(2010) 11 P&H CK 0158

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4841 of 2009

Kakkar Steel Forgings and Another — APPELLANT

Vs

Bhushan Metallics Ltd. — RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 139, 5, 6, 87

Citation : (2010) 11 P&H CK 0158

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Defendants M/s Kakkar Steel Forgings and its Managing Partner are in second appeal after remaining successful in the trial court but unsuccessful in the lower appellate court.

2. Respondent-Plaintiff M/s Bhushan Metallics Limited filed suit for recovery of Rs. 2,94,627.66 against the Defendants-Appellants under Order 37 of the CPC (in short, CPC) alleging that the Plaintiff had been supplying material/goods to the Defendants on credit pursuant to orders placed by the Defendants and on settlement of account, Defendants issued cheque No. 745242 dated 8.9.1993 for the due amount of Rs. 2,29,981.66 in favour of the Plaintiff but the said cheque was dishonoured. The Defendants failed to pay the due amount inspite of demand notice. Accordingly, the Plaintiff claimed recovery of the principal amount of Rs. 2,29,981.66 along with Rs. 64,646/-as interest thereon @ 18% per annum till filing of the suit, thus claiming total amount of Rs. 2,94,627.66.

3. The Defendants inter alia pleaded that they had business dealings with M/s Archna Steels Private Limited and have never had business dealings with the Plaintiff M/s Bhushan Metallics Limited. The cheque in question said to be of the year 1993 was alleged to be forged and fabricated. It was denied that amount of Rs. 2,29,981.66 was due from the Defendants to the Plaintiff. It was also pleaded

that the Defendants had already filed criminal complaint against the Plaintiff regarding forgery of the cheque. Various other pleas were also raised.

4. Learned Civil Judge (Junior Division), Chandigarh vide judgment and decree dated 31.7.2007 dismissed the Plaintiff''s suit. However, first appeal preferred by Plaintiff has been allowed by learned Additional District Judge, Chandigarh vide judgment and decree dated 12.5.2009 and thereby Plaintiff''s suit has been decreed for recovery of principal amount of Rs. 2,29,981.66 with costs and interest @ 12% per annum and with future interest @ 6% per annum from the date of decree till recovery. Feeling aggrieved, the Defendants have preferred the instant second appeal.

5. I have heard learned Counsel for the parties and perused the case file.

6. At the outset it may be noticed that it is the Plaintiff''s case that initially name of the Plaintiff-company was M/s Archna Steels Limited which was earlier changed to M/s Archna Steels Private Limited and it was then changed to M/s Bhushan Metallics Limited i..e. Plaintiff vide certificate dated 15.6.1993 Ex. P3.

7. Learned Counsel for the Appellants vehemently contended that notice dated 12.9.1992 Ex. D2 was issued on behalf of M/s Archna Steels Limited (Plaintiff''s predecessor) mentioning that sum of Rs. 19,921/-was due from the Plaintiff''s predecessor to the Defendants and thereafter as per account statement Ex. P19, there was no transaction of supply of any material by the Plaintiff to the Defendants and therefore, the question of the suit amount being due from the Defendants to the Plaintiff did not arise.

8. It was next contended by learned Counsel for the Appellants that the cheque in question (copy Ex. P1) has been forged and fabricated because body of the said cheque has been written with black ink but it bears signature of Defendant No. 2 in blue ink and account number in the cheque has been left blank and there is also ''2-9-61'' written in red ink on the cheque above the signature and stamp of Defendants on the cheque and the said writing has also not been explained. It was sought to be contended that blank signed cheque was stolen and it was fabricated to make it the disputed cheque.

9. Learned Counsel for the Appellants also argued that cheque dated 8.9.1993 has been issued in favour of M/s Archna Steels Limited although Plaintiff M/s Bhushan Metallics Limited had already come into existence on 15.6.1993 and it would depict that cheque issued some time earlier had been forged and fabricated in favour of Plaintiff''s predecessor.

10. Amount in the cheque and name of the payee had been filled later on and therefore, it is not a valid cheque in view of provisions of Sections 5 and 6 read with Section 87 of the Negotiable Instruments Act, 1881 and in view of alternations made in the cheque in this regard, presumption regarding consideration arising u/s 139 of the said Act would also stand rebutted. Reliance in support of this contention has been placed on Capital Syndicate v. Jameela

2003(1) R.C.R. 286. It was pointed out that these infirmities dealt with by the trial court have not been dealt with by the lower appellate court.

11. On the other hand, learned Counsel for the Respondent contended that the Defendants while issuing cheque Ex. P1 might not be aware of change in the name of Plaintiff from M/s Archna Steels Limited to M/s Bhushan Metallics Limited and therefore, the Defendants issued the cheque in the name of M/s Archna Steels Limited.

12. It was also pointed out that in letter dated 12.9.1992 Ex. D2 amount of Rs. 19,921/-was mentioned to be due from the Plaintiff to the Defendants on account of supply of scrap material by the Defendants to the Plaintiff for which separate account was maintained whereas the suit amount is due, after adjusting the same, on account of the material supplied by the Plaintiff to the Defendants. It was contended that even Defendant No. 2 admitted that the Defendants had been supplying scrap to the Plaintiff whereas Plaintiff had been supplying other goods to the Defendants.

13. Learned Counsel for the Plaintiff-Respondent also contended that cheque was not dishonoured on account of account number being not mentioned therein and the cheque has not been forged or fabricated. There is also no plea or evidence by the Defendants that blank signed cheque had been stolen. On the contrary, it was pointed out, the Defendants had filed criminal complaint wherein a completely different version was pleaded. It was pleaded in the criminal complaint that some old cheque had been used to fabricate the cheque in question by deleting the writing with some chemical and by writing present contents of the cheque. In the written statement, however, no such version was pleaded and it was simply alleged that the cheque had been fabricated and forged but there is no explanation as to how the signed blank cheque fell into the hands of the Plaintiff. Further more it was contended that in evidence, Defendant No. 2 even denied his signatures on the disputed cheque as well as letters Ex. P25 to P28 whereas expert witness of the Defendants themselves stated that the said signatures were of Defendant No. 2.

14. Learned Counsel for the Respondent also pointed out that in letter Ex. P25, the Defendants requested the Plaintiff to permit payment of the outstanding amount in installments of Rs. 25,000/-per month by waiving off the interest and it would depict that some amount was due from the Defendants to the Plaintiff although the Defendants pleaded that no amount was due from them to the Plaintiff.

15. It was next argued on behalf of the Respondent that the Defendants despite being asked failed to produce their own account books and also failed to produce counter-foil of the cheque in question to depict as to in whose favour and for what amount the cheque had been issued or to depict that the cheque was not issued at all.

16. I have carefully considered the rival contentions. The contentions raised by

learned Counsel for the Appellants have been fully rebutted by learned Counsel for the Respondent whereas the contentions raised by learned Counsel for the Respondent have not been rebutted on behalf of the Appellants. There is no explanation as to how blank signed cheque of the Defendants came into hands of the Plaintiff. There is not even a whisper in the written statement that any such cheque had been stolen as sought to be now argued. In the criminal complaint, a completely different version was pleaded that some old cheque had been used by deleting the writing thereof with some chemical. However, the Defendants did not take this stand in the instant case in the written statement. Defendant No. 2 while stepping into witness box went a step further and even denied his signatures on the cheque in question as well as on letters Ex. P25 to P28, although expert witness of the Defendants admitted that the cheque and the letters aforesaid had been signed by Defendant No. 2. Letters Ex. P25 further reveals that the Defendants admitted some substantial amount to be due from them to the Plaintiff because they wanted to make payment of the amount due in monthly installments of Rs. 25,000/-each. Consequently, it cannot be said that upto issuance of letter dated 12.9.1992 by the Defendants, the entire outstanding amount stood paid after issuance of letter Ex. P25 which is dated 28.7.1992. It is not the case of the Defendants that in the interregnum, they over-paid the outstanding amount so as to clear the outstanding amount and in addition thereto, a sum of Rs. 19,921/-becoming due from the Plaintiff to the Defendants.

17. The cheque was issued in favour of M/s Archna Steels Limited because by then, the Defendants might not be knowing that the said company has changed its name to M/s Bhushan Metallics Limited. Moreover, if the Plaintiff had fabricated the cheque, it would have done so in the present name of the Plaintiff and not in the name of its predecessor. The Defendants have also admitted that they had been supplying scrap to the Plaintiff whereas the Plaintiff had supplied other goods to the Defendants. Consequently, the amount mentioned in letter Ex. D2 to be due from the Plaintiff to the Defendants was on account of the scrap material supplied by the Defendants to the Plaintiff whereas the amount due from the Defendants to the Plaintiff was in other account of supplying goods by the Plaintiff to the Defendants.

18. There is no explanation why the Defendants failed to produce their own account books and also failed to produce counter-foil of the cheque in question. On account of non-production of the aforesaid documents, a very strong adverse inference arises against the Defendants. Mere use of different ink for signatures and writing of body of the cheque would not by itself be sufficient to hold that the cheque had been fabricated. As regards writing of "2-9-61" in red ink, counsel for the Respondent has explained that the said figure was written by the bank for clearance purpose and it does not denote any date.

19. The trial court also made out a new case for the Defendants by holding that the cheque had been issued as security although it was not even the case of the

Defendants.

20. Since it is not proved that the cheque has been fabricated or any alteration has been made therein, the contention that it is not a valid cheque as raised by learned Counsel for the Appellants cannot be accepted. Taking of different versions by the Defendants at different stages also falsifies their version.

21. For the reasons aforesaid, I find no merit in the instant second appeal. No question of law much less substantial question of law arises for determination in the instant second appeal. The appeal is accordingly dismissed.