(2003) 05 P&H CK 0131

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1021 of 2003

State of Haryana and Others APPELLANT

Vs

Vipin Kumar Gupta and Others RESPONDENT

Date of Decision : 19-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Haryana General Sales Tax Act, 1973 — Section 62

Citation : (2003) 135 PLR 528 : (2003) 3 RCR(Civil) 747

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : N.K. Jodhi, A.A.G, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is defendant appeal filed u/s 100 of the Code of Civil Procedure, 1908 (for brevity the Code) challenging the concurrent findings of facts recorded by both the Courts below wherein it has been held that the plaintiff-respondