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2023:PHHC:053774

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

DATE OF DECISION: 23.03.2023

1. RSA No. 6127 of 2018 (O & M)

Perfect House Limited and others ...Appellants

Versus

Bijender Singh ...Respondent

2. RSA No. 6149 of 2018 (O & M)

Perfect House Limited and others ...Appellants

Versus

Bijender Singh ...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Arun Kumar Singal, Advocate,
 For the appellants.

 Mr. Gaurav Tyagi, Advocate,
 For the respondent.

ARUN MONGA, J. (ORAL)

**CM-3083-C-2023 IN RSA-6127-2018 AND
CM-3084-C-2023 IN RSA-6149-2018**

For the reasons stated in applications, same are allowed and documents contained at Annexures R-2 and R-3 are taken on record in both the appeals, subject to all just exceptions.

Main cases (O&M)

Vide this common order/judgment, above-mentioned two second appeals are being disposed of, since they arise out of the same original suit. For brevity, recitals are taken from RSA-6127-2018.

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

3. Having suffered adverse concurrent findings by the two Courts below, defendant/appellant herein is in second appeal against the trial Court's judgment and decree dated 03.07.2015, as upheld by learned First Appellate Court vide its judgment and decree dated 24.07.2018 with modification regarding interest @ 6% per annum, vide which suit for recovery of Rs.10,00,000/- was decreed.

4. Succinct facts first.

4.1 Plaintiff, being proprietor of M/s Standard Engine Care Centre, Panipat, filed a suit for recovery alleging that defendant No.1-company through its directors, defendants No.2 and 3, deals in providing diesel generating sets. Defendant No.1 through defendants No.2 and 3 entered into a contract under which the plaintiff was to provide services to repair the generators installed at the towers of Reliance Communications in the districts of Ambala, Yamuna Nagar, Kurukshetra and Kaithal. The generating sets along with spares were imported from China. It was decided between the parties that spares for repair of generating sets shall be provided by defendants at Panipat and all the payments shall also be made by the defendants to plaintiff at Panipat only. Plaintiff provided services to defendants from 01.04.2008 to 30.06.2009 and was sending relevant bills regarding repair to them. Suddenly, defendants without any due notice, terminated the service contract, without settling accounts. After various efforts, accounts were settled and defendants were found liable to pay a sum of Rs.4,45,000.48 and spares to the value of Rs.4,45,000/- were found in possession of plaintiff for which plaintiff had already paid. This amount was required to be credited in the account of plaintiff and defendants were under legal obligation to take back the spares. Plaintiff approached defendants many a times to pay the

outstanding amount and to credit Rs.4,45,000/- after taking spares back as they were of no use to plaintiff.

4.2 Legal notice dated 19.07.2010 was also served but to no avail. Hence, the suit.

5. Upon notice, defendant/appellants herein appeared and filed written statement taking preliminary objections regarding jurisdiction; plaintiff not coming to Court with clean hands and suppression of material facts; suit being time barred etc.

5.1 On merits, it was admitted that defendant No.1 was providing services of diesel generating sets. However, it was denied that it was doing business through defendants No.2 and 3. Execution of dealership agreement dated 15.02.2009 was denied. It was further denied that plaintiff offered dealership of four districts in State of Haryana. It was further denied that plaintiff ever provided any repair services from 01.04.2008 to 30.06.2009. Service contract of plaintiff were terminated as he was not providing proper services and there was no requirement of issuing notice before termination of contract. It was admitted that accounts were settled between the parties pleading that according to same, nothing was due against defendants.

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

“(1) Whether plaintiff is entitled to recovery of Rs.10,00,000/- , as prayed for? OPP

(2) Whether this Court has no jurisdiction to try the present suit? OPD

(3) Whether plaintiff has concealed true and material facts and not come to the Court with clean hands? OPD

(4) Whether the suit is bad for mis-joinder and non-joinder of parties? OPD

(5) Whether the suit is barred by time? OPD

(6) *Whether suit is not properly valued for the purpose of court fee and jurisdiction? OPD*

(7) *Whether suit is not maintainable in the present form? OPD*

(8) *Whether the suit is not disclose any cause of action against the defendants? OPD*

(9) *Relief.*

7. 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*.

8. On appraisal of evidence vis-à-vis pleadings, issues No.1 and 2 were decided by learned trial Court in favour of plaintiff. However, issues no. 3 to 8 were not pressed during the course of arguments. Resultantly, suit was decreed for recovery of Rs.10 Lakh. However, no order was passed regarding grant of interest by learned trial Court.

