
(1992) 01 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 653 of 1983

Central Distilley and Chemical Works Ltd.

APPELLANT

Vs

Gurbharatjeet Singh and others

RESPONDENT

Date of Decision : 31-01-1992

Acts Referred:

Limitation Act, 1963 — Article 14, 62

Citation : AIR 1993 P&H 25

Hon'ble Judges : B.C. Verma, C.J.;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Arun Jain, for the Appellant; Puran Chand, for the Respondent

Judgement

Jawahar Lal Gupta, J.—This order will dispose of L.P.A. No. 653 of 1983 and R.F.A. No. 1523 of 1983.

2. The appellant viz. Central Distillery and Chemical Works Ltd. filed a suit for the recovery of Rs. 1,12,154-21 paise against respondents Nos. 1 and 2. It claims to have been supplying the Indian Made Foreign Liquor to respondents Nos. 1 and 2. Vide letter dated December 29, 1971 the said respondents sought credit facility from the appellant-company. At the instance of the appellant, respondent No. 3 who is the father of respondent No. 1 created a mortgage on June 15, 1972 by depositing title-deeds with respect to house No. 720, Sector 8-B, Chandigarh. It is claimed that vide letter dated December 22, 1973, respondents Nos. 1 and 2 acknowledged that an amount of Rupees 1,02,793-35 paise remained outstanding against them. The appellant claimed an additional amount of Rs. 9,366-86 paise by way of interest. The appellant's claim was upheld by the trial Court, through a preliminary decree passed on March 31, 1979. Aggrieved by the judgment of the learned trial court, the respondents filed R.F.A. No. 1923 of 1979. This appeal was accepted by the learned single Judge vide judgment dated May 4, 1983. Aggrieved by the judgment and the decree of the learned single Judge, the appellant has filed the present appeal. In the meantime, the trial Court passed the final decree in the matter out of which

R.F.A. No. 1523 of 1983 has arisen. The decision of the regular first appeal depends on the result of the Letters Patent Appeal.

3. On the pleadings of the parties, the learned trial Court had framed the following issues :--

1. Whether the suit has been filed by a duly authorised person?

2. Whether the defendant No. 3 had created mortgage of house No. 720, Sector 8-B, Chandigarh, in favour of the plaintiff by deposit of title deed? If so, on what terms and whether defendant No. 3 had confirmed creation of the said mortgage?

3. To what amount the plaintiff is entitled if any as balance of price of goods supplied?

4. Whether the plaintiff is entitled to claim interest, if so, at what rate and to what amount?

5. Whether the plaintiff is entitled to a decree for recovery of decretal amount through sale of mortgage property?

6. Relief. The findings of the learned trial court in favour of the appellant were reversed by the learned single Judge on the ground that the plaintiff-appellant had filed Annexure "A" giving the details of the five bills (Ex. P-5 to Ex.P-10) along with the plaint. According to the said Annexure, the aggregate amount of the bills is Rs. 17,486-54 paise and an amount of Rs. 32,306-81 paise had been claimed by way of interest. On a perusal of the plaint and Annexure "A", the learned single Judge found that the amounts mentioned in the respective documents did not tally. He further found that the appellant did not get the original bills produced from the defendants. Accordingly, it was held that there is no documentary evidence on the record except the bills to fasten the liability of huge amount on the respondents. It was further held that the memo, dated June 15, 1972 (Ex. P-12) did not create any mortgage by deposit of title deeds. Only a photo stat copy having been produced, it was held that there was no evidence on record that Surjit Singh (now deceased) ever deposited the title-deeds by way of mortgage. Accordingly, the decree of the trial Court was set aside and the suit of the plaintiff-appellant was dismissed with costs throughout.

4. Aggrieved by the judgment, the plaintiff-appellant has come up in this appeal. Mr. Arun Jain, learned counsel for the appellant has inter alia submitted that the plaintiff had filed the suit under Order XXXIV of the CPC for the purpose of enforcing payment of money secured by a mortgage. Along with the plaintiff, the appellant had produced a statement of the running account which shows that the amount claimed is actually due. He has further submitted that the evidence on record clearly establishes the claim of the appellant for the recovery of money. According to the learned counsel, a perusal of the evidence shows that vide letter dated December 29, 1971 (Ex. P-14), the respondents had sought credit facilities and sought loan of rupees one lac to meet the excise commitments. In this letter it was pointed out that the respondents owned a house worth of Rs. 1,75,000/ -

in Chandigarh and land worth many lacs of rupees. It was further pointed out "that my father is also prepared to give guarantee on my behalf." It was in pursuance to this letter that a memo dated June 15, 1972 was executed by which the title deeds of the property No. 720 in plot No. 7-P situate in Sector 8-B measuring 1100 square yards and consisting of a double storey building at Chandigarh for securing the repayment to the plaintiff-appellant "of the amount of the various supplies of their Products that may be made by the said Central Distillery & Chemical Works Limited from time to time with interest there @12% p.a." was made. The learned counsel has further contended that the finding of the learned single Judge that a part of the claim was barred by limitation is totally vitiated as the suit was governed by the provisions of Art. 62 of the Limitation Act and not Art. 14. In any event the learned counsel argued, the respondents had acknowledged the debt vide letter dated December 22, 1973 (Ex. P-15) wherein it was mentioned that the payment will be sent by draft in instalments every month. On the other hand, Mr. Puran Chand has contended that the suit was based solely on Annexure "A" to the plaint. As the entries in Annexure "A" did not tally with those in the bills, at Exhibits P-5 to P-10, the finding of the learned single Judge is unassailable. He further contended that the original of memo, dated June 15, 1972 (Ex. P-12) having not been produced, the secondary evidence could not have been entertained by the trial Court and as such, the learned single Judge has rightly held that there was no mortgage. The learned counsel has further contended that there was no running account between the parties and that Art. 14 of the Limitation Act applied and not Art. 62.

