

(2016) 07 P&H CK 0179

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3517 of 2011 (O&M)

Haryana Warehousing Corporation, Panchkula

APPELLANT

Vs

M/s Haryana Enterprises

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Citation : (2016) 4 LawHerald 2917

Hon'ble Judges : Mr. Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. K.K. Gupta, Advocate, for the Appellants in RSA No. 3517 of 2011; Mr. M.K. Garg, Advocate, for the Appellants in RSA No. 4976 of 2011; Mr. K.K. Gupta, Advocate, for the Respondents in RSA No. 4976 of 2011; Mr. M.K. Garg, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Amit Rawal, J.—This order of mine shall dispose of two Regular Second Appeal Nos. 3517 and 4976 of 2011 as the common questions of law and facts are involved in both the appeals.

2. RSA No. 3517 of 2011 filed by the Haryana Warehousing Corporation, Panchkula (hereinafter called as "the defendant") is against the judgments and decrees of both the Courts below, whereby the suit for recovery of amount of Rs. 9,70,911/- along pendente lite and future interest @ 12% per annum, was decreed by the trial Court, whereas the Lower Appellate Court modified the judgment and decree by holding the plaintiffs entitled to recover the amount w.e.f. 12.4.2003 against the effective date 31.7.2002 as held by the trial Court.

3. RSA No. 4976 of 2011 filed by M/s Haryana Enterprises (hereinafter referred as "the plaintiff") is for setting-aside of the findings of the Lower Appellate Court qua modifying the judgment and decree of the trial Court.

4. Mr. K.K. Gupta, learned counsel for the appellants in RSA No. 3517 of 2011 submits that the suit seeking recovery of the amount mentioned above was

erroneously based upon claiming of the rent of the premises rented out to the appellants for storing of wheat etc. The premises were taken on rent on storage basis instead of actual basis. The rate of rent was 2.20 per metric ton in 2003. The plaintiff had already leased out the place to the CONFED, which fact is evident from Ex.P7 letter dated 22.5.2003 addressed by the defendant to the plaintiff and as well as letter Ex.D12 allegedly written by the plaintiff to the Electricity Board for disconnection of the electric connection. The trial Court had ordered the recovery of the amount w.e.f. 31.7.2002 to 5.5.2005 by assessing the rate @ 3.25 per metric ton, whereas the Lower Appellate Court reduced it from 12.4.2003 to 5.5.2005 limiting the claim within the period of three years. In fact, as per Ex.P12, i.e., the judgment and decree dated 28.9.2005 passed in Civil Suit No. 118 dated 30.7.2002, similar suit at the instance of the plaintiff claiming the rent @ 3.25 per metric ton for the period 5.5.2001 to 30.7.2002, though had been decreed, but the fact remains that the plaintiff has failed to prove on record that the plinths were taken on four years guarantee basis for a period of four years and, thus, the suit was liable to be dismissed and, thus, submits that the question of law arises for determination. He further submits that there is gross illegality and perversity in the judgments and decrees of both the Courts below and accordingly the questions of law as formulated in the memorandum of appeal are liable to be framed for the adjudication of the lis.

5. On the other hand, Mr. M.K. Garg, learned counsel for the appellants in RSA No. 4976 of 2011 submits that the judgment and decree of the Lower Appellate Court suffers from illegality and perversity, for, as per the judgment and decree Ex.P12, the rate of rent has already been held to be 3.25 per metric ton and the pleadings in the aforementioned suit qua taking of the plinths on four years guarantee for a period of four years have not been emphatically denied and, thus, the aforementioned judgment and decree is admissible in the evidence as per the provisions of the Indian Evidence Act. He further submits that the defendant had taken the premises w.e.f. 2.5.2001 at the aforementioned rate for storing of 9000 metric ton of wheat. Even the security amount of Rs. 20,000/- was deposited by the plaintiff vide receipt dated 2.5.2001. Since there was failure in payment of the rent/hire charges for the period from 31.7.2002 to 5.5.2005, the aforementioned suit was filed. However, the Lower Appellate Court has erroneously held that the rent can only be claimed for not more than three years and restricted the claim within three years, but the fact remains with respect to the arrears of rent w.e.f. 5.5.2001 to 30.7.2002 and the amount claimed in the present suit was w.e.f. 31.7.2002 to 5.5.2005 as the suit was filed on 12.4.2006. The amount claimed is of a period of three years and, therefore, could not have been restricted for three years by taking the date of filing of the suit and, thus, urges this Court for setting-aside of the judgment and decree of the Lower Appellate Court qua restricting of claim w.e.f. 12.4.2003 as the following substantial question of law would involve for adjudication of RSA o.4976 of 2011:-

"Whether the State Government or semi-government Department can frustrate

the genuine claim of payment of amount of eligible person by taking plea of limitation?"

6. I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no merit and substance in the submission of Mr. Gupta, whereas there is force in the submission of Mr. Garg with regard to the claim w.e.f. 31.7.2002 to 5.5.2005.

7. It is the conceded position on record that as per the judgment and decree dated 28.9.2005 (Ex.P12), the factum of taking the plinths on four years guarantee basis for a period of four years has not been denied in the written statement and the suit for arrears of rent @ 3.25 per metric ton w.e.f. 5.5.2001 to 30.7.2002 had been decreed which had attained finality. It appears that the defendant is a perpetual defaulter and plaintiff had resorted to legal proceedings for claiming the rent. Ex.D12 relied upon by Mr. Gupta does not contain the date and month for which the plaintiff is alleged to have written to the Electricity Board for disconnection of the electric connection, whereas Ex.P7 purportedly is a letter written by the defendant to the appellants with regard to the renting out the premises to CONFED. It is a self serving document which does not carry any presumption of truth. If at all the defendant was sure about vacating the premises taken on rent, he could have summoned the witness from the concerned department from whom the premises had allegedly been rented out. They even did not summon the plaintiffs in their evidence calling upon them to produce the statement of account regarding the receipt of rent from the third party. In the absence of the same, much less in view of the judgment and decree already rendered, it is irresistably concluded that the defendants were perpetual defaulters in making the payment.

8. As regards the findings rendered by the Lower Appellate Court with regard to limiting the claim of the plaintiff from 31.7.2002 to 12.4.2003, admittedly in the previous round of litigation, the decree was up to the period 30.7.2002 and since the defendants failed to pay the lease amount, they became defaulter w.e.f. 31.7.2002 to 5.5.2005 after the expiry of period of four years. The cause of action accrued to the plaintiff to institute the case and the amount claimed is for period of three years and cannot be said to be beyond the limitation.

9. Accordingly, the finding of the Lower Appellate Court limiting the recovery of the amount from 12.4.2003 is hereby set-aside and that of the trial Court is restored. The question of law, as noticed above, is answered in favour of the plaintiff and against the defendant.

10. RSA No. 3517 of 2011 filed by Haryana Warehousing Corporation & others is dismissed, whereas RSA No. 4976 of 2011 filed by M/s Haryana Enterprises & another is allowed in the aforementioned terms.