9. Feeling aggrieved, both parties preferred separate appeals before learned First Appellate Court; plaintiff claimed interest @ 18% per annum on the decretal amount, whereas defendants prayed for setting aside judgment and decree passed by learned trial Court. Appeal filed by plaintiff was partly allowed modifying judgment and decree of learned trial Court to the extent that plaintiff was held entitled to interest @ 6% while appeal filed by defendants was dismissed by learned First Appellate Court, resulting in two different Regular Second Appeals by defendants before this Court.

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

“xxx

22. *The arguments advanced by both the sides are duly considered apart from perusing the record. As far as the point of limitation is concerned, this point was not raised before the learned trial Court by the defendant-appellant of case No.2, however, it is raised first time in the appeal alleging that it is a legal argument. If it is considered that it is legal argument and can be taken in appeal even, then it is not made out that the suit is time barred. The last settlement between the parties is placed on record which pertains to 17.02.2010 and the same has been signed by Perfect House Private Ltd. on 20.02.2010 and the present suit is well within limitation from the date of the settlement i.e. 17.02.2010. Now the question is that whether this document is established in the evidence or not. A perusal of the statement of PW1 Bijender reveals that he has tendered the settlement as Ex.P69 in his statement. In the cross-examination there is no effective cross-examination regarding this document and it could not be extracted during the cross-examination that it is a false or forged document. Moreover, DW1 N.K.Parsad admitted in his cross- examination that Ex.P69 has been issued by their company. Regarding this fact though the learned counsel for the defendant raised objection at the time of arguments as the learned counsel has alleged that this line should be read in continuation of previous line wherein the witness says that he do not know whether account statement Ex.P66 has been issued by his company or not. As a matter of convenience the translation of relevant lines is hereby re-produced:-*

"I do not know whether material of bill Ex.P3 to Ex.P65 was supplied to our company or not I cannot say. The statement of account Ex.P66 is issued by our company. In the same way Ex.P69 is also issued by our company"

In this regard, first of all this Court is of the view that the above said line is a different line and the line regarding admission of Ex.P69 is a different line, therefore, it amounts to admission. Anyhow if the arguments of learned counsel is accepted even then the interpretation of the said line will be that the witness has said that he do not know that whether Ex.P69 is issued by his company or not. If the said line is interpreted in that manner then its is an evasive denial which amounts admission. In such, circumstances, in view of the totality of the circumstances and while reading the evidence as a whole Ex.P69 stands proved and the suit is well within limitation from the said date.

23. *The next objection is regarding jurisdiction. It is being alleged that Court at Panipat has no jurisdiction. For that purpose the learned counsel for the appellant in case No.2 has pointed out clause 38 of the agreement while the learned counsel for respondent-plaintiff has pointed out the foot note*

*on the bills that all disputes subject of Panipat jurisdiction. These bills from Ex.P3 to Ex.P65 were acted upon during the transaction. In such circumstances, the Court at both the places i.e. Mumbai and Panipat are having jurisdiction. The suit was filed at Panipat, therefore, the Court at Panipat was well having jurisdiction. Apart from that such type of objection can be raised before the appellate Court upto a limited extent only. It is to be established before the appellate court that there was failure of justice due to the jurisdiction point but no such fact came before this Court that there was any failure of justice due to jurisdiction point. Therefore, the jurisdiction at Panipat is made out. The reliance in this regard can be given to the upon the law laid down by Hon'ble Supreme Court in case titled as **R.S.D.V. finance Co. Pvt. Ltd. Vs. Shri Vallabh Glass Works Ltd. 1993 AIR (SC) 2094 (Supra) and Koopilan Uneen's daughter Pathumma and others Vs. Koopilan Uneen's son Kuntaian Kutty dead by LRS and others 1981 AIR (SC) 1683 (Supra).** The law laid down by Hon'ble Punjab and Haryana High Court in case titled as **Suraj Bhan Vs. Murari Lal 1983 HLR 83 (Supra).** The law laid down by Hon'ble Bombay High Court in case titled as **Suresh Kumar S/o Rochi Ram Jagyasi Vs. Maharashtra State Electricity Distribution company Ltd. Nagpur 2014(17) RCR (Civil) 499 (Supra)** and the law laid down by Hon'ble Karnataka High Court in case titled as **Bayamma and Others Vs. Puttabayamma and another 2010(10) RCR (Civil) 774 (Supra).** The case law laid down by the Hon'ble Supreme Court in case titles as **Inter Globe Aviation Ltd. Vs. N.Satchinand 2011(3) RCR(Civil) 666 (Supra),** is not applicable on the facts and circumstances of the present case.*

