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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-:-

RSA-1140-2021 (O&M)
Reserved on : 02.02.2024
Date of Decision : 08.02.2024

M/s Partapa Ram Rice Mills & Anr.

...Appellants

Versus

M/s Nagpal Rice Mills & Ors.

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amit Jain, Senior Advocate with
Mr. Aryaman Thakur, Advocate for the appellants.

ALKA SARIN, J.

CM-4986-2021 & CM-4987-2021

For the reasons stated therein, CM-4986-2021 for condoning
the delay of 197 days in refiling the appeal is allowed.

For the reasons stated therein, CM-4987-2021 for condoning
the delay of 190 days in filing the appeal is allowed.

RSA-1140-2021

1. The present regular second appeal has been preferred by the
plaintiff-appellants against the judgments and decrees dated 18.01.2014 and
29.10.2018 passed by the Trial Court and the lower Appellate Court
respectively, whereby the suit for recovery filed by them has been dismissed.

2. As per the plaintiff-appellants, the plaintiff-appellant No.1 is a registered firm and plaintiff-appellant No.2 is well conversant with the facts of the present case. It was averred that the plaintiff-appellant No.1 deals in the business of sale and purchase of food grains while the defendant-respondent No.1 is a firm and defendant-respondent Nos.2 to 5 are its partners who are jointly and severally liable. As per the plaintiff-appellants the defendant-respondent No.1 had purchased rice/paddy from the plaintiff-appellant No.1 on account of which Rs.7,40,000/- was payable to the plaintiff-appellant No.1. The plaintiff-appellants had requested the defendant-respondents to make the payment of the due amount with interest but the defendant-respondents kept postponing the matter on one pretext or the other and finally refused and therefore the present suit for recovery. In the written statement the defendant-respondents took the plea that the plaintiff-appellant No.1 was not a registered firm, that the quality of paddy purchased was not up to the mark, that the amount payable was adjusted and the balance paid and that there was no amount payable to the plaintiff-appellants. Replication was filed by the plaintiff-appellants reiterating the averments made in the plaint and denying the averments made in the written statement.

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

1. Whether the plaintiff is entitled to get decree for recovery of amount as detailed in para No.18 of the plaint along-with interest as alleged in his favour and against the defendants ? OPP

2. Whether the suit of the plaintiff is not maintainable in the present form ? OPD

3. Whether the suit of the plaintiff is barred by law of limitation ? OPD

4. Whether the plaintiff has concealed the material facts from the court ? OPD

5. Relief.

4. The Trial Court vide impugned judgment and decree dated 18.01.2014 dismissed the suit. Aggrieved by the said judgment and decree, the plaintiff-appellants preferred an appeal. Vide the impugned judgment and decree dated 29.10.2018 the appeal was dismissed by the lower Appellate Court. Both the Courts held that the suit had been filed by an unregistered firm and was hit by Section 69 of the Partnership Act, 1932. Hence, the present regular second appeal.

5. Learned senior counsel for the plaintiff-appellants would contend that the suit filed by the plaintiff-appellants was maintainable as the firm was registered subsequently and the defect of Section 69 of the Partnership Act stood cured. As per counsel, the Courts below have erred in not decreeing his suit in toto.

6. Heard senior counsel for the plaintiff-appellants.

7. In the present case both the Courts below have reached concurrent findings of fact that the suit was filed at a time when the plaintiff-appellant was not registered. The date of institution of the suit has been determined as 18.03.2006 while the plaintiff-appellant No.1 was registered on 22.03.2006. Section 69(1) of the Partnership Act provides that no suit to enforce a right arising from a contract shall be instituted in any court by or

on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. This sub-section begins with the words : “*No suit ... shall be instituted in any court ...*”, which prima facie bar the institution of the suit by a firm which is unregistered. Sub-section (2) next provides that no suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm. This sub-section also begins with the words : “*No suit ... shall be instituted in any court ...*”, which clearly bar the institution of a suit by a firm which is not registered. The provisions of sub-sections (1) and (2) have been made applicable to other proceedings to enforce a right arising from a contract by virtue of sub-section (3) of Section 69. It would thus seem on a plain reading of Section 69(2) that a suit instituted in any court by or on behalf of a firm against any third party shall not be valid unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners of the firm. Plainly, the institution of the suit itself by the plaintiff-appellants on 18.03.2006 was barred since the plaintiff-appellant No.1 was not registered. A suit filed by an unregistered firm would be hit by Section 69(2) if the firm filing the suit is not registered with the Registrar of Firms. The present suit was ab-initio defective since the plaintiff-appellant No.1 was not registered and its subsequent registration on 22.03.2006 cannot cure that defect. A suit by an unregistered firm is not maintainable and the bar under Section 69 of the Partnership Act hits at the very root or the very institution of the suit. Since

the suit was filed by an unregistered firm, the Courts below have rightly declined the relief to the plaintiff-appellants. No other point was argued.

8. In view of the above and in view of the concurrent findings of facts returned by both the Courts below, I do not find any merit in the present regular second appeal. No question of law much less any substantial question of law arises in the present appeal which is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.02.2024

Yogesh Sharma

(ALKA SARIN)
JUDGE

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