

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2127-2017 (O&M)
Date of Decision:-10.04.2024

Rajpal Singh

... Appellant

Versus

M/s H Goyal Products Regd.

... Respondent

-. -

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

-. -

Argued by :-

Mr. Sunny K. Singla, Advocate
for the appellant.

Mr. Aman Bansal, Advocate with
Ms. Chitra Daramwal, Advocate
for the respondent.

-. -

RITU TAGORE, J.

1. Appellant, (defendant before the learned Trial Court) has preferred this regular second appeal against the judgment and decree dated 18.01.2017 passed by learned First Appellate Court which, reversed the findings of the learned Trial Court dated 31.10.2015 and decreed the suit of the respondent (plaintiff before the learned trial Court) for ₹44,000/- and interest @ 7 % per annum from the date of issuance of cheque, till realization, alongwith costs.

2. For sake of convenience, parties to the *lis* hereinafter, shall be referred to by their original status in the suit.

3. The plaintiff, M/s H.S. Goyal Products Regd. Chhanna Road, Ahmedgarh, District Sangrur, through its partner-Vijay Kumar Goyal, instituted a civil suit against defendant for recovery of ₹59,840/- i.e. ₹44,000/- as principal amount and ₹15,800/- as interest from 07.04.2011 to 28.03.2014 @ 1% per month along with *pendent lite* and future interest, with averments that it is a registered firm engaged in other businesses, also manufactures rigid PVC pipes at Chhanna Road, Ahmedgarh.

4. It is asserted that defendant purchased PVC pipes from the firm vide Bill No.002 dated 07.04.2011 for ₹44,000/- and issued cheque No.355799 dated 07.4.2011 in the name of the firm in lieu of payment. The cheque was presented for its encashment twice but was dis-honoured due to 'insufficient funds'. The defendant was apprised about the same and was requested to make the payment. However, despite a legal notice and even a complaint under Section 138 of Negotiable Instruments Act, resulting in defendant's conviction and sentence vide judgment dated 14.03.2014, the payment was not made. It is pleaded that defendants' failure to make the payment constrained the plaintiff to file the extant suit.

5. Upon receiving notice, defendant appeared and filed a written statement denying purchase of pipes from the plaintiff on 07.04.2011 or issuing cheque in question for payment of pipes. Instead, the defendant claimed that he was employed in the plaintiff's firm. Vijay Kumar Goyal, a partner opened the bank account for him and retained his cheque book with him. He issued a cheque of ₹4,000/-, which was misused by Vijay Kumar , who made alteration in it by adding a digit '4' before the amount of ₹4,000/-, making it as ₹44,000/-. The defendant pleaded that he has appealed against

the judgment of his conviction and sentence in a criminal complaint under Section 138 of Negotiable Instruments Act. On grounds stated above, the defendant pleaded that plaintiff's suit lacks merit, and should be dismissed.

6. The plaintiff filed the rejoinder, reiterating the stand and denied the averments of the defendant. From the pleadings of the parties, learned trial Court framed following issues:-

1. *Whether the plaintiff is entitled for recovery of ₹59,840/- alongwith interest at the rate of 1% per annum from the defendant as prayed for? OPP*
2. *Whether the suit of plaintiff is not maintainable in the present form? O PD*
3. *Whether the plaintiff has no cause of action to file the present suit? OPD*
4. *Whether the plaintiff has not come to the Court with clean hands? OPD*
5. *Relief.*

7. The parties led the evidence as detailed in the judgment of learned trial Court. On appraisal of evidence, learned trial Court dismissed the suit of plaintiff. The learned Appellate Court did not agree with the findings recorded by the learned Trial Court and reversed them, holding that plaintiff proved its case by leading cogent and reliable evidence, while defendant failed to rebut the same and substantiate his version by any good evidence. As a result, decreed the suit of the plaintiff as indicated above, which led to filing of this appeal.

8. Learned counsel for the appellant submitted that learned Appellate Court erred in upsetting a well reasoned findings of the learned trial Court, rendered on sound appreciation of facts and law. Learned counsel contended that learned Appellate Court failed to appreciate the fact that appellant was working in the plaintiff's firm, run by Vijay Kumar, a partner (PW-1), who in his cross-examination admitted that he had helped the defendant in opening his bank account. This material admission, learned counsel for the appellant stated that indeed, probalised the version of the defendant that Vijay Kumar retained his cheque book and manipulated the cheque Ex.P4 by adding digit '4', against the amount of ₹4,000/-, whereas defendant never purchased the pipes nor issued the cheque of ₹44,000/- towards the payment of pipes. Learned counsel stated that learned trial Court, basing its conclusions on evidence, categorically observed that plaintiff failed to substantiate his case of purchase of pipes by the defendant and issuance of cheque No.355799 (Ex.P4) thereof. It is stated that learned trial Court rightly discarded the self-created evidence of the plaintiff with respect to his ledger books etc. and rightly noted the absence of defendant's signatures on the disputed bill dated 07.04.2011 (Ex.P3) as well as his inability to afford pipes of such high value.

9. Learned counsel further stated that defendant had been acquitted in a criminal case, filed by the plaintiff based on the cheque in question. However, learned Appellate Court while acknowledging this fact, conveniently brushed it aside by observing that it has no impact on the case in hand. Learned counsel stated that acquittal of defendant was indeed a significant factor supporting the version of the defendant and causing a huge

blow to the plaintiff's case. It is argued that learned Appellate Court materially erred in discarding this piece of evidence and in rejecting the version of the defendant. It is stated that finding of learned Appellate Court are arbitrary and contrary to the record, liable to be set aside with the dismissal of the suit of the plaintiff. Accordingly, a prayer is made to allow the appeal.

10. On the other hand, learned counsel for the respondent-plaintiff submitted that learned Appellate Court has rightly appreciated the evidence. The findings are based on the facts and law and should not be interfered with. It is stated that defendant failed to explain why he issued the cheque in question. This failure, on the contrary, probalizes the plaintiff's version, which is supplemented by both oral and documentary evidence, which defendant failed to rebut. The learned counsel for the plaintiff submitted that admission of the defendant that he made no complaint against Vijay Kumar, the partner of the plaintiff-firm, for the alleged misuse of his cheque by him rather renders defendant's version unbelievable. The learned counsel further submitted that defendant's acquittal in criminal case, has no bearing on the case, a proposition of law rightly noted by the learned Appellate Court. Concluding his arguments, learned counsel stated that appeal should be dismissed, having no merits.

11. I have heard learned counsel for the parties and have gone through the record with their valuable assistance.

12. The plaintiff brought a suit for recovery of ₹59,840/-, on the basis of cheque bearing No.355799 dated 07.04.2011 (Ex.P4) alleged to be executed by defendant to discharge his liability of payment of PVC pipes

purchased by him from the plaintiff-firm. It is settled principle of law that in order to earn the relief as prayed for, the plaintiff has to bring cogent and reliable evidence.

13. In order to discharge the initial onus that lied upon the plaintiff, the partner of the firm Sh. Vijay Kumar Goyal appeared as PW-1 and reiterated the facts of the plaint and also tendered the documentary evidence i.e. Form C as Ex.P1, Form A as Ex.P2, copy of bill No.002 as Ex.P3, photocopy of cheque as Ex.P4, copy of balance sheet as Ex.P5, certified copy of judgment dated 14.03.2014 as Ex.P6, certified copy of cheque as Ex.P7, certified copy of memo as Ex.P8, certified copy of notice as Ex.P9, charge sheet as Ex.P10, certified copy of challan as Ex.P11, photocopy of partnership deed as Mark A, letter of authority as Mark-B.

14. On the other hand, Rajpal Singh, the defendant, appeared as DW1 and denied having purchased PVC pipes from the plaintiff firm or issuing a cheque of ₹44,000/- for the payment of sale price of the pipes. He instead pleaded that Vijay Kumar, the partner of plaintiff-firm, misused the cheque issued by him for ₹4,000/-, and converted into a sum of ₹44,000/- by adding a digit '4' before amount of ₹4,000/-. Vijay Kumar forged the cheque Ex P4.

