly, for recovery of Rs.2 lacs with interest. The factors which weighed on the mind of learned Additional District Judge, in doing so were that though defendant by examining DW-1 Om Parkash and DW-2 Suraj Bhan Sharma, had succeeded in proving that vide cheque No. 993411 dated 16.9.2005, a sum of Rs.1,80,000/- had been paid to Lt. Col. Kadam Singh Ahlawat, father of the plaintiff vide documents Exhibits D-1 to D-4, but the defendant was unable to establish the payment of remaining Rs. 2 lacs which according to him he had paid in cash to father of the plaintiff on 7.6.2005. It has been noticed that according to version of the defendant it was assured by father of the plaintiff that after accepting the final payment , a receipt regarding settlement of accounts would be provided to the defendant and the defendant in good faith and on request of father of the plaintiff had made payment of RS., 2 lacs in case, prior to termination of date of agreement. It was found to be highly improbable, that a businessman would tender an amount of Rs. 2 lacs in cash without obtaining any receipt with respect to the same and furthermore, if the said cheque statedly received by father of the plaintiff was a bearer cheque, then why the payment was not directly received by him from bank instead of defendant firstly withdrawing it and then handing over the same to father of the plaintiff. It was also noticed that defendant had not examined Sh. Satpal, from whose account said amount of Rs.2 lacs then withdrawn by the defendant to give it to father of the plaintiff. This factor was also taken into consideration that subsequent receipt Exhibit DW8/B for Rs.1,80,000/- purported to

be scribed by DW-5 Deepak Kumar Sharma, allegedly bearing the signatures of the father of the plaintiff, does not reflect the payment of Rs. 2 lacs in cash on 7.6.2005. Reply of DW-5 in his cross examination was also considered that defendant Virender had not given any cash amount to plaintiff Pankaj in his presence. Therefore, the fact that the words 'settlement of accounts in lieu of agreement' was written in receipt Exhibit DW 8/B does not give rise to an inference regarding 'full and final' and to create his defence, the defendant had lodged a false DDR No.8 on 24.9.2005 at Police Post City, Jhajjar, regarding loss of original receipt alongwith some other documents.

14. Learned Additional District Judge, had reached a conclusion that defendant had not made payment of Rs. 2 lacs to Lt. Col. Kadam Singh Ahlawat, father of the plaintiff, as claimed by him. It was rightly observed that though the plaintiff had filed a suit for recovery of refund of entire security amount of Rs.3,80,000/-, but it being established that a sum of Rs.1,80,000/- had been returned to him by the defendant, but that does not demolish the entire case seeking recovery from the defendant, since principle of '*falsus in uno, falsus in omnibus*' i.e. false in part, false in whole, is not applicable in India.

15. I find that the judgment passed by the learned Additional District Judge, Jhajjar, is based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity there with. Learned Additional District Judge, had rightly set aside the judgment and decree passed by the trial Court

and then decreed the suit of the plaintiff in part.

16. The regular second appeal filed by the defendant is found to be without any merit and further more, no substantial question of law is found to be involved in this case.

17. Therefore, the appeal stands dismissed.

13.2.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No