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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-568-1995 (O&M)
Date of Decision : 22.08.2024

Punjab & Sind Bank ... Appellant(s)

Versus

M/s Heera Rubbers ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gaurav Goel, Advocate for the appellant.

Mr. S.S. Deol, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgments and decrees dated 01.06.1990 and 23.09.1994 passed by the Trial Court and the First Appellate Court, respectively.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit against the defendant-respondent for recovery of Rs.86,313/-. It was averred by the plaintiff-appellant in the plaint that the defendant-respondent was a sole proprietorship concern of Shri Mohinder Singh who was engaged in the business of manufacturing and supplying of transmission and conveyor rubber beltings. The defendant-respondent approached the plaintiff-appellant for a facility regarding purchase of bills on production of Goods Receipt and Railway Receipt as he had a current account with the plaintiff-appellant. To further promote the relationship of banker and customer, the plaintiff-appellant allowed the defendant-respondent the facility regarding purchase of bills. The defendant-respondent

handed over four GRs Nos.220867 to 220870 which had been issued by the Jalandhar Ex-Servicemen Motor Transport Coop. Society Ltd., Jalandhar for a value of Rs.30,186.52 paise. The defendant-respondent also sent forwarding letters addressed to M/s Apollo Enterprises which was to pay the amount on demand to Punjab and Sind Bank. Hundis in the sum of Rs.7,684.60 paise, Rs.7,571.20 paise, Rs.7,420/- and Rs.7,510.72 paise with the endorsement by the consigner in favour of the plaintiff-appellant were also handed over. The plaintiff-appellant made an endorsement thereon in favour of Indian Bank, Mandvi Branch Bombay. The bills, GRs and the Hundis were forwarded by the plaintiff-appellant to the aforesaid bank for realization. No payment was received by the consignee from the consignor against these documents and the GRs were received back by the plaintiff-appellant and the amount remained unpaid. It was further the case set up that as 70% of the bill value had been credited to the account of the defendant-respondent and the payment was not received by the plaintiff-appellant, therefore, many reminders were sent to the defendant-respondent and as per the letter dated 01.03.1986 the defendant-respondent acknowledged in writing the dues against him and promised to make the payment in monthly instalments of Rs.6,000/-. He also agreed to pay interest at the prevailing rate. The defendant-respondent was approached many times to make the payment. It was further averred that on 19.07.1984 Mohinder Singh acknowledged in writing that a sum of Rs.52,729/- was due and he also executed a demand promissory note in favour of the plaintiff-appellant besides a letter of waiver and a letter regarding the penal rate of interest and general letter of hypothecation. Since the defendant-respondent failed to make the payments, hence the suit. The defendant-respondent admitted the facts regarding extension of the facility by the plaintiff-appellant but denied that he was ever informed that the documents had not been retired or had remained unpaid. The defendant-respondents also denied the execution of the documents on 19.07.1984. The plaintiff-appellant filed a formal replication.

3. Vide judgement and decree dated 01.06.1990 the Trial Court dismissed the suit of the plaintiff-appellant. The Trial Court found that the plaintiff-appellant had not been able to prove that the documents were executed by the defendant-respondent on 19.07.1984. It was also found that the plaintiff-appellant had not shown that any notice was ever issued to the defendant-respondent. The appeal of the plaintiff-appellant was also dismissed by the First Appellate Court. Hence, the present regular second appeal.

4. Learned counsel for the plaintiff-appellant would contend that repeated reminders were sent to the defendant-respondent to make the payments and there was sufficient evidence on the record in support of the same. The learned counsel would further contend that there was no necessity of sending a notice as contemplated under Section 30 of the Negotiable Instruments Act, 1881 as at the relevant point of time there was no such practice.

5. *Per contra*, the learned counsel for the defendant-respondent has contended that no notice was given as contemplated under Section 30 of

the Negotiable Instruments Act, 1881 and that the plaintiff-appellant even failed to prove that the defendant-respondent had executed any documents on 19.07.1984. No handwriting expert was examined by the plaintiff-appellant.

6. I have heard the learned counsel for the parties.

7. In the present case, admittedly, no notice was issued qua dishonour as was necessary in the case of a Hundi. Section 30 of the Negotiable Instruments Act, 1881 reads as under :

> *"30. Liability of drawer.*
>
> *The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided."*

8. The argument of the learned counsel for the plaintiff-appellant that there was no requirement of sending a notice as contemplated under Section 30 of the Negotiable Instruments Act, 1881 is noticed only to be rejected. Both the Courts have concurrently found that there was not an iota of evidence on the record that a dishonor notice was issued as contemplated under Section 30 of the Negotiable Instruments Act, 1881. It is unimaginable that a public sector bank would not issue a dishonor notice and be lax in recovery of dues as has been found by both the Courts. Further, the plaintiff-appellant has not brought forth any cogent and reliable evidence to prove that the documents were executed by the defendant-respondent on

19.07.1984. In the absence of any evidence to prove it's case, no fault can be found with the judgments and decrees passed by both the Courts.

9. In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

22.08.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO