
(1995) 07 P&H CK 0120
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 816 of 1990

Haryana Tanneries Ltd.

APPELLANT

Vs

Hans Raj Mahajan and Sons (P) Ltd.

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1995) 111 PLR 645

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : S.K.S. Bedi, for the Appellant; G.S. Jaswal, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—Facts giving rise to the present revision petition, in brief, are that the respondent herein filed a suit for mandatory injunction directing defendant-petitioner to release the leather after accepting the balance amount after reconciliation of the accounts and for a permanent injunction restraining the defendant not to auction or sell the leather. The trial Court decreed the suit in favour of the plaintiff-respondent subject to its (plaintiffs) depositing a sum of Rs. 74367.23 paise. This amount was deposited and under the interim orders of the courts below, a part of the leather, rather a substantial part of the leather which had been delivered to the defendant for processing, was delivered to the plaintiff after the same had been processed by the defendant at Jind but the amount deposited by the plaintiff was not disbursed to the defendant. Meanwhile, appeal filed by the plaintiff before the lower appellate court was allowed and the suit filed by the plaintiff was dismissed. In the circumstances, the plaintiff moved an application in the court of Sub Judge 1st Class, Jalandhar averring that a sum of Rs. 74367.23 had been deposited subject to final reconciliation of accounts between the parties and that since the suit had been dismissed and reconciliation had not taken place, the amount aforesaid be refunded to it. The application moved by the plaintiff-respondent for withdrawal

of the amount was contested by the defendant-petitioner by filing reply. The stand taken by the defendant-petitioner was that the plaintiff after depositing the amount obtained stay from the appellate court thereby prevented the defendant from utilising the amount. It was further stated that it was absolutely wrong that the defendant did not supply full quantity of leather. Rather the plaintiff after taking delivery of the leather from the defendant wrongly and illegally and by mentioning wrong facts, obtained an order staying disbursement of the amount to the defendant. It was also stated that the amount was deposited being the amount of processing charges and once the leather had been received by the plaintiff, it was not entitled to withdraw the amount as the same belonged to the defendant and that the plaintiff did not intentionally reconcile the accounts and was causing loss to the defendant.

2. Trial court by order dated January 17, 1990 came to the conclusion that from the judgment dated September 19, 1986 passed by the learned Sub Judge 1st Class, Jalandhar, it was clear that the payment of Rs. 74,367.23 paise was subject to final reconciliation of accounts between the parties and since no reconciliation of accounts between the parties was arrived at, the plaintiff-applicant was entitled to refund thereof and that the defendant was at liberty to file a suit for recovery of the amount if any, due to it from the plaintiff. The trial court thus, ordered that the plaintiff-applicant was entitled to withdraw the aforesaid amount. It is against this order, the present revision has been filed by Haryana Tanneries Ltd., Jind.

3. Learned counsel for the petitioner submitted that the trial court had decreed the suit subject to reconciliation of accounts between the parties on plaintiffs paying a sum of Rs. 74,367.23 paise. The plaintiff having received the processed leather in terms of the decree of the trial court and under the interim orders of the courts below, was not entitled to the refund of the amount deposited by it after the suit had been dismissed. The trial court could not order refund of the amount in favour of the plaintiff in the facts and circumstances of this case, especially when the processed leather had been delivered to the plaintiff in terms of the directions of the court. Assuming the amount was to be returned to the plaintiff, the plaintiff ought to have been directed to restore the processed leather received by it in terms of the decree of the trial court and other interim orders passed by the court before the suit was finally dismissed. The plaintiff could not be allowed to have the leather and the amounts after the suit had been finally dismissed, and defendant could not have been left to recover the leather or money by filing another suit. According to learned counsel for the petitioner, the defendant was entitled to an order of restitution in respect of leather delivered under the orders of the court once the suit had been dismissed before the amount could be ordered to be refunded to the plaintiff. The plaintiff could not have been allowed to have the double advantage. Learned counsel for the petitioner in order to show that the leather had been delivered to the plaintiff in terms of the decree of the trial court and the interim orders of the courts below, referred to a Receipt of goods against job work, Annexure P-I available on the

record of the revision petition. This receipt is signed on behalf of the plaintiff-company and contains the details of the quantity of finished leather having been received from the defendant-company. Learned counsel for the respondent, however, on the other hand submitted that the accounts having not been reconciled, the defendant is not entitled to any amount as the amount was deposited subject to reconciliation of accounts. The accounts having not been reconciled, the plaintiff was rightly granted refund of the amount. Learned counsel for the respondent, however, could not deny or dispute the delivery of finished leather taken by the plaintiff from the defendant as is envisaged by Annexure P-I under the decree of the trial court or other interim orders passed till the suit was finally dismissed.

4. After hearing learned counsel for the parties, I am of the view that this revision deserves to succeed and the trial court was not at all justified in ordering refund of the amount in favour of the plaintiff. Undisputedly, the suit was decreed subject to deposit of amount and in view of the decree and other interim orders passed, defendant had no option but to deliver the leather. Once the processed leather had been delivered and the plaintiff has taken the delivery thereof as is evidenced by Annexure P-I, the plaintiff was not entitled to the refund of the amount. In any case, if the court was of the opinion that the plaintiff was entitled to the refund of the amount, it ought to have at the same time directed the plaintiff to return the processed leather which had been received by it from the defendant because of the decree which had been set aside. The plaintiff could not be allowed to have advantage over the defendant of a decree which had been set aside. The trial court did not take this fact into consideration at all though it was highlighted, as noticed above in the reply filed by the defendant to the application seeking refund of the amount, which is the subject matter of this revision. In my view, the trial court acted with material irregularity and illegality and in excess of its jurisdiction in ordering refund of the amount in favour of the plaintiff. Order of the trial court passed on January 17, 1990, therefore, cannot be sustained either on principle or on equity or on the touchstone of justice and the same is consequently set aside. However, in the peculiar facts and circumstances of the present case and with a view to undo the injustice done to the defendant-petitioner and having regard to the enunciation of law as laid down in *Kartar Singh @ Naranjan Singh and Ors. v. State of Punjab* 1995 RLR 385 I hereby direct the plaintiff-respondent to deposit with the trial court a sum of Rs. 74,367.23 paise within a period of six weeks from today along with interest at the rate of 15% per annum from the date of withdrawal till the date of deposit. Re-deposit of the amount is nothing but in the nature of restitution. While ordering restitution, the court is always competent to direct the restoration of the amount which had been illegally received by the other side, with interest. If however, the amount as aforesaid is not deposited within the time allowed, the defendant-petitioner shall be entitled to take the processed leather back, already delivered by it to the plaintiff under the orders of the courts or the defendant-petitioner shall be entitled to receive the present market value of the processed

leather from the plaintiff by way of restitution. If the amount as aforesaid is deposited the same shall be disbursed to the defendant-petitioner forthwith leaving it open to the plaintiff to file a suit for reconciliation of accounts between the parties or for any other cause as might be admissible under law, in a court of competent jurisdiction. It is further ordered that if the amount as aforesaid is not deposited, trial court shall on an application moved before it, take all necessary steps for restitution of finished leather delivered by defendant to the plaintiff or its market value prevalent at that time at a very early date. If the amount is deposited, question of restitution proceedings would not arise.

5. With the above observations and directions, revision stands allowed with costs. Counsel fee is assessed at Rs. 1000/-.