

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 09.07.2024

Pronounced on: 16.07.2024

CFA No. 16/2018

c/w

CFA No. 19/2018

1. Din Mohd

Age 72 Years S/o Abdul Aziz Sheikh
R/o Dalain, Tehsil Gandoh and
District Doda.

.....Appellant(s)/Petitioner(s)

2. Rehmatullah

Age 51 Years S/o Din Mohd R/o
Suranga A/P Khara, Tehsil Thathri
and District Doda.

Through: Mr. M. Tariq Mughal, Advocate
In CFA No. 16/2018
Mr. Naveen Sharma, Advocate
In CFA No. 19/2018

vs

1. Shokat Ali

S/o Din Mohd Lone R/o Bathri Tehsil
Thatri, District Doda.

..... Respondent(s)

2. Farooq Ahmed

S/o Din Mohd R/o Dalain, Tehsil Gandoh,
District Doda.

Through: Mr. F. A. Natnoo, Advocate.

Coram: HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

16.07.2024

1. Impugned in the instant civil 1st appeals is the common judgment and decree dated 31.07.2018 passed by the court of learned Principal District Judge, Bhaderwah (hereinafter referred to as the 'Trial Court' for short), while disposing of three suits regarding the same subject matter. Two suits both for relief of rendition of accounts were filed by

one Din Mohd S/O Abdul Aziz Sheikh R/o Dalain, Tehsil Gandoh respectively bearing file Nos. 13/Suit and 45/Suit instituted on 12.12.2005 and 01.02.2006 against one Shokat Ali S/o Din Mohd Lone R/o Bathri Tehsil Thathri. Din Mohd S/o Abdul Aziz filed the successive suit No. 45 also for rendition of accounts during pendency of the first suit of same nature before the court of learned Munsiff, Gandoh on the ground that he being an agriculturist was governed by the Agricultural Relief Act and as such, was needed to file his suit for rendition of accounts under the provisions of the said act. The other suit bearing file No. 29/Suit came to be instituted on 19.04.2006 by the Shokat Ali S/o Din Mohd Lone R/o Bathri Tehsil Thathri against Din Mohd And others for recovery of Rs. 2,93,000/-. The first suit bearing file No. 13 was instituted firstly before the Munsiff, Gandoh when the suit No. 45 was originally filed before Sub-Judge, Bhaderwah when the third suit bearing file No. 29 came to be instituted before the learned trial court on 19.04.2006 with the relief of recovery of an amount of Rs. 2,93,000/-. The earlier two suits also came to be withdrawn by the learned trial court from the files of aforesaid courts for the joint trial thereof with the suit bearing file No. 29.

2. The learned trial court after conducting joint trial in all the three suits passed the common impugned judgment and decree dated 31.07.2018 thereby dismissing the suit Nos. 13 and 45 filed by Din Mohd for rendition of accounts as being non maintainable under law but allowing the suit No. 29 filed by Shokat Ali for recovery of money. As

per the impugned judgment, the learned trial court decreed the suit of Shokat Ali against the defendant Nos. 1 and 3 therein namely, Din Mohd And Rehmat Ullah for an amount of Rs. 1,58,000/- and against the defendant No. 4 therein for an amount of Rs. 1,35,000/- along with the costs of the suit against the said three defendants therein. The said defendants/judgment debtors were as per the impugned judgment and decreed dated 31.07.2018 directed to pay the decretal amount to the said plaintiff Shokat Ali within a period of one month with the stipulation that in case of failure to pay the decretal amount, the same shall carry an interest at the rate of 5 percent per annum from the date of institution of the said suit till the realization of the amount.

3. Aggrieved by the impugned judgment and decree, Din Mohd And Rehmat Ullah assailed the same through civil 1st Appeal bearing No. 16/2018 whereas the other civil 1st Appeal bearing No. 19/2018 came to be filed by one Balkrishan S/o Panna Lal R/o Luddu Tehsil Gandoh against the aforementioned decree holder Shokat Ali.
4. The decree holder Shokat Ali S/o Din Mohd Lone is the contesting respondent in both the appeals.
5. The brief facts of the case that led to the filing of the trial suits and also relevant for disposal of the instant appeals are that the contesting respondent/plaintiff-Shokat Ali being a forest contractor used to work at various places in the country including Uttarakhand. That the appellants-Din Mohd (plaintiff in suit Nos. 13 and 45 and defendant No. 1 in suit No. 29) and Balkrishan (defendant No. 4 in suit No. 29)

used to work as mates/labour suppliers, out of whom the appellant Din Mohd is alleged to have contracted with the contesting respondent Shokat Ali for supply of manpower (labour) on the agreed rates in connection with the work of felling and sawing of timber in Uttarakhand in the year 2005, which work had been allotted for execution to the contesting respondent-Shokat Ali. The appellant Balkrishan is alleged to have supplied labour to the contesting respondent Shokat Ali through appellant Din Mohd, without there being any direct contact between him and Shokat Ali. After arising of a dispute regarding settlement of accounts between the appellant Din Mohd and the respondent Shokat Ali, various pre litigation settlements are alleged to have taken place between them. The appellant Din Mohd is alleged to have admitted his liability of Rs. 2,93,000/- towards the respondent Shokat Ali and in the process the appellant Balkrishan is alleged to have admitted his liability of Rs. 1,35,000/- towards the respondent Shokat Ali through Appellant Din Mohd. After the alleged settlements failed to mature regarding the actual payment of agreed amounts, the present appellant Din Mohd preferred two suits bearing Nos. 13 and 45 respectively before Munsiff Gandoh and Sub-Judge Bhaderwah against the contesting respondent Shokat Ali for rendition of accounts. The contesting respondent Shokat Ali also filed a suit bearing file No. 29 against the aforementioned appellants herein, namely, Din Mohd and Balkrishan as also against one Farooq Ahmed and Rehmat Ullah. All the suits came to be heard and tried by the

learned trial court which disposed of them through common impugned judgment dated 31.07.2018.

6. The appellants have assailed the common impugned judgment through the medium of their respective appeals on the grounds inter alia that the same is suffering from illegality and perversity as having been passed on a common trial held in breach of the provisions of the Code of Civil Procedure and upon non appreciation of the evidence whatever adduced at the trial. That the respondent Shokat Ali by misuse of his position made the appellant Din Mohd to forcibly admit his liability and obtained his signatures on some documents. That the learned trial court has saddled the liability of Rs. 1,35,000/- on the appellant Balkrishan when there was no agreement or liaison between them. That the learned trial court decreed the suit No. 29 against the appellant Balkrishan to the extent of Rs. 1,35,000/- on the mere asking of the appellant Din Mohd That the said Balkrishan has not admitted his liability to repay an amount of Rs. 1,35,000/-. That the appellant Din Mohd had supplied labour to the respondent Shokat Ali and some amount is outstanding from the respondent Shokat Ali. That the appellant Balkrishan also supplied labour to the respondent Shokat Ali through Din Mohd and he is also entitled to settlement of accounts to be made with him by Din Mohd as he has supplied labour in excess of the amount received by him from Din Mohd.
7. I have heard the learned counsels for the parties.

8. Learned counsel for the appellants Din Mohd and Balkrishan reiterated their stands taken by them in the memo of appeals by contending that the impugned judgment and decree is bad in law for being outcome of an irregular trial and non appreciation of evidence. Learned counsel for the appellant Din Mohd, in support of his arguments placed reliance upon the authoritative judgment of Hon'ble the Supreme Court in case titled **"Shakti Bhog Food Industries Ltd. Vs. The Central Bank of India and another"** bearing Civil Appeal No. 2514 of 2020 decided on 05.06.2020 and contended that the learned trial court has illegally dismissed his subsequent suit No. 45 filed for rendition of accounts. He submitted that he was compelled to file the subsequent suit for rendition of accounts in the backdrop of the legal provisions of Agricultural Relief Act. He contended that there was continuing cause of action for him to file the said suit.
9. Learned counsel for the respondent Nos. 1 Shokat Ali however, in rebuttal argued that both the appeals deserve to be dismissed as being without any merit. He submitted that the learned trial court conducted a joint trial on all the suits as they were related to the same subject matter and after conducting full-fledged trial in accordance with provisions of Code of Civil Procedure (hereinafter referred to as 'CPC' for short) passed the common judgment. He contended that the evidence at the trial was led by both the sides and the learned trial court after appreciation of the evidence and hearing both the sides, passed the impugned judgment. He further contended that the

respondent No. 1 in his trial suit No. 29 adduced sufficient and unequivocal evidence to prove that he was entitled to recovery of an amount of Rs. 2,93,000/-. Learned counsel further contended that the learned trial court has rightly dismissed the suits of appellant Din Mohd filed for rendition of accounts as the same were not maintainable in view of the Section 10 of the CPC and Section 213 of the Contract Act as interpreted by the Hon'ble Apex Court in case titled **K. C. Skaria Vs. Govt. of State of Kerala** reported in **AIR 2006 SC 811**. The learned counsel prayed for dismissal of the appeals.

10. I have gone through the record of both the appeals, especially the impugned common judgment dated 31.07.2018.
11. Keeping in view the aforementioned perusal and the consideration of the rival arguments advanced on both the sides in light of the law on the subject, this Court is of the opinion that the learned trial court does not appear to have passed the impugned judgment strictly as per the procedure as laid down in the CPC. During the trial of the suit No. 29, issues came to be framed vide order dated 07.10.2013, but the learned trial court, as per Para 4 of the impugned judgment formulated some points of determination for disposal of the case, which no doubt include most of the issues framed earlier. The learned trial court also does not appear to have appreciated the evidence as required by the law. The learned trial court decreed the suit of the contesting respondent Shokat Ali for recovery of money on the grounds that as per the evidence adduced during trial there had taken place settlement

of accounts between him i.e. the respondent and the appellant Din Mohd. The onus of proof of the issue that settlement of accounts had taken place and the amount of Rs. 2,93,000/- were due from the appellant Din Mohd was on the contesting respondent Shokat Ali and the said proof in light of the evidence on the record does not appear to have been made through sufficient, cogent and unambiguous evidence. The learned trial court has saddled the liability of Rs. 1,58,000/- out of total decreed amount on the appellant Balkrishan without there being any independent and admissible evidence justifying the same.

12. A civil trial is meant to be conducted strictly as per the provisions of the CPC and more particularly as regards the framing and settlement of the issues, in the backdrop of the evidence adduced by the parties at the proceedings. In the civil cases the burden of proof is on the party which asserts the fact and that should be proved by sufficient, cogent, unambiguous and unequivocal evidence. A fact of issue cannot be decided on the basis of the admission of opposite party alleged to have been made before outside the court forcibly sittings convened in respect of the dispute without independent proof regarding the same. It is well settled that rights of the parties must be determined on the basis of a case pleaded and proved. A judgment in a civil suit shall necessarily be based on the findings of the adjudication of the issues already framed during trial of the case. Any other pattern of rendering judgment by formulating some points of determination even if inclusive of some of the already framed issues is unknown to law.

13. **However, the dismissal of the suits of the appellant-Din Mohd for rendition of accounts appears to be well tenable under law. Both the appellants Din Mohd and Balkrishan stand arrayed as defendants in the suit for recovery of money filed by the present respondent Shokat Ali.**
14. The learned trial court in the facts and circumstances of the case ought to have invoked the provisions of Order XXVI of CPC for issuance of a commission for local investigation for rendition of accounts between the contesting parties and the report of the said commissioner along with the evidence to have been recorded by him could have facilitated the learned trial court to decide the case more effectively.
15. For the foregoing discussion, the appeals are partly allowed and the common judgment and decree dated 31.07.2018 is set aside to the extent of disposal of suit No. 29 instituted on 19.04.2006 titled Shokat Ali Vs. Din Mohd and others decreeing the recovery of an amount of Rs. 1,58,000/- in favour of the contesting respondent Shokat Ali and against the appellants in civil 1st appeal No. 16/2018 and for an amount of Rs. 1,35,000/- in favour of respondent Shokat Ali and against the appellant Balkrishan in civil 1st appeal No. 19/2018. The suit bearing file No. 29 with date of institution 19.04.2006 titled Shokat Ali Vs. Din Mohd and others is remanded back to the learned trial court with the direction to dispose of the same afresh after affording the parties a further chance of hearing and with liberty to place on record any additional evidence by way of issuance of

commission for local investigation for rendition of accounts and after due appreciation of evidence.

16. An interim direction dated 31.10.2018 has stood infructuous with the passing of this judgment. However, this Court vide order dated 30.07.2021 had directed the appellants to deposit the decretal amount with the Registry of this Court within a period of two months with a direction to the Registry to keep the same in FDR initially for a period of six months. In case the decretal amount stands deposited with the Registry, release of the same shall be subject to outcome of the fresh disposal of the suit bearing No. 29 by the learned trial court. As the parties are litigating before the courts since 2005, as such, the learned trial court is expected to explore a possibility of fresh disposal of the case as expeditiously as possible with liberty to make an endeavour also for disposal of the case amicably by the parties by adoption of ADR mechanism of Lok Adalat and/or Mediation. In case of expected amicable settlement of the case before the learned trial court, the amount if any deposited before the Registry can be transferred back to the learned trial court on being required.
17. The appeals are however disallowed as regards the challenge thrown in respect of the dismissal of the suits filed by Din Mohd for rendition of accounts bearing file No. 13/Suit dated 12.12.2005 and file No. 45/Suit dated 01.02.2006.
18. A copy of this judgment shall be forwarded to the learned trial court for compliance along with the record of all the three suits.

19. It is needless to mention that the appellant Din Mohd, who had filed two suits for rendition of accounts, dismissal whereof through the impugned common judgment has been maintained by this Court can plead his case in the surviving suit sought to be disposed of afresh.

20. **Disposed of.**

(MOHD YOUSUF WANI)
JUDGE

Jammu

16.07.2024

Sahil Padha

Whether the order is speaking: Yes/No.

Whether the order is reportable: Yes/No.

