
(2016) 11 SHI CK 0056
In the High Court Of Himachal Pradesh
Case No : RSA No. 320 of 2008

Himachal Pradesh General Industries Corporation Ltd.	APPELLANT
Vs	
M/s. Hari Singh Harpal Singh	RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Section 3

Citation : (2017) 1 BC 36

Hon'ble Judges : Mr. Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. Satya Vrat Sharma, Advocate, for the Respondent; Mr. Hemant Vaid, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mr. Ajay Mohan Goel, J. - By way of this second appeal, the appellant/defendant has challenged the judgment and decree passed by the Court of learned Senior Sub Judge, Shimla in Civil Case No. 182/1 of 1997, dated 27.09.2001, vide which said Court decreed the suit of respondent-plaintiff for recovery of Rs. 1,52,464.80/- along with interest as well as judgment and decree passed by the Court of learned Additional District Judge, Shimla in Civil Appeal No. 13-S/13 of 2007 dated 25.03.2008 vide which learned Appellate Court while dismissing the appeal filed by the present appellant upheld the judgment and decree passed by the learned trial Court.

2. Brief facts necessary for the adjudication of this case are that respondent/plaintiff (hereinafter referred to as "plaintiff") filed a suit for recovery of amount of Rs. 1,52,464.80/- with interest on the grounds that the plaintiff which was a partnership concern was awarded contract for transportation of Rectified Spirit fort for the year 1993-94 from various Distilleries to the Country Liquor Bottling Plant, Mehatpur, District Una, H.P by the defendant for which an amount of Rs. 50,000/- was deposited by the plaintiff towards security which was refundable.

As per the plaintiff, it transported alcohol/Rectified Spirit from various distilleries to Bottling Plant at Mehatpur during the year 1994 and submitted its bills/G.Rs to the General Manager of the Country Liquor Bottling Plant of the defendant, a part of which remained unpaid. Further as per the plaintiff, the outstanding amount was claimed by it vide notice dated 01.03.1995 and payment of the same was delayed by the defendant on one pretext or the other and despite assurance no payment was made. In these circumstances, plaintiff filed suit for recovery of an amount of Rs. 1,52,464.80/- which included outstanding amount along with interest as well as refund of security deposit and earnest money.

3. The claim of the plaintiff was contested by the defendant inter alia on the ground that plaintiff had failed to comply with clause 6 of the contract and had supplied defective spirit to the defendant Country Liquor Bottling Plant, Mehatpur which was unfit for human consumption. As per the defendant, the amounts which were due from them to plaintiff were adjusted against the losses which were caused by the plaintiff to the defendant and on these bases, the claim of the plaintiff was refuted.

4. In replication, the stand so taken by the defendant was denied by the plaintiff. It was stated therein by the plaintiff that one tanker bearing No. HR-01-2991 belonging to the plaintiff loaded with the rectified spirit met with an accident and defendant was reimbursed by the Oriental Insurance Company for the loss caused to it on account of said accident. On these bases, it was stated by the plaintiff that the defendant/Corporation could not withhold the payment of the plaintiff on the said pretext as it had already recovered the insured amount from the insurance company. Rest of the averments of the written statement were also not admitted in the replication by the plaintiff.

5. Before proceeding further, it is pertinent to mention here that paragraph 5 of the plaint, contained contents with regard to cause of action and the same is being reproduced as under :-

"5. That the cause of action arose to the plaintiff against the defendant on 3.6.94, 22.7.94 and 1.3.95 onwards on each date of demand within the jurisdiction of this court where also the defendant works for gain and hence this court is competent to try this suit."

6. The reply to the said paragraph of the plaint as it find mention in the written statement is reproduced as under :-

"Calls for no reply."

7. On the basis of pleadings of the parties, learned trial Court framed the following issues:-

"1. Whether the plaintiff is entitled for the recovery of the suit amount as alleged ? OPP.

2. Whether the suit is within limitation ? OPP.

3. Relief."

8. On the basis of evidence led by the parties both ocular as well as documentary in support of their respective cases, the issues so framed were answered by the learned trial Court in the following manner :-

"Issue No.1 : Yes.

