

(2012) 04 P&H CK 0092

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1566 of 2012 (O and M)

Jaspal Singh and Another

APPELLANT

Vs

M/s. H. P. Falgu Filling Station

RESPONDENT

Date of Decision: April 3, 2012

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Harish Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 4230-C of 2012

For reasons mentioned in the application, which is accompanied by affidavit, delay of 11 days in filing the appeal is condoned.

RSA No. 1566 of 2012

1. Defendants-Jaspal Singh and M/s. Singh Construction Company (of which Jaspal Singh is also partner) have filed this second appeal having lost in both the courts below. Respondent-plaintiff M/s. H. P. Falgu Filling Station, Faral, Kaithal filed suit against defendants/appellants for recovery of Rs. 39716.70 alleging that the plaintiffs supplied diesel and petrol to the defendant on cash and credit basis and ultimately sum of Rs. 39716.70 remained due from the defendants to plaintiff for which defendants issued cheque dated 08.10.2006. However the said cheque was dishonoured twice on being presented by the plaintiff. The defendants failed to pay the said amount along with interest in spite of demands, necessitating the filing of the suit.

2. The defendants pleaded that the plaintiff has not maintained proper accounts. It was alleged that no amount remained due from the defendants to the plaintiff. Cheque was given as security to the plaintiff. All accounts of the plaintiff were

cleared by the defendants. Various other pleas were also raised.

3. Learned Civil Judge (Junior Division), Kaithal vide judgment and decree dated 30.08.2011 decreed the plaintiff's suit for recovery of Rs. 39716.70 along with simple interest @ 12% per annum from the date of cheque i.e. 08.10.2006 till recovery. First appeal preferred by defendants has been dismissed by learned Additional District Judge, Kaithal vide judgment and decree dated 28.11.2011. Feeling aggrieved, defendants have filed this second appeal.

4. I have heard learned counsel for the appellants and perused the case file.

5. Plaintiff has led cogent evidence to prove its case. Cheque in question was admittedly issued by the defendants. However, self-serving statement of Jaspal Singh defendant No. 1 that the cheque was issued as security is not sufficient to prove this version of the defendants. On the other hand, plaintiff has produced its accounts books also to substantiate its claim, in addition to dishonouring of the cheque for the suit amount issued by the defendants. If the cheque had been issued as security, the plaintiff would not have become dishonest for petty amount of Rs. 39716.70. Moreover, the plaintiff would not have used the cheque for the aforesaid odd amount and would have used it for heavy amount in round figure. In addition to it, the cheque was dishonoured in February and April, 2007 and the suit was instituted on 07.04.2009. The cheque was thus dishonoured two years before the filing of the suit. All these circumstances completely rule out the defendants' version that the cheque had been given as security to the plaintiff.

6. In view of the aforesaid, concurrent finding recorded by the courts below to decree the suit of the plaintiff is fully justified and does not suffer from any perversity or illegality nor it is based on misreading or misappreciation of the evidence. On the contrary, the said finding is the only reasonable finding that can be arrived at on the basis of the evidence on record. The said finding, therefore, does not require any interference.

7. Counsel for the appellants contended that the plaintiff is proprietorship firm and, therefore, the firm is not a juristic person and the suit was not filed through authorized person. The contention cannot be accepted. It is correct that proprietorship concern has no independent existence. However, proprietorship concern is same as the proprietor himself. In the instant case, the suit was filed through plaintiff's Manager Dheer Singh Nain in view of authority letter Exhibit P-3 issued in his favour by proprietor of the plaintiff. Consequently, it cannot be said that the suit was not filed through authorized person.

8. Counsel for the appellant contended that Courts below have also granted interest for pre-suit period, which was not even claimed by the plaintiff. The contention cannot be accepted. The plaintiff has claimed interest for pre-suit period and also further interest from the date of suit till recovery. There was no reason for not granting interest for pre-suit period from the date of cheque till the date of filing of

the suit. Interest has been awarded at moderate rate of 12% per annum. The suit amount is result of commercial transaction between the parties. Consequently, the interest has been rightly awarded by the courts below. It may be added that no such contention appears to have even been raised before the lower appellate Court.

9. It may also be noticed that the defendants instead of filing first and second appeals and spending money on litigation including Court fee and counsel's fee should have utilized the amount in paying the decretal amount to the plaintiff. Unnecessary litigation has been generated for the petty suit amount. The suit was rightly decreed by the trial Court as upheld by the lower appellate court. For the reasons aforesaid, I find no merit in this second appeal. No question of law, much less substantial question of law, arises for determination in this second appeal. Accordingly the appeal is dismissed in limine.