15. It is settled position of law that plea of fraud needs to be proved akin to a criminal charge, beyond reasonable doubt, even when taken in civil proceedings. The general principle of proof of preponderance of probability required in civil cases is not applicable when plea of fraud is set up. It is well establish rule of procedure that who takes up the plea of fraud, bears the burden of proof and must fully discharge it by cogent and reliable evidence

in support thereof. When version of defendant is tested on these settled legal principles, it failed to pass the test, for the following reasons:-

- 1). The defendant has admitted issuance of a cheque No.355799 dated 07.04.2011 in favour of plaintiff-firm. However, offered no explanation for issuing a cheque of ₹4,000/- in favor of plaintiff-firm. The Appellate Court has rightly noted this infirmity in the version of the defendant.
- 2). The defendant also admitted that he filed no complaint against Vijay Kumar, partner of the plaintiff-firm for manipulating and forging the cheque Ex P4. Had there been manipulation or forging of the cheque as claimed, there was no occasion for the defendant to remain silent. This inaction on part of the defendant made his version unbelievable and improbable. The learned Appellate Court noticed the same while concluding against defending and in favor of the plaintiff, finding his version more probable.
- 3). Defendant took the plea that plaintiff added the digit '4' to the amount of ₹4,000/- in the cheque Ex P4 but failed to explain how the word 'four' was added in the letters, to make 'forty four thousand'. Evidently, defendant did not examine any handwriting expert or evidence of the officials of the

bank, where cheque was presented and dis-honoured for insufficient funds, to support his claim of tampering of the cheque Ex P4. This was a material piece of evidence for the defendant to substantiate his version. However, for reasons best known to the defendant, he did not present such an evidence. This material deficiency was rightly noticed by the learned Appellate Court, in the case of the defendant, adversely affecting his version. The admission of Vijay Kumar Goyal (PW-1) for having helped the defendant in opening his bank account has not helped the defendant in proving that the cheque in question Ex.P4 was ever tampered by Vijay Kumar as alleged by him.

16. The plaintiff presented sufficient evidence i.e. bill of purchase, copy of balance sheet to show that firm sold PVC pipes to defendant and entries regarding sale were recorded in business records kept in their regular course of their business. The self-made entries carried by any business entity in ordinary course of their business can be relied upon, unless rebutted by the adverse party. The defendant failed to rebut the same by leading any evidence or to establish they were prepared later on. The observations of learned Trial Court that they are self-creating and therefore not worthy of reliance, was not a correct approach. Furthermore, the conclusion so drawn by the learned Trial Court were not supported by any evidence or circumstance to suspect the entries.

17. To suspect the plaintiff's version the observations by the learned Trial Court that bill (Ex.P3) did not bear signatures of defendant is unwarranted. Firstly, this conclusion lacks evidence, supporting the customary practice of buyers signatures. Secondly, no such plea was raised by the defendant in this regard.

18. Furthermore the acquittal of the defendant in criminal case filed by the plaintiff on the basis of cheque (EX.P4) under Section 138 of Negotiable Instruments Act is concerned, the observations of the learned Appellate Court that judgment passed by criminal Court is not binding on the civil Court cannot be considered flawed. In this regard reliance can be placed in Seth Ramdayal Jat vs. Laxmi Prasad, 2009(11), SCC 545, wherein has been observed as follow:-

“It is now almost well settled that save and except for Section 43 of the Evidence Act which refers to Sections 40, 41 and 42 thereof, a judgment of a criminal Court shall not be admissible in a civil suit. What, however, would be admissible is the admission made by a party in a previous proceeding.”

19. Having considered the entire evidence on record, I am of the view that findings recorded by learned Appellate Court are factually and legally valid and are upheld.

20. No other plea was raised.

21. Accordingly, present appeal fails and is hereby dismissed with no order as to costs.

22. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

10.04.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No