5. After hearing learned counsel for the parties, we find that the suit had been instituted by the plaintiff-appellant under Order XXXIV of the CPC Code "for a mortgage decree for recovery of Rs. 1,12,154-21 paise and interest." In the plaint it has been categorically mentioned that "On June 15, 1972 defendant No. 3 who is the father of defendant No. 1 created a mortgage by deposit of title deeds of his property comprising plot No. 7-P measuring 1100 square yards with house No. 720 standing thereon and agreed that the said property will remain a security for payment of the price of goods that may be supplied by the plaintiff to defendants Nos. 1 and 2 up to a maximum limit of Rs. 50,000/- and interest thereon @ 12% per annum." In the plaint, the appellant has further alleged that "a complete statement of account of defendants Nos. 1 and 2 as per the plaintiff's ledger is enclosed as Annexure "B" to this plaint". Accordingly, it was prayed that "a preliminary decree in accordance with the provisions of Order XXXIV of the CPC ordering that an account be taken of the amount due to the plaintiff at the date of such decree for principal and interest, the cost of the suit and the other charges and expenses to the plaintiff may be" made. It was further claimed that defendant No. 3 be directed "to pay the amount that may be found due for which the mortgaged property stands security within such time as this Hon'ble Court may fix" and in case of failure, direction be issued that "the mortgaged property be sold and payment therefrom to the plaintiff of the amount due from defendant No. 3 as aforesaid". In the written statement filed

on behalf of the respondents it was inter alia pleaded that they had never defaulted in any payment and that every transaction was on cash basis. It was further denied that the defendants asked for any credit facility from the plaintiff. The claim of the appellant was accordingly disputed by the respondents. On the basis of the pleadings, the issues as mentioned above had been framed.

6. We have perused the evidence on record. On a perusal of Annexure-B, which is, a true copy of entries appearing in account ledger from August 24, 1971 to April 30, 1976, we find that all the bills produced on record as Exhibits P-5 to P-10 had been duly entered therein. Even the entries with regard to the payments received at different intervals of time are duly made. Furthermore, on a perusal of the letter dated December 29, 1971 (Ex.P.14) we find that the respondents had sought credit facilities/sanction of a loan and offered to give "whatever guarantee you propose". In this letter it was categorically mentioned that the respondents owned a house worth about Rs. 1,75,000/- and land worth many lacs of rupees. It is thereafter that the Memo, dated June 15, 1972 was executed by which the afore-mentioned plot No. 7-P along with the house thereon No. 720 in S.8-B, Chandigarh was mortgaged with the appellant for the purpose of securing "the repayment to the said Messrs Central Distillery & Chemical Works Ltd. Delhi of the amount of the various supplies of their Products that may be made by the said Central Distillery & Chemical Works Limited, Delhi from time to time with interest thereon at the rate of 12% p.a." This evidence leaves us with no doubt that the respondents had created a mortgage in favour of the appellant. It is further clear that the appellant had been supplying material regularly to the respondents for which certain payments were made at different intervals of time, but some amount was always due to the appellant from the respondents. It is only when the outstanding amount kept piling up that the appellant was forced to institute the suit for recovery of its dues, in this situation, we are clearly of the view that the suit was for recovery of money secured by a mortgage. There was a running, account between the parties. Annexure-B with the plaint represents that account. Accordingly, we are of the view that the finding of the learned single Judge which was based solely on a perusal of Annexure-A is untenable. We set aside that finding.

7. Mr. Puran Chand contends that Ex. P-12 was not admissible in evidence as the original document as also the title deeds had not been produced. We are unable to sustain this objection. The document was exhibited without any objection having been raised on behalf of the respondents. Still further, if it was the case of the respondents that the title deeds had not been deposited, then he should have produced the said title deeds. They could have called upon the plaintiff-appellant to produce the title deeds. Nothing of the sort having been done, we find that a valid mortgage had in fact been made by deposit of title deeds and at least part of the liability of the extent of Rs. 50,000/- along with interest thereon @ 12% per annum had been duly guaranteed to the appellant.

8. Since the suit was for payment of money secured by a mortgage, the claim

was covered by Art. 62 of the Limitation Act and not Art. 14. This is not withstanding the fact that the parties had a running business account.

9. In view of the above findings, we accept this appeal, set aside the judgment and decree of the learned single Judge and restore that of the learned trial Court. Accordingly, the suit of the plaintiff-appellant is decreed with costs throughout.

10. RFA No. 1523 of 1983 is directed against the final decree passed by the learned trial court by which the preliminary decree was confirmed. In view of the fact that we have upheld the preliminary decree passed by the learned trial court and set aside the judgment of the learned single Judge, there is no merit in the appeal filed by the respondents in the L.P.A. against the final decree. It is accordingly dismissed.

11. As a result, this appeal is accepted and the suit of the plaintiff-appellant is decreed with costs throughout.

12. Appeal allowed.