

(2008) 08 SHI CK 0003
In the High Court Of Himachal Pradesh

Juggal Kishore Sharma

APPELLANT

Vs

Patiala Distillers and Manufactures Pvt. Ltd.

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Citation : (2008) 3 ShimLC 448

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—This regular second appeal has been directed by the Plaintiff against the judgment and decree passed by the learned Additional District Judge, passed in C.A. No. 27-S/13 of 1995 whereby he accepted the appeal of the defendant-respondents, setting aside the findings of learned Sub Judge.

2. This appeal was admitted on the following substantial questions of law:

Whether in the facts and circumstances of the case, the plaintiff appellant as an agent of the respondent is entitled to a decree for rendition of account against the respondents?

I have heard the learned Counsel for the parties and have gone through the record of the case of both the Courts below.

The admitted facts of the case are:

- (a) Respondent to be referred as the defendant Company hereinafter, is the duly licensed distillers and the manufacturer of the Indian Made Foreign Liquor (IMFL);
- (b) The defendant, entered into an agreement with the plaintiff, appointing him as their agent for procuring orders for sale of IMFL @ Rs. 5/- per case;
- (c) The defendant company issued a certificate to this effect followed by two letters dated 28.7.1994 bearing Nos. 1478 and 1479 specifying the terms and conditions;

(d) The plaintiff procured some of the orders and the defendant company paid Rs. 17,120/- as common on 27.2.1985 and Rs. 15,000/- on 11.4.1985 vide demand drafts.

3. According to the plaintiff, he spent time and energy to procure the orders from different parties in the State of Himachal Pradesh but the defendant company did not pay his commission amount, despite sending them a written communication vide his letter dated 21.12.1985 and also served the legal notice and put him off on one pretext or the other, therefore, he filed the suit for rendition of accounts against the defendant company.

4. The defendant-company resisted and contested the suit on the ground that as per letter dated 28.7.1984 and the terms and conditions of the agreement, the plaintiff was requested to perform certain conditions before he could claim commission which he did not do and the plaintiff did not submit requisite details of orders procured by him but whatever details were submitted by him, he was duly paid vide two demand drafts as admitted by the plaintiff. The plaintiff was not entitled for any relief and his suit was not maintainable, for the relief sought as such prayed for dismissal of the suit.

5. The plaintiff filed the replication and denied the averments made in the plaint and re-affirmed even paras on merits.

On the pleadings of the parties, the following issues were framed:

1. Whether the plaintiff performed the duties and acts of an agent of the defendant's company two letters Nos. 1478 and 1479 and secured orders for the defendant, if so to what effect and extent? OPP.

2. Whether the suit is within time? OPP.

3. Whether this Court has no jurisdiction? OPD.

4. Whether the plaintiff has no cause of action? OPD.

5. Whether the suit is not maintainable ? OPD.

6. Relief.

6. The learned trial Court after appreciating the evidence on record and hearing the Counsel for the parties, decided issues No. 3 to 5 against the defendant company and Issues No. 1 and 2 in favour of the plaintiff, accordingly passed the preliminary decree against the defendant Company for rendition of accounts, in his favour regarding the commission payable to the plaintiff in terms of the agreement dated 28.7.1984 which was challenged by the defendant in appeal before the learned District Judge.

7. The learned District Judge placed his reliance on the various judgments, viz. M.C. Krishnan Nambiar Vs. The Municipal Prosecutor, Narandas Morardas Gaziwala and Others Vs. S.P. Am. Papammal and Another, , S. Imam Peer Khadri Nooredaria Vs. S. Khadija Bi and Others, and Chaubey Sushil Chandra Vs. Raj

Bahadur, , and held that the plaintiff was not able to show the exceptional circumstances under which this right was available to him on equitable consideration. Further that the plaintiff was bound to send the forms and details of commission on his letter head, as per the terms and conditions contained in the agreement. Even otherwise when he had claimed specific amount, the right course was, to file the suit for recovery and not for rendition of accounts. It was also held that the plaintiff was required to stand on his legs and to succeed on his strength and not on the weaknesses of the case of defendants. Precisely, on these findings the judgment and decree passed in favour of the plaintiff were reversed by the learned District Judge. Consequently the suit of the plaintiff was dismissed.

8. As a matter of fact, there is no provision in the Contract Act or any other enactment conferring a right on an agent to sue his principal for accounts. The general rule is that an agent is not entitled to bring a suit for accounts against the principal except in exceptional circumstances. Such circumstances would exist where the agent is unable to know the amount due to him without examining the accounts which are in possession of the principal and which he is not able to get, or where his remuneration depends on the extent of the dealings entered into between his principal and third parties of which he is not aware. In other cases, the agent is bound to sue his principal for specific sums of money and not for an account. This position is well settled on authorities.

9. In the instant case, the plaintiff-agent failed to bring out the special circumstances which necessitated him to bring his case for rendition of account, therefore the first appellate Court rightly approached the matter and non-suited him. The substantial point is accordingly answered and the judgment and decree passed by learned District Judge calls for no interference, as such the appeal is dismissed with costs.