



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1182-1996 (O&M)
Date of decision : 23.08.2024

State of Haryana & Ors. ... Appellants

Versus

Khushi Ram deceased through LRs ...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Pankaj Middha, Addl. AG Haryana for the appellants.

Mr. Sanjay Mittal, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the defendants-appellants aggrieved by the judgments and decrees dated 10.11.1990 and 27.01.1996 passed by the Trial Court and the First Appellate Court, respectively, whereby the suit filed for declaration and permanent injunction by the plaintiff-respondent herein was decreed with costs.

2. In brief, the facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for declaration and permanent injunction averring in the plaint that one M/s Subhash Bartan Bhandar, Rewari was issued registration certificate under The Haryana General Sales Tax Act, 1973 (hereinafter referred to as '*Haryana Act*') and under The Central Sales Tax Act, 1956 (hereinafter referred to as '*Central Act*'). At the time of issuing of the said certificate, M/s Subhash Bartan Bhandar, Rewari executed bonds in the sum of Rs.25,000/- whereby the said firm declared itself bound to the

extent of the said sum. The plaintiff-respondent was one of the sureties to the extent of Rs.25,000/-. The terms of the bonds were : (i) if the dealer pays all the dues, then the obligation under the said bond will be void and of no effect, (ii) otherwise the same shall be and remain in full force, (iii) the executors will be free to terminate the said bond by giving six months' notice to the department. The department cannot terminate it so long as the licences are in force. It was further the averment that the plaintiff-respondent had moved an application (Ex.P4) to the defendants-appellants withdrawing the surety furnished by him. The defendants-appellants herein initiated recovery proceedings against the plaintiff-respondent for recovery of Rs.25,000/- on the ground that the principal debtor was not traceable and all efforts to recover the said amount from whom were futile. The defendants-appellants issued letter dated 08.01.1986 (Ex.P6) for recovery of sum of Rs.2,800/- from the plaintiff-respondent. Similarly, vide letter dated 07.01.1986 (Ex.P5) the defendants-appellants also started recovery proceedings of Rs.25,000/- from the plaintiff-respondent on the ground that the principal debtor had failed to make the payment. It was further the case of the plaintiff-respondent that since he was being pressurized, he deposited Rs.12,500/- and Rs.700/- under protest with the defendants-appellants vide challans Ex.P10 and Ex.P11. The said payment was made on 25.04.1986. Hence, the suit by the plaintiff-respondent seeking a declaration that the bonds executed by him were void. The defendants-appellants contested the suit alleging that the bonds were enforceable even after cancellation. The factum of having received a letter dated 07.10.1985 written by the plaintiff-respondent cancelling the bonds was admitted by the defendants-appellants in their written statement. It was further the case that no cancellation order

was passed. Replication was filed.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether bond executed by the plaintiff is in favour of defendants department has become void ? OPP
2. Whether the plaintiff has terminated the execution of bonds vide letter dt.07.10.1985 ? OPP
3. Whether the defendant department is not competent to recover the disputed amount without exhausting the remedies available against principal licensee ? OPP
4. Whether the suit is bad for want of notice under section 80 CPC ? OPD
5. Whether the Civil Court has got no jurisdiction to try the present suit ? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
7. Whether the suit is not maintainable in the present form ? OPD
8. Relief.

4. The Trial Court, after detailed discussion, decreed the suit filed by the plaintiff-respondent vide judgment and decree dated 10.11.1990. Aggrieved by the same an appeal was preferred by the defendants-appellants which appeal was dismissed by the First Appellate Court vide judgment and decree dated 27.01.1996. Hence, the present regular second appeal.

5. Learned counsel for the defendants-appellants has vehemently contended that the suit was barred as the Civil Court had no jurisdiction to

try the present suit. It is further the contention that the bond was executed by the plaintiff-respondent and the defendants-appellants had every right to recover the amount of Rs.25,000/- qua which the bond had been furnished. It is further contended that the amount could have been recovered from either M/s Subhash Bartan Bhandar, Rewari or the sureties.

6. *Per contra*, learned counsel for the plaintiff-respondent has contended that a specific issue was framed qua jurisdiction being issue No.5. The said issue was not even pressed before the Trial Court and hence was decided against the defendants-appellants. It hence does not now lie in the mouth of the defendants-appellants to raise the question of jurisdiction. Learned counsel for the plaintiff-respondent has further contended that out of Rs.25,000/-, Rs.13,000/- has already been paid by the plaintiff-respondent under protest. It is further the contention that there is not an iota of evidence which has been led by the defendants-appellants to show that any proceedings were ever initiated for recovery against M/s Subhash Bartan Bhandar, Rewari after the framing of the assessment on 20.11.1985.

7. Heard.

8. In the present case the argument of the learned counsel for the defendants-appellants that the jurisdiction of the Civil Court is barred deserves to be rejected on the ground that though a specific issue was framed before the Trial Court and the onus was cast upon the defendants-appellants, the same was not pressed and accordingly the same was decided against the defendants-appellants. Even before the First Appellate Court the said issue was not raised and arguments were addressed only on issues No.1 to 3. In view thereof, the defendants-appellants cannot now be permitted to raise the said issue of jurisdiction. The argument of the learned counsel for

the plaintiff-respondent that no proceedings appear to have been initiated against M/s Subhash Bartan Bhandar, Rewari deserves to be accepted inasmuch as a perusal of both the judgments and decrees passed by the Trial Court and the First Appellate Court reveal that there is not an iota of evidence which was produced by the defendants-appellants to show that any proceedings were initiated against M/s Subhash Bartan Bhandar, Rewari. Infact, learned counsel for the defendants-appellants, except for arguing that the amount can be recovered from either of the principal debtor or the surety, has not been able to point out any evidence on the record to even remotely suggest that proceedings were initiated as per law against M/s Subhash Bartan Bhandar, Rewari after the framing of the assessment on 20.11.1985.

10. In view of the above, no fault can be found with the judgments and decrees passed by both the Courts. 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.

23.08.2024
Ankur

(ALKA SARIN)
JUDGE

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