

Amar Singh and Sons Vs Haryana State and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 14, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 80

Citation: (2009) 156 PLR 63

Hon'ble Judges: Sham Sunder, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sham Sunder, J.

This regular second appeal is directed against the judgment and decree dated 17.03.2007, rendered by the Court of Civil

Judge (Senior Division) Hisar vide which it dismissed the suit of the plaintiff for rendition of accounts and the judgment and decree dated

29.4.2009 rendered by the Court of district Judge, Hisar vide which it dismissed the appeal against the judgment and decree of the trial Court.

2. Shorn off unnecessary details, the relevant facts of the case are that Amar Singh, is the sole proprietor of the plaintiff concern dealing in Vety

Medicines at Hisar. The plaintiff being an approved source of medicines etc. supply the same, to the Central Government, Haryana Govt, the

Haryana Agricultural University, Hisar and the National Dairy Research Institute, Karnal. The Director, Animal Husbandry, Haryana Chandigarh

and the Milk Commissioner, Haryana, Panchkula had placed orders for the supply of medicines with the plaintiff in the year 1996. The plaintiff

supplied the medicines against those orders from time to time vide different bills which provided that in case of any delay in payment after 21 days

of raising the same the plaintiff shall be entitled to interest at the rate of 24% per annum. It was further stated that as per the Government

instructions, in case of any delay on the part of the supplier the goods penalty at the rate of 2% per month could be recovered. It was further stated

that actually the purchasers had collected the penalty at the rate of 2% per month from the plaintiff as and when there was some delay in supplying

the goods. It was further stated that the plaintiff raised various bills worth Rs. 28,03,728.71 paisa in respect of the medicines supplied by it to the

Director of Animal Husbandry, Haryana Chandigarh in the year 1996. The department, however, pegged the price of these medicines at Rs.

27,65,609/-. Then the plaintiff raised another, bill amounting to Rs. 4,16,618.22 paisa in respect of the medicines, supplied by it to the Milk

Commissioner, Haryana, Panchkula, in the year 1996 but the department pegged the price of those medicines at Rs. 4,09,409/-. Both the

departments did not release the aforesaid amount, because of a false complaint filed by Dr. P.S. Gaur, former Milk Commissioner, Haryana which

was inquired by the Flying Squad of the Chief Minister, Haryana, Chandigarh and also the Vigilance Department, Haryana, Chandigarh. It was

further stated that the said enquiry was finalized, in the year 1999, in which it was found that Dr. P.S. Gaur was in the habit of making false

complaints and the complaint made by him, in the instant case was also proved to be false and frivolous. The Government of Haryana decided vide

letter dated 5.5.1999 that payment of the plaintiff be released and for delayed payment interest be paid. It was further stated that despite this

decision, various representations were made for payment by the plaintiff. Legal notice through his counsel was also sent by the plaintiff for payment

of interest on the amount of price of goods paid after delay, but the same was not made. Thereafter, the plaintiff filed a civil writ petition No. 5308

of 2002 in this Court. It was further stated that during the pendency of the writ petition, the defendants paid the principal amount of Rs. 1,35,875/-

in the month of December 2002 and Rs. 2,74,017/- in the month of February 2003 to the plaintiff. It was further stated that the above said writ

petition was disposed of by this Court, vide order dated 10.2.2003 with liberty to the plaintiff to approach the civil court for grant of interest, in

accordance with the provisions of law. It was further stated that the plaintiff became entitled to interest at the rate of 24% per annum on the

delayed payments after the expiry of a period of 21 days from the date of supply of medicines till 5.2.2003 when the last payment was made.

Despite issuance of notice u/s 80 of the CPC the defendants failed to make the payment of the same. Left with no alternative, a suit for rendition of

accounts was filed.

3. The defendants put in appearance and contested the suit by way of filing their joint written statement. They pleaded therein that the suit in the

present form was not maintainable; that the plaintiff had no locus standi to file the suit; that the Civil Court had no jurisdiction to entertain and try

the suit; and that the suit was bad for non-joinder and mis-joinder of necessary parties. It was admitted that the plaintiff concern was dealing in

veterinary medicines but it was denied for want of knowledge that Amar Singh, was the sole proprietor of the said concern at the relevant time. It

was stated that the orders for the supply of medicines were not placed by the answering defendants, with the plaintiff. Rather the same were placed

by the defendants with the manufacturer company of Karnataka. It was further stated that accordingly the manufacturers supplied the medicines to

the concerned department through the plaintiff. It was further stated that the plaintiff raised bills on behalf of the manufacturers. It was further stated

that there was no privity of contract between the plaintiff and the defendants, regarding the payment of interest at the rate of 24% per annum on the

delayed payments. It was further stated that defendants No. 3 had paid the price of medicines to the tune of Rs. 27,65,609/- as per the quantity of

medicines, supplied to him. It was further stated that defendant No. 4 also paid the price of purchased medicines to the tune of Rs. 4,09,892/-. It

was further stated that the payment was stopped as per the decision of Government, after receipt of a complaint made by Dr. S.P. Gaur, the then

Milk Commissioner, Haryana. It was further stated that the Court fee had not been affixed on the plaint. The remaining averments were denied.

4. From the pleadings of the parties, the following issues were framed by the trial Court on 07.10.2003:

1. Whether the plaintiff is entitled to rendition of accounts as prayed in the plaint? OPP

2. Whether the plaintiff is entitled to get mandatory injunction for directing the defendants to make the payment of the amount found due towards

the plaintiff alongwith future interest @ 12% p.a.? OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Whether the plaintiff has no locus standi to file the suit? OPD

5. Whether the suit is not maintainable? OPD

6. Whether the plaintiff has concealed material facts from the Court? OPD

7. Whether the civil court has no jurisdiction to try the suit? OPD

8. Relief.

5. The parties led evidence in support of their case. The trial Court after hearing the counsel for the parties and on going through the evidence and

record of the case decided issue. Nos. 1 and 2 against the plaintiffs. Issue Nos. 3 to 5 were decided in favour of the defendants. Issue No. 7 was

decided against the defendants, being not pressed. Ultimately, the trial Court dismissed the suit.

6. Feeling aggrieved against the judgment and decree dated 17.3.2007 passed by the trial Court, the appellant filed an appeal before the Appellate

Court at Hisar, which vide its judgment and decree dated 29.4.2008 dismissed the same.

7. Still feeling dissatisfied the instant Regular Second Appeal has been filed by the appellant.

8. I have heard the counsel for the appellant and have gone through and perused the documents on record carefully.

9. The counsel for the appellant submitted that no doubt, there was a privity of contract between the defendants and M/s Karnataka Antibiotics &

Pharmaceuticals Ltd. Bangalore for the supply of medicines. He further submitted that the said company authorized the plaintiff to supply the

medicines to the defendants being its stockists. He further submitted that whatever goods were supplied through the bills by the plaintiff, to the

defendants the payment used to be made to him. He further submitted that as such, the plaintiff was competent to file the suit even without

impleading M/s Karnataka Antibiotics & Pharmaceuticals Ltd. Bangalore, as a party. He further submitted that since the sum was not ascertainable

a suit for rendition of accounts was maintainable. He further submitted that the judgments and decrees of the Courts below dismissing the suit of the

plaintiff were thus illegal and liable to be set aside.

10. After giving my thoughtful consideration to the contentions raised by the counsel for the appellant, in my considered opinion, the appeal is liable

to be dismissed for the reasons to be recorded hereinafter. Admittedly, there was no privity of contract, between the plaintiff and the defendants,

regarding the supply of goods. The contract regarding the supply of goods was between the defendants and M/s Karnataka Antibiotics and

Pharmaceuticals Ltd. Bangalore. If M/s Karnataka Antibiotics and Pharmaceuticals Ltd. Bangalore authorized the plaintiff, as stockists, to supply

the goods, in pursuance of the contract which was entered into by it, with the defendants and any claim arose with regard to the price or interest on

the delayed payments then only Mr Karnataka Antibiotics and Pharmaceuticals Ltd. Bangalore, could file a suit, for recovery. The plaintiff had no

locus standi to file the suit. The courts below were thus, right in holding so.

11. Even vide letter (Ex.P-13) dated 3.2.1998, the plaintiff raised a demand of Rs. 28,03,728.71 plus interest of Rs. 16,67,025/- against the

Director, Animal Husbandry and Rs. 4,16,618.22 plus interest of Rs. 2,61,857/- against the Milk Commissioner, Hary-ana, Panchkula, upto

December. 1998. The price of the goods was ascertainable from the bills. The price which was paid by the defendants from time to time against

those bills to the plaintiff on behalf of M/s Karnataka Antibiotics and Pharmaceuticals Ltd. Bangalore was also ascertainable. Since the amount

was ascertainable the plaintiff wrote letter (Ex.P-13) demanding the same with interest. It could not be said that the amount being unascertainable,

no suit for recovery could be filed but only a suit for rendition of accounts was maintainable. With a view to avoid the payment of requisite court

fee, the plaintiff resorted to the subterfuge by filing a suit for rendition of accounts. Under these circumstances, the suit for rendition of accounts

was not maintainable. The courts below were thus, right in holding so.

12. The concurrent findings of fact, recorded by the Courts below that the plaintiff had no locus standi to file the suit as no contract was entered

into between it and the defendants, but on the other hand the contract was only entered into between"the defendants and M/s Karnataka

Antibiotics & Pharmaceuticals Ltd. Bangalore, which could only file the same (suit); and that the sum being ascertainable, a suit for rendition of

accounts was not maintainable being based on the correct appreciation of evidence and law on the point do not suffer from any illegality or

perversity and thus warrant no interference. The judgments and decrees of the courts below, are liable to be upheld. The submission of the

Counsel for the appellant, being without merit, must fail and the same stands rejected.

13. No question of law, much less substantial, arises in this appeal, for the determination of this Court.

14. For the reasons recorded above, the appeal being devoid of merit, must fail and the same stands dismissed with costs.