24. *The other contention of appellant of case No.2 was that the recovery of 10 lacs is not established as complete bills and proper documents have not been produced on record and some of the bills are photo copies. In this regard this Court is of the view that the bills Ex.P3 to Ex.P65 are in original. Apart from that the material documents for the decision of the present case is Ex.P67 and Ex.P69. As already discussed above, during the point of limitation the document Ex.P69 is well proved on the record. Similarly the document Ex.P67 is also established. It is proved by PW1 and there is no effective cross-examination on this document also. It cannot be extracted during the cross-examination that the document is false and fabricated. Hence, it can be relied upon and from those documents the recovery of 10 lacs is well established. These documents are duly signed, therefore, it cannot be said that these documents cannot be relied upon. Therefore, the law laid down by Hon'ble Supreme Court in case titled as **Ishwar Dass Jain (dead) through L.Rs Vs. Sohan Lal (dead) by L.Rs 1999(2) PLJ 486 (Supra)** is not applicable on the facts and circumstances of the present case. Therefore, the judgment of the learned*

trial Court is proper and justified. It deserves to be upheld and appeal in Case No.2 is liable to be dismissed.

25. *The learned counsel for respondent no.1 in case appeal No.2 has taken an objection that no resolution of company has been filed, therefore, the appeal is not maintainable. The learned counsel for the respondent alleged that it is a continuation of suit, therefore, appeal is well maintainable. In this regard this court is of the view that it is correct that the appeal is continuation of suit, therefore, it cannot be dismissed merely on the ground that fresh resolution has not been filed. In such circumstances, the law laid down by Hon'ble Punjab and Haryana High Court in case titled as **The Uddat Bhagat Ram Nazoor Land Co-operative Society Vs. Lekal and others 1981 PLJ 79**, the law laid down by Hon'ble Allahabad High Court in case titled as **Cantonment Board Bareilly and another Vs. Jhankar Singh Yadav 2006 (Suppl.) A.R.C.301** and the law laid down by Hon'ble Supreme Court in case titled as **Cantonment Shubh Shanti Services Ltd. Vs. Manjula S.Aggarwalla & Ors. 2005 A.I.R. (SC) 2506** is not applicable on the facts and circumstances of the present matter as those are not concerned with appeal. However, though the appeal cannot be dismissed due to non-filing of fresh resolution but due to the reasons as already discussed in the above paras the appeal in Case No.2 is liable to be dismissed.*

26. *As far as the appeal in case No.1 is concerned, the plaintiff has come with a prayer that it has claimed interest @ 15% per annum and the same may be granted as suit has been decreed. The learned counsel for the defendant alleged that the plaintiff has restricted his claim to the tune of Rs. 10 lacs only including the interest calculated upto to date as mentioned in para No.11 of plaint and para no.12 of the affidavit filed with the plaint. Therefore, no interest is to be paid. In this regard this Court is of the view that from the perusal of para No.11 of the plaint and para no.12 of the affidavit it is made out that the plaintiff has restricted his claim to 10 lacs including interest calculated up to date. The value of the suit is also assessed to the tune of 10 lacs and the Court fee has been filed accordingly. However, the plaintiff has not waived his right of interest during pendency of suit and from decision of suit till recovery. The learned trial Court has not given any observation that whether it is allowing interest or whether it is declining the interest. However, keeping in view the facts and circumstances of the present matter the plaintiff is entitled for interest. Now it is to be seen that at what rate the plaintiff is entitled for interest. The plaintiff has claimed interest @ 15% per annum which appears to be on higher side as the rate of interest is at a very lower side now a days. There is no evidence on the record to establish that in such type of transactions the rate of interest is 15% per annum. Keeping in view the entire facts and circumstances of the matter the interest is assessed*

to be @ 6% per annum from the date of institution till the realization of the amount. Hence, the judgment of learned trial court is suffering from infirmity on the point of interest which requires to be modified.

27. In view of above discussion, the appeal in case No.1 is hereby allowed with no orders as to costs by way of modifying the order judgment of the learned trial Court to the extent that the plaintiff- appellant of case No.1 is entitled for interest from the date of institution of suit till realization of the amount @ 6% per annum. However, the appeal in case No.2 is hereby dismissed with no order as to costs and the judgment of the learned trial Court is upheld to that extent. Decree sheet be drawn accordingly. Copy of this judgment be kept in another case i.e. appeal No.2 titled as Perfect House Limited etc. Vs. Bijender Singh also. The trial Court record be sent back. Appeal file be consigned to the record room after due compliance.”

