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

RSA-5367-2015 (O&M)

Date of decision: January 17, 2023

National Fertilizer Limited

....Appellant

versus

M/s Narang Khad Store, Panjeton and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Arvind Mittal, Advocate for the appellant.

None for the respondents.

ARUN MONGA, J. (ORAL)

CM-12775-C-2015

This is an application for permission to lead additional evidence.

Heard.

No grounds for interference are made out at this belated stage as no cogent reasons have come forth for not doing the needful either at the trial stage or even before the first Appellate Court.

Dismissed.

Main case (O&M)

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

2. Having suffered concurrent adverse findings by the two Courts below, appellant-defendant No.1 (National Fertilizer Limited – NFL) is in second appeal before this Court assailing the trial Court judgment and decree

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dated 08.09.2012, as upheld by learned First Appellate Court vide its judgment and decree dated 24.04.2015.

3. Briefly stated, fact, as noticed by Courts below.

3.1 Plaintiff-respondent No.1 is proprietor of M/s Narang Khad Store, Panjeton, District Yamuna Nagar. Defendant No.1 (NFL) is Manufacturer and defendant no. 2 is dealer of Kissan Urea Khad (fertilizer). Plaintiff intended to purchase the said Khad from defendant No.1 through defendant No.2. For purchase of Kissan Urea Khad, plaintiff handed over a draft/cheque No.254136 dated 31.01.2005 drawn on PNB, Chhachhrauli for a sum of Rs. 50,000/- to defendant No.2 for further remittance to defendant No.1 at its Kurukshetra branch. Prior thereto, another draft/cheque No.91456 dated 29.12.2004 drawn on PNB, Chhhachhrauli for a sum of Rs.30,000/- was also given by plaintiff. Defendant No.2 issued receipts in this regard to the plaintiff. After receiving payment, fertilizer was not supplied by the defendants. Plaintiff thus suffered loss of business and mental agony, harassment and other incidental loss. Plaintiff issued a legal notice, which was duly received by the defendants, but they did not either reply or comply with the notice.

4. Upon notice, defendants appeared and defendant No.1 filed written statement taking preliminary objections *inter alia* of maintainability, *locus standi*, estoppel, concealment of material facts, mis-joinder and non-joinder of necessary parties and stated that suit was barred by the provisions of Specific Relief Act etc.

4.1. On merits, it is pleaded by defendant No.1 that it did not sell fertilizer directly. Defendant No.2 placed the order with NFL alongwith

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several demand drafts and as per Rules fertilizer was supplied to defendant No.2. The payment made by the plaintiff to defendant No.2 and assurance given by defendant No.2, were denied by NFL for want of knowledge. NFL averred that there was no privity of contract between it and the plaintiff.

4.2 Defendant No.2 filed his independent written statement and pleaded that he had indeed received two demand drafts from the plaintiff for supply of Kissan Urea Khad. However, after receiving those demand drafts, the same were given to NFL. It was the duty of NFL to supply the order, after receiving the amount. Rest of the averments of the plaint were denied.

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

- “1. *Whether plaintiff is entitled to decree for recovery of Rs.80,000/- alongwith interest at the rate of 2% per month from the date of deliver i.e., 29.12.2004 till upto date, on the grounds mentioned in the plaint? OPP.*
2. *Whether suit is not maintainable against defendant no.2? OPD.*
3. *Whether suit is bad for mis-joinder and non-joinder of necessary parties? OPD.*
4. *Whether suit is not maintainable in the present form? 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, trial Court decided issues No.1 to 4 in favour of the plaintiff. Consequently, learned trial Court decreed the suit of the plaintiff for recovery of Rs.80,000/- along with interest @ 6% per annum from date of filing of suit till its actual realization, vide impugned judgment and decree dated 08.09.2012.

8. Feeling aggrieved against the said judgment and decree dated 08.09.2012, appellant-defendant No.1 preferred first appeal.

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

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

“15. It is not disputed by the appellant/defendant No. 1 that the amount was being received by the defendant No.1 through cheques demand drafts. Receipt Ex.P3 dated 31.12.2004 shows that demand draft No.91456 dated 29.12.2004 drawn on Punjab National Bank, Chhachhrauli, in the sum of Rs.30,000/- in favour of NFL, Kurukshetra was handed over by the plaintiff. Similarly, receipt Ex.P2 dated 31.01.2005 shows that demand draft No. 254136 dated 31.01.2005, for a sum of Rs.50,000/- in favour of NFL. Kurukshetra was handed over by the plaintiff. Ex.P7 reveals that Punjab National Bank. Chhachhrauli branch, has certified that teal No. 091456 dated 29.12.2004 for Rs.30,000/- and demand draft No. 254136 dated 31.01.2005 for Rs. 50,000/- were issued in favour of NFL, Kurukshetra. Ex.D1 shows the letter written from Zimidara Khad Store to Area Manager, NFL, Kurukshetra with regard to demand draft in the sum of Rs.50,000/- and Ex.D2 show letter written from Zimidara Khad Store to Area Manager, NFL, Karukshetra with regard to demand in the sum of Rs.30,000/-. During the course of arguments, it has not been disputed by learned counsel for the appellant/defendant No.1 that demand drafts in the sum of Rs.30,000/- and Rs.50,000/- were received by NFL, Kurukshetra, but has argued that the delivery was made against the said payment. The learned counsel for the appellant/defendant No.1 has drawn attention of the court towards Ex. D3 wherein the deliveries made by it to defendant No.2 have been shown. It is pertinent to mention here that no delivery in the sum of either Rs.30,000/- or Rs.50,000/- or Rs.80,000/- have been shown after receipt of the demand drafts. In the absence of any such proof, it cannot be presumed that the deliveries shown in Ex.D3 also relate to Kisan Urea Khad to be delivered to the plaintiff through defendant No.2. The learned trial court has rightly observed that both the defendants had not supplied Kisan Urea Khad to the plaintiff nor amount was returned to him. Both the defendants were held liable to deliver the Khad on receiving the amount of Rs.80,000/- from the plaintiff. Hence, the findings of learned trial court on issue No.1 are reiterated.”

11. Shorn of unnecessary details, the submissions in this Regular Second Appeal are that the findings returned by the Courts below are against the facts of the case and are based on conjectures and surmises; and are

contrary to law and evidence on record. There is no privity of contract between appellant (defendant No.1) and plaintiff. Appellant (defendant No.1) is not responsible for the acts of defendant No.2.

12. Having perused the impugned judgments, my considered opinion is that the 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 the same. There seems no substance in the submissions that the impugned judgments are based 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. In any case, appellant/ defendant No.1 being principal cannot wash its hands off the acts of its agent i.e., defendant No.2, especially once it is proved on record that it had received payment of the money for supply of fertilizer. It was duty bound to ensure the delivery with liberty to action against its agent.

15. There thus 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.

16. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

17. However, since learned counsel for the appellant even at this stage continues to argue that there was no privity of contract between appellant and plaintiff to accept the money and therefore appellant-Company is not liable to pay the decretal amount, I am hasten to add that the aforesaid argument canvassed by learned counsel for appellant-defendant No.1, at best, is dispute *inter se* between defendants No.1 and 2 and the appellant is/ was at liberty to appropriate action against respondent-defendant No.2. I see no grounds to interfere with the judgment/ decree under challenge which is joint and several.

18. 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.

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

20. No order as to costs.

(ARUN MONGA)
JUDGE

January 17, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No