(2011) 06 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 361 of 2004

Era Construction (India) Limited and Others — APPELLANT

Vs

Johri Lal Bansi Dhar — RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 17

Citation : (2011) 06 SHI CK 0019

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Ahuja, J.—This is an appeal filed by the Appellant against the judgment and decree of the court of the learned District Judge, Solan, dated 19.7.2004, vide which he decreed the suit of the Respondent as against the Appellants for recovery of Rs. 2,23,942.67, alongwith interest.

2. Briefly stated, the facts of the case are that the Respondent (hereinafter also referred to as the Plaintiff) filed a suit for recovery of the amount against the Appellants (hereinafter also referred to as the Defendants). It was alleged by the Plaintiff that it is a registered partnership firm dealing with iron, hardware, paint etc. Defendant No. 1 had been executing some work at Nalagarh for which it purchased some building material from the Plaintiff through its agents and servants. The material was purchased against five bills detailed in the plaint. The total price of the material purchased was Rs. 3,16,549.67. Out of this, the Defendants paid a sum of Rs. 1,26,767/- on three different occasions. The balance amount of Rs. 1,89,782.67 was not paid despite reminders and notice. The Plaintiff, thus, claimed Rs. 1,89,782.67, as principle amount and Rs. 43,955/- by way of interest and filed the suit for recovery of the amount.

3. Defendants took up objections in regard to jurisdiction etc. On merits, they pleaded that the Plaintiff supplied plywood of inferior quality. They also pleaded

that the legal notice was replied to by them. There were differences in regard to the quality mentioned in the bills and the quality actually supplied and accordingly, the Defendants denied their liability to pay the amount.

4. On the pleadings of the parties, the following issues were framed by the learned trial Court:

1. Whether the Plaintiff is entitled to the suit amount as claimed for and interest? OPP

2. Whether the court has no jurisdiction to entertain the present suit? OPD

3. Whether the Plaintiff''s firm is not a registered firm and Shri Bansidhar is not competent to file the present suit? OPD

5. Parties led their evidence and the learned trial Court vide its impugned judgment decided all the issues in favour of the Plaintiff and against the Defendants and consequently, decreed the suit of the Plaintiff in full.

6. I have heard the learned Counsel for the parties and have gone through the record of the case.

7. During the course of arguments, two grounds were urged by the learned Counsel for the Appellants. The first ground urged was that Bansidhar, a partner of the Plaintiff firm, was not competent to file the suit since the partnership firm was not in existence on the date of filing of the suit. The second ground urged was that the suit was bad for non-compliance of provisions of Order 7 Rule 17 CPC. No other point was urged. Therefore, the appeal is being taken up on both these grounds.

8 In regard to the first ground taken that Bansidhar was not a partner of the Plaintiff firm, my attention has been drawn by the learned Counsel for the Appellants himself to Ext.PA, the certificate from the office of the Registrar, dated 22.8.1970, which shows that the firm M/s Johri Lal Bansi Dhar, Solan was duly registered. The certificate Ext.PB shows that the date of registration is 22.8.1970 and on this date the names of the partners were Johri Lal, Bansidhar, Pawan Kumar, Pankaj Kumar and Parveen Kumar and one of the partners had died on 1.1.1990 as per the remarks column. Thus, Bansidhar and other persons were the partners of the firm and the firm was duly registered. Both these documents were duly proved before the learned trial Court and no objection appears to have been taken or urged during the course of hearing before the learned trial Court.

9. Thus, both the above documents clearly proved that on the date the suit was filed i.e. on 12.11.1996, all the persons named above were the partners of the Plaintiff firm. The learned Counsel for the Appellant had tried to take benefit from the statement of PW-1 Bansidhar recorded by the learned trial Court, who had stated that now the firm stood dissolved and Parveen Kumar was its sole proprietor. Earlier, he was one of the partners of the Plaintiff firm. The learned Counsel for the Defendants never extracted from the witness as to when the firm

was dissolved or the firm was not in existence on the date when the suit was filed. There were no suggestions to the witness during cross examination that the firm was not in existence when the suit was filed and no specific plea in this regard was also taken in the written statement.

10. Thus, from the above discussion, it is clear that the Plaintiff had proved the fact that the firm was duly registered and as per the record, it was still in existence and nothing was proved that the firm was not in existence on the date of filing of the suit in the year 1996. Therefore, the first plea raised by the learned Counsel for the Appellants is repelled since the record could have been summoned by the Defendants or the statement of the Plaintiff could have been deferred to confront him with the record. Thus, the only conclusion that can be drawn is that the Plaintiff firm was a registered firm and Bansidhar was a partner on the day when the suit was filed. Thus, the plea is repelled being devoid of any merit.

11. Coming to the second ground that there was non-compliance of the provisions of Order VII Rule 17 CPC, and, therefore, the ledger could not be relied upon. Order VII Rule 17 CPC reads as under:

Production of shop-book.-(1) Save in so far as is otherwise provided by the Bankers'' Books Evidence Act, 1891 (18 of 1891), where the document on which the Plaintiff sues is an entry in a shop-book or other account in his possession or power, the Plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) Original entry to be marked and returned. - The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification, and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the Plaintiff and cause the copy to be filed."

12. It is clear from the a perusal of this provision that it is the duty of the court to see the ledger, when the Plaintiff filed the suit, and to get its attested copy placed on record and after initialing the ledger, it should be returned to the party. Therefore, this was to be done by the court, which has not been done. What is the effect of non-compliance of this provision has to be seen by this Court. Once the court had not seen the original ledger at the time of filing of the plaint, the only thing the Plaintiff could do was to produce the ledger during the course of hearing and prove the entries according to law. A perusal of the statement of the Plaintiff clearly shows that he had brought the original register which was produced in the Court and the entries were proved according to law. The procedural lapse committed by the court in regard to the provisions of Order VII Rule 17 CPC does not lead to the inference that the entries in ledger which was produced subsequently also in original cannot be relied upon.

13. The learned Counsel for the Appellants, in support of his submissions, relied upon the decision in Paras Nath Hira Lal Vs. Kishan Lal Chuni Lal and Others, A

perusal of this decision shows that it was observed in para 3 as under:

It is plain from an examination of these provisions that the party relying upon an entry in an account book must produce the account book in court, and if the account book is one in current use, he may furnish a copy of the entry on which he relies and after that copy has been examined, compared and certified with the original entry, the court will mark the entry and return the account book,. Unless the original account book is produced before the court, no copy of any entry contained in that account book can be entertained in evidence.

14. A further perusal of this decision shows that it was observed that in the instant case the law enabled the court to admit in evidence a copy of an entry in an accounts book only after the copy had been examined, compared and certified in the manner set out in Order VII Rule 17 CPC. The said case is distinguishable from the present facts since in the present case, the entry in question has been proved legally and, therefore, the said entry from the ledger can be relied upon and it was rightly relied upon by the learned trial Court. There is no substance in the plea raised by the learned Counsel for the Appellants, which squarely falls on the ground. The suit in question was based upon the bills and not on the entries in the accounts book only and the bills were duly proved according to law. The Defendants raised the plea in regard to the quality of the material supplied or the other such questions which were not substantiated by the Defendants during the course of hearing before the learned trial Court. The point was also not urged before this Court that this plea was taken and substantiated but it has been ignored by the learned trial Court.

15. On a perusal of the findings recorded by the learned trial Court, it is clear that the bills Ext.P1/A to Ext.P3/C were duly proved and this clearly proves that this amount was due to the Plaintiff from the Defendants and as such the learned trial Court had rightly decreed the suit of the Plaintiffs. No other plea was raised or pressed for during the course of arguments.

16. accordingly hold that there is no merit in the appeal filed by the Appellants, which is dismissed alongwith costs including lawyer''s fee.