11. I have heard learned counsel for parties and perused the judgments of both the Courts below.

12. Learned counsel for appellants vehemently argues that both the Courts below have committed a manifest error in not appreciating the contractual arrangement existing between the parties vide Exhibit P-1 dated 15.02.2009, which governs *inter se* relationship between business transactions. He has more particularly referred to Clause 38 of Agreement, which is reproduced herein below for ready reference:

“38. Subject to the above, the Courts at Mumbai shall have exclusive jurisdiction in respect of all matters arising under or out of this agreement.”

12.1 Relying on the aforesaid Clause, he contends that learned Courts below ought to have rendered a finding that there was a concealment of material facts on the part of plaintiff and decided issue No.3 against him. He also submits that defendant-Perfect House Limited has to get back the unused spare parts supplied to plaintiff. Having perused the findings returned by learned trial Court as well as learned first

Appellate Court after appreciating the entire evidence, I am of the view that this argument about concealment of material facts by the plaintiff was not pressed before the learned Trial Court nor was it raised before learned First Appellate Court. The same cannot be, therefore, entertained for the first time in this RSA to upset the concurrent findings recorded by the two Courts below on issue No.3 against the defendants.

12.2 On a Court query, learned counsel would canvass that the same contention is covered by Issue No.1. His arguments, if it were to be accepted, would amount to rendering issue No.3 redundant. On the fact of it, the contention is untenable and is, therefore, liable to be rejected.

12.3 In this case, appellant/defendants chose not to press the said issue No.3 before the learned trial Court judgment as evident from para 17 of its judgment reproduced herein below:-

“Issues No.3 to 8

Issues No.3 to 8 were not pressed during the course of arguments. Hence the present issues are disposed of being not pressed.”

12.4 *Apropos*, though defendants in the second round before appellate Court pressed Issues No.2 and 5, but still chose not to press Issue No.3 which is relevant in the context of argument being now raised for the first time. I am of the opinion that findings *qua* Issues No.2 and 5 recorded by the learned First Appellate Court do not call for any interference as the same have been returned based on cogent evidence are legally sound and do not require any interference by this Court.

13. However, there is another aspect of the case, which has been overlooked by the learned Courts below. The impugned judgment passed by the learned trial Court shows that as per plaintiff’s pleadings, the spares for the repair of the generating sets were to be provided by

defendant No. 1 at Panipat and their value was to be debited to the plaintiff's account. As and when the spares were used, their value as per books used to be credited to the plaintiff's account. It is the own case of the plaintiff, as noted by the learned trial Court, that at the time of settlement of accounts on 18.09.2009, it was found that the defendants were liable to pay a sum of Rs. 4,45,000/- and that the unutilized spares of the value of Rs. 4,45,000/- were found in possession of the plaintiff. Further, as per plaintiff's case, he had been approaching the defendants, inter alia, to take back the unutilized spares of the value of Rs. 4,45,000/- lying with him and give him the corresponding credit of that amount, but they did not do so. The amount of Rs. 4,45,000/- being the value of the unutilized spares lying with the plaintiff has been included in the suit claim for Rupees ten lakhs allowed by the learned Courts below. Firstly, as noted above as per plaintiff's own pleadings, he had been approaching the defendants, inter alia, to take back the unutilized spares of the value of Rs. 4,45,000/- lying with him and give him the corresponding credit of that amount, but they did not do so. Even otherwise, when the value of the unutilized spares lying with the plaintiff had been included in the suit claim for Rupees ten lakhs allowed by the learned Courts below, it would be only just and fair to direct that unutilized spares of the value of Rs. 4,45,000/-lying with the plaintiff be returned by him to the defendants. However, no such direction has been given in the impugned judgments/decrees. To that extent, in my opinion, the impugned judgments/decrees need to be modified by further directing that the plaintiff shall send written offer to the defendants to return to them the unutilized spares of the value of Rs. 4,45,000/-lying with him.

14. Except for my observations, as above, my opinion on perusal of the impugned judgments, 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, with which I am inclined to agree. There seems no substance in the submissions that the impugned judgments are based on surmises and conjectures.

15. As a result of the above discussion, these RSAs are disposed of modifying the impugned judgment/decreed dated 03.07.2015 passed by the learned trial Court as upheld vide judgment/decreed dated 24.07.2018 passed by the learned First Appellate Court and directing that the plaintiff shall send written offer, within a period of one month of the instant order/judgment being uploaded on this court's website, to the defendants to take back the unutilized spares of the value of Rs. 4,45,000/-lying with him, failing which appellant shall be entitled to withhold/adjust the equivalent amount from the money decree.

16. Pending application/s, if any, shall also stand disposed of.

17. No order as to costs.

MARCH 23, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No