(2012) 10 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2810 of 2011 (O and M)

State of Haryana and Others — APPELLANT

Vs

M/s. Anant Raj Industries Ltd. — RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:
Haryana General Sales Tax Act, 1973 — Section 62

Citation : (2013) 169 PLR 182 : (2013) 63 VST 209

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

Bench : Single Bench

Advocate : Rajesh Garg, A.A.G., Haryana, for the Appellant; Sandeep Goyal, for the Respondent

Final Decision : Dismissed

Judgement

L.N. Mittal, J.

C.M. No. 7709-C of 2011:

1. Heard. For reasons mentioned in the application, which is accompanied by affidavit, delay of 128 days in filing the appeal is condoned.

The application stands allowed accordingly.

Main Case:

Defendants have filed this second appeal having lost in both the courts below.

Suit was filed by respondent-plaintiff against defendants/respondents. Defendants No. 1 to 3 are State of Haryana and its authorities in the Excise and Taxation Department whereas defendant No. 4 is a private dealer (assessee under the Haryana General Sales Tax Act, 1973 - in short the ''Act''). It is undisputed that plaintiff stood surety for defendant No. 4 assessee for its sales tax liability under the Act. Defendants No. 1 to 3 have served notice dated 18.05.2007 on the plaintiff requiring it to pay Rs. 13,13,328/- being the amount of sales tax due from defendant No. 4- assessee. The amount has been demanded from the plaintiff as surety of the assessee.

2. In the suit, the plaintiff has challenged the aforesaid demand on the ground that the plaintiff as per terms and conditions of the surety bond had withdrawn its surety bond by serving notice on 26.12.1991 on defendants No. 1 to 3 and the notice period of six months lapsed on 26.06.1992 and thereafter the plaintiff is not liable as surety of defendant No. 4 to pay the amount due from defendant No. 4.

3. Defendants No. 1 to 3 contested the suit whereas defendant No. 4 was proceeded against ex parte.

4. Defendants No. 1 to 3 denied having received alleged notice dated 26.12.1991 from the plaintiff withdrawing its surety bond. It was pleaded that plaintiff as surety is liable to pay the disputed amount due from the assessee. Various notices were also issued to the plaintiff but the plaintiff failed to pay the suit amount. Various other pleas were also raised.

5. Both the Courts below have decreed the plaintiffs suit. Feeling aggrieved, defendants have filed this second appeal.

6. I have heard learned counsel for the parties and perused the case file.

7. Counsel for the appellants contended that notice dated 26.12.1991 was not served on defendants No. 1 to 3 by the plaintiff and, therefore, the plaintiff as surety of defendant No. 4 is liable to pay the suit amount, which is due from defendant No. 4. It was also contended that jurisdiction of the Civil Court is also barred by Section 62 of the Act.

8. I have carefully considered the aforesaid contentions but the same are meritless. As regards service of notice on defendants No. 1 to 3 on 26.12.1991 by the plaintiff, evidence of the plaintiff in this regard practically stands unrebutted. Contesting defendants have, of course, examined Narender Kaushik, Excise & Taxation Officer as DW-1. However, he was not posted at the relevant time at the relevant place and, therefore his testimony that no such notice was received from the plaintiff carries no probative value. On the other hand, plaintiff has produced stamped and signed letter dated 26.12.1991 having been received by the concerned assessing authority of the contesting defendants. The said officer, by whom the said notice purports to have been received, has not been examined by the contesting defendants as witness. He was the only material witness on behalf of defendants. Due to his non-examination, adverse inference has to be drawn against the contesting defendants. Moreover, receipt register of defendants of the relevant period has also been withheld, again giving rise to adverse presumption against the contesting defendants.

9. In the aforesaid circumstances, concurrent finding recorded by the Courts below regarding service of the aforesaid notice by plaintiff on contesting defendants, is fully justified by the evidence on record. The said finding is not

shown to be perverse or illegal or based on misreading or misappreciation of the evidence on record. Consequently there is no ground to interfere with the said finding.

10. It is undisputed that as per terms and conditions of the surety bond furnished by the plaintiff, the plaintiff had right to withdraw its surety bond by serving notice of six months. Consequently after service of aforesaid notice by plaintiff on contesting defendants, the plaintiff no longer remained surety for defendant No. 4 since after 26.06.1992 on expiry of the notice period of six months. The disputed liability admittedly relates to the period thereafter. Consequently the plaintiff is not liable to satisfy the said liability of defendant No. 4.

11. Contention of counsel for appellants regarding bar of jurisdiction of Civil Court also cannot be accepted. When the plaintiff is neither dealer nor surety nor assessee, the plaintiff is not amenable to the jurisdiction of defendants No. 1 to 3 under the Act. Consequently, entire action of defendants No. 1 to 3 is illegal and against statutory provisions and therefore, jurisdiction of Civil Court to challenge the said action is not barred, notwithstanding the provisions of Section 62 of the Act. For the reasons aforesaid I find no merit in this second appeal. No question of law, much less substantial question of law, arises for determination in this second appeal. The appeal is accordingly dismissed.