Issue No. 2 : Yes.

Relief : Suit decreed as per operative part of the Judgment."

9. Learned trial Court vide its judgment and decree dated 27.09.2001 decreed the suit of the plaintiff for recovery of Rs. 1,52,464.80/- along with interest at the rate of 6% per annum. Learned trial Court held that plaintiff had proved on record that it had sent bills to the defendant/Corporation and receipt of same was not denied by the defendant. Learned trial Court also took note of the fact that as per the contention of the defendant, the bills in question were withheld as the plaintiff firm had not complied with terms and conditions laid down in Clause 6 of the contract/agreement entered into between the plaintiff and defendant. Learned trial Court also took note of the fact that DW-1 Shri J.K. Lakhanpaul stated that plaintiff had agreed to get adjusted the loss suffered by the defendant on account of accident of the tanker out of the security amount of Rs. 50,000/-. It was held by the learned trial Court that neither defendant examined anyone from the Excise Department to either certify or prove that spirit which was transported by the plaintiff firm was not fit for human consumption nor it was controverted by the defendant that it (defendant) had received the claim on account of loss suffered by it from the Insurance Company. It was further held by the learned trial Court that no Counter Claim was filed by the defendant to claim any damages or losses allegedly suffered by it due to accident of the tanker. On these bases, it was held by the learned trial Court that defendant had failed to substantiate its contention that the plaintiff had violated the terms and conditions of the agreement. It was further held by the learned trial Court that even if plaintiff had violated the terms of the agreement then also the proper course for the defendant was not to withhold the outstanding payment, security amount and earnest money but right course was to file a suit for recovery of damages allegedly suffered by it. On these bases, learned trial Court allowed the suit for recovery so filed by the plaintiff along with interest @ 6% per annum. On the issue of limitation, it was held by the learned trial Court that during the course of arguments it was not explained on behalf of defendant/Corporation as to how the suit was not within limitation. It further held that in the written statement no such objection was raised that the suit was time barred. It was accordingly held by the learned trial Court that the suit was within limitation.

10. In appeal, learned Appellate Court while upholding the judgment and decree passed by the learned trial Court, dismissed the appeal filed by the present appellant against the judgment and decree of the learned trial Court. It was held by the learned Appellate Court that defendant had not disputed that a sum of Rs.

50,000/- was received as security and a sum of Rs. 10,000/- as earnest money by it from the plaintiff. Learned Appellate Court further held that it was also not disputed that plaintiff had submitted bills for an amount of Rs. 39,120/- on account of transportation of spirit which bills were not paid by the defendant on the ground that plaintiff caused loss to it and therefore, it had adjusted the loss against the amount of security etc. It was further held by the learned Appellate Court that the onus to prove loss caused to defendant by the plaintiff was upon the defendant and defendant had failed to prove the same. Learned Appellate Court held that the factum of 16,000/- litres of spirit having been spilled in the accident was not in dispute. It further held that it was contemplated in clause 9 of the agreement Ext. DW1/A that transit insurance of rectified spirit was to be arranged by the defendant, which meant that it was agreed that if any loss is caused to the spirit during the transit, plaintiff shall not be liable to pay for the same and that defendant would get itself indemnified by the Insurance Company. Learned Appellate Court further held that contention of the defendant that the spirit was found unfit for human consumption could not be accepted because if that was the case, then there was nothing on record to suggest as to what happened to the spirit and where had the said spirit gone and whether or not it was destroyed. It further held that it was not so stated that the defendant has handed over the same to the plaintiff. On these bases, it was held by the learned Appellate Court that no loss on account of alleged contamination of spirit was proved and as the defendant had failed to prove any loss caused to it by the plaintiff, it was not justified in realizing the same out of security amount, earnest money and payment of bills which were due to the plaintiff. On these bases, learned Appellate Court while upholding the judgment and decree passed by the learned trial Court, dismissed the appeal of the defendant.

11. Feeling aggrieved by the findings so returned by both the learned Courts below, defendant has filed the present appeal.

12. I have heard the learned counsel for the parties and also gone through the records of the case as well as the judgments passed by both the learned Courts below.

13. This appeal was admitted on following substantial questions of law on 28.07.2008 :

"1. Whether is the effect of the absence of the pleading in the plaint regarding the respondent/plaintiff firm having been registered and whether the court will have the right to exercise the jurisdiction in the matter in the absence of such pleading in the plaint and whether in such circumstances the suit was required to be dismissed ?

2. Whether in the facts and circumstances of the case the suit of the respondent/plaintiff was barred by time ?"

14. I will deal with both these questions separately.

Question No. 1 :-

"1. Whether is the effect of the absence of the pleading in the plaint regarding the respondent/plaintiff firm having been registered and whether the court will have the right to exercise the jurisdiction in the matter in the absence of such pleading in the plaint and whether in such circumstances the suit was required to be dismissed ?"

15. Copy of partnership deed dated 01.04.1993 is on record as Ext. PW1/A. Certificate of Registration of the said partnership firm under Section 58(1) of the Indian Partnership Act dated 08.08.1996 is on record as PW1/B. There is no objection taken in the written statement to the effect that plaint filed was not maintainable in its present form. No issue was framed with regard to maintainability of the suit on the ground on which substantial question No. 1 has been framed. There was definite averment in the plaint that the plaintiff was a partnership concern and memo of parties demonstrated that the suit was filed in the name of partnership concern through its partner Harpal Singh. Not only this, the factum of a contract having been entered into between the defendant and plaintiff firm has also not been disputed by the defendant. Accordingly, in my considered view, there is no merit in the contention which has been raised by the appellant in the present second appeal by way of substantial question No. 1 especially when it is a matter of record that the plaintiff firm was a registered concern and as such, it had the locus to file and maintain the case and that the trial Court was having both pecuniary and territorial jurisdiction to adjudicate upon the same. There is no averment made in the written statement that the suit filed was not maintainable on the ground that trial court had not jurisdiction to try the same. Not only this, it is a matter of record that partnership firm is a duly registered firm and same stood registered before the suit was filed by the partnership firm. Therefore also, not only the suit was maintainable on behalf of partnership firm but the learned trial Court was having the jurisdiction in the matter to adjudicate upon the same on merit. The substantial question of law is answered accordingly.

Question No. 2 :-

"2. Whether in the facts and circumstances of the case the suit of the respondent/plaintiff was barred by time ?"

16. As I have already mentioned above with regard to accrual of cause of action, the plaintiff had stated about the same in paragraph 5 of the plaint which is being reproduced as under :-

"5. That the cause of action arose to the plaintiff against the defendant on 3.6.94, 22.7.94 and 1.3.95 onwards on each date of demand within the jurisdiction of this court where also the defendant works for gain and hence this court is competent to try this suit."

17. The reply to the said paragraph of the plaint as it find mention in the written

statement is reproduced as under :-

"Calls for no reply."

18. While deciding Issue No. 2 it was held by the learned trial Court that at the time of arguments it was not explained as to how the suit was not within limitation and in the written statement there was no such objection that the suit was time barred. In my considered view, the findings so returned by the learned trial Court cannot be faulted with. This Court is not oblivious to the fact that the question of limitation can be raised at any stage but then there has to be some foundation laid by a party who is challenging the maintainability of a suit on the basis of limitation in the written statement. Coming to the facts of this case, as I have already mentioned above, the factum of plaint/suit being within limitation has been admitted in the written statement by the defendant. Even during the course of arguments, learned counsel for the appellant could not point out as to how the suit was barred by limitation when it stood admitted in the written statement that cause of action accrued in favour of plaintiff 3.6.94, 22.7.94 and 1.3.95 onwards. Even from the evidence which has been led by the defendant both ocular as well as documentary it could not be substantiated by the learned counsel for the appellant that the suit filed by the plaintiff was barred by limitation. Therefore, in my considered view, it cannot be said that in the facts and circumstances of the case, suit of the plaintiff was barred by time. The substantial question of law is answered accordingly.

In view of the discussion held above, I do not find any merit in the present appeal and the same is dismissed with costs, so also pending miscellaneous application(s), if any.