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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 720 OF 2024

Maharashtra Agro Industries
Development Corporation Ltd.

.....Appellant

Vs.

Ovhal Agencies

.....Respondent

Mr. Mahesh Shukla a/w Mr. Niraj Prajapati for the appellant
Mr. Amit Padwal i/b M/s. Utangale and Co. for respondent

CORAM : GAURI GODSE, J.

DATE : 18th NOVEMBER 2024

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ORDER:

1. Heard learned counsel for the parties. This second appeal is preferred by the original plaintiff to challenge the judgment and decree passed by the first Appellate Court. The suit for recovery of amount towards two invoices was decreed by the trial Court. In an appeal preferred by the defendant, the trial Court's decree is set aside and the suit is dismissed.

2. Learned counsel for the appellant submitted that though both the

invoices were placed on record, the learned Judge erred in accepting the amount towards only one invoice. He submits that though the defendant had raised the grounds regarding “no dues certificate” and “release of bank guarantee”, no supporting documents were produced to support the contentions of no dues certificate. He submits that once the invoice raised by the appellant was accepted, the first Appellate Court erred in setting aside the findings recorded by the trial Court. He thus submits that the second appeal would raise substantial questions of law on the point of incorrect appreciation of evidence on record.

3. Learned counsel for the respondent supports the impugned decree. He submits that the defendant had disputed the receipt of material, i.e. urea as against bill no. 5962. He submits that the plaintiff failed to produce any supporting evidence that the material as per bill no. 5962 was actually supplied to the defendant. He thus submits that no fault can be found in the impugned judgment.

4. To consider the submissions made on behalf of the parties, I have perused both the judgments. The plaintiff’s claim is based on bill no. 6116 and bill no. 5962. The first Appellate Court accepts the plaintiff’s case as against bill no. 6116. However, for want of any

evidence, the claim as against bill no. 5962 is not accepted by the first Appellate Court. The first Appellate Court after examining the evidence on record held that as per the case of the plaintiff, he has already recovered the amount towards the outstanding bills which is more than the amount claimed in the suit. Thus, in view of the plaintiff's case regarding recovering the amount against outstanding bills from the defendant, the first Appellate Court reversed the findings recorded by the trial Court.

5. Even if there is no document of no dues certificate or release of bank guarantee produced by the defendant, the burden would be on the plaintiff that the amount towards both the bills was due and payable by the defendant. On perusal of the pleadings and evidence on record, the first Appellate Court has recorded findings of facts in paragraphs 18 to 23. I do not find any illegality or perversity in the reasons recorded by the first Appellate Court. The first Appellate Court being the last fact finding Court has thoroughly examined the evidence on record and rejected the plaintiff's case in regard to bill no. 5962. In the absence of any evidence to support the plaintiff's case of supply of the material as per the said bill, no fault can be found in the reasons recorded by the first Appellate Court.

6. I do not find illegality or perversity in the reasons recorded by the first Appellate Court. The submissions made on behalf of the appellant would require re-appreciation of facts and evidence on record which is not permissible under Section 100 of Code of Civil Procedure, 1908.

7. The second appeal does not raise any substantial questions of law. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]