

(2014) 02 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : Cross Objection No. 4-C of 2010 in R.S.A. No. 3266 of 2009 (O&M), Cross Objection No. 5-C of 2010 in R.S.A No. 3267 of 2009 (O&M) and Cross Objection No. 6-C of 2010 in R.S.A No. 3268 of 2009 (O&M)

Punjab State Civil Supplies Corp. Ltd.

APPELLANT

Vs

K.S. Trading Co.

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Partnership Act, 1932 — Section 56, 69, 69(2), 69(3)(a)
Presidency Small Cause Courts Act, 1882 — Section 19

Citation : (2014) 175 PLR 67

Hon'ble Judges : Rakesh Garg, J

Bench : Single Bench

Advocate : Deepali Puri, Advocate for the Appellant; Sandeep Khunger, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Garg, J.

C.M. No. 10063-C of 2009 in R.S.A. No. 3266 of 2009; and C.M. No. 10070-C of 2009 in R.S.A. No. 3268 of 2009

1. The instant applications have been filed for condonation of delay in filing the respective appeals. Though there is no justification for condoning the delay, however, keeping in view the fact that the appeals are being decided on merits, the question of delay has been rendered redundant.

Main appeals

2. These are defendants' second appeals challenging the judgments and decrees of the Courts below decreeing the suits of the plaintiff-respondents for recovery.

3. This judgment shall dispose of three regular second appeals, i.e. R.S.A. Nos.

3266, 3267 & 3268 of 2009 and three Cross Objections, i.e. XOBJs Nos. 4-C, 5-C & 6-C of 2010 filed on behalf of the plaintiff-respondents in the aforesaid appeals respectively; as in all the three appeals and cross-objections similar questions of law have been raised on similar facts. However, for brevity sake, the facts are being noticed from R.S.A. No. 3266 of 2009.

4. Plaintiff-respondents filed a Civil Suit against the appellant-Corporation for recovery as under:

Civil Suit for decree of recovery of Rs. 9,85,466/- (i.e. Rs. 7,24,610/- being the sale consideration of paddy purchased by the defendants through the commission agency of the plaintiff on 12.11.1998 from procurement purchase center Kamla Bodla, Tehsil and District Ferozepur and Rs. 2,60,856/- as interest at the rate of 12% p.a.) on the basis of oral and documentary evidence.

5. The suit was contested by the defendant-appellants raising various preliminary objections including that the plaintiff-firm was not registered under the provisions of Indian Partnership Act, 1932 (hereinafter referred to as, "the Act") so the suit was barred u/s 69(2) of the Act. On merits also, the defendant-Corporation disputed its liability to pay on various grounds.

6. On the basis of the pleadings of the parties, following issues were framed by the trial Court:

(i) Whether the plaintiffs are entitled to recover the suit amount along with interest from the defendants?

(ii) Whether the plaintiff firm is duly registered under Indian Partnership Act? OPP

(iii) Relief.

7. After considering the evidence on record and hearing learned counsel for the parties, under issue No. 2 the trial Court held that the suit instituted on behalf of the plaintiff-respondents, which was an unregistered partnership firm, to recover its amount was not barred on the ground that the firm was not registered, and therefore, the suit was maintainable; and resultantly the suit for recovery was decreed in the following manner:

It is ordered that the suit of the plaintiff succeeds and the same is hereby decreed with costs. A decree for recovery of Rs. 9,85,466/- is passed in favour of the plaintiff and against the defendant PUNSUP. The plaintiff is also held entitled to recover future interest @ 6% per annum from the date of this order till actual realization of the decretal amount.

8. The plaintiffs as well as the defendants challenged the aforesaid judgment and decree of the trial Court, i.e. the defendant appellants challenged the legality and sustainability of the judgment and decree of the trial Court whereas the plaintiff-respondents sought modification of the impugned judgment and decree and prayed for grant of interest pendente lite i.e. from the date of filing of the suit till the date of decree @ 12% per annum and also sought future interest at the

same rate.

9. The lower appellate Court, vide its judgment and decree dated 02.02.2009, dismissed the appeals and affirmed the findings of the trial Court on all the issues.

10. Aggrieved from the aforesaid judgment and decree of the lower appellate Court, the defendants have filed the instant appeal.

11. Considering the contentions raised at the time of motion hearing, this Court passed the following order on 10.09.2009:

Counsel for the appellants submits that the sole question of law that arises for consideration is, whether partners of an unregistered firm can sue for recovery of amounts due to the unregistered firm.

In support of the above argument, counsel for the appellants places reliance upon Section 69 of the Indian Partnership Act, 1932 and upon a judgment of the Hon'ble Supreme Court reported as Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E. John and Others,

Notice of motion for 23.09.2009, limited to the aforementioned question.

12. Upon service, the plaintiff-respondents put in appearance and also filed cross objections seeking modification of the impugned judgment and decree of the trial Court claiming interest pendente lite and future interest @ 12% per annum.

13. It may further be noticed that in compliance of the order dated 05.07.2010 passed by this Court, the appellants deposited the decretal amount with the Registrar of this Court. The plaintiff-respondents have also moved an application for releasing the aforesaid amount in their favour.

14. Thereafter, this Court passed the following order on 05.02.2013:

The aforementioned application has been filed by the applicant/respondents/plaintiffs praying for the release of the decretal amount against furnishing adequate security. The amount deposited by the appellants before the Registry of this Court in compliance of the order passed by this Court.

At the time of the hearing, learned counsel for the non-applicant/appellants states that the appeal itself can be argued since the legal point is extremely short.

List on 20.02.2013.

15. At this stage, it may further be noticed that in the cross objections, the plaintiff-respondents have submitted that they were entitled to interest pendente lite as well as future interest @ 12% per annum and thus, the courts below have erred while granting no pendente lite interest and further holding that the respondents were entitled to future interest @ 6% per annum only.

16. According to counsel for the plaintiff-respondents, the future interest should have been awarded at a much higher rate, the dispute being a commercial transaction between the parties; and thus, it was submitted that the following substantial question of law arises for consideration of this Court in the cross-objections filed on behalf of the plaintiff-respondents:

Whether the judgments and decrees passed by both the Courts below, whereby interest pendente lite has not been granted and even the future interest has been granted at a lesser rate of 6% per annum, are perverse?

17. I have heard learned counsel for the parties and perused the impugned judgments and decrees of the Courts below.

18. At this stage, Section 69 of the Indian Partnership Act, 1932 be referred to, which reads thus:

Section 69

Effect of Non-Registration

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on a behalf of any persons suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm:

(2) No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceedings to enforce a right arising from a contract but shall not affect -

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm,

or

(b) the powers of an official assignee, receiver or Court under the Presidency Towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, to realise the property of an insolvent partner.

(4) This section shall not apply-

(a) to firms or partners in firm which have no place of business in the territories to which this Act-extends, or whose places of business in the said territories, are situated in areas to which, by notification u/s 56 this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the presidency towns, is not of a kind specified in Section 19 of the Presidency Small Cause Courts Act, 1882, or outside the Presidency towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

19. A perusal of the aforesaid provision would show that Section 69(2) of the Act bars a suit to enforce the right arising from a contract by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the register of firm as its partners. However, at this stage, it may be mentioned that learned counsel for the appellants has very candidly admitted that in view of the provisions of Section 69(3)(a) of the Act, the enforcement of any right to sue for recovery with regard to any right to realize the property of a dissolved firm cannot be said to be hit by Section 69(2) of the Act; and therefore, the argument raised at the time of motion hearing and as noticed above, has to be answered against the appellants and in favour of the plaintiff-respondents.

20. It could not be disputed before this Court that in the present case, partnership has already been dissolved on 10.11.2001 and the dissolution deed Ex. P. 13/B is on record; and thus, the present suit has been filed to realize the property of a dissolved firm and therefore, the suit was rightly held to be maintainable by the courts below, and in view of the fact that no other question was raised by the appellants, the appeals are liable to be dismissed.

21. At this stage, it may also be noticed that though the respondents have pleaded that according to the usage and customs prevalent in the local market, the plaintiffs were entitled to interest on the amount which has been illegally held by the appellants; however, there is no evidence produced on record to prove the aforesaid usage and customs to prove that the interest was payable.

22. It could further not be proved on record that there was any privity of contract between the parties to pay interest on the amount payable on account of sale of goods by the defendant-appellants. Moreover, it could not be disputed by the appellants that it was in the discretion of the Court to grant interest for the pre-suit period, interest pendente lite and future interest. There is nothing on record to show that such discretion has been exercised by the courts below arbitrarily.

23. In view thereof learned counsel for the cross-objector/respondents does not wish to press the cross-objections and prays that the decretal amount deposited with the Registrar of this Court be allowed to be withdrawn in favour of the plaintiff-respondents. Resultantly, the appeals as well as the cross-objections filed on behalf of the parties are ordered to be dismissed; however, it is ordered that the amount deposited by the appellants in compliance of the order dated 05.07.2010 be released in favour of the plaintiff-respondents subject to adjustment in satisfaction of the impugned judgments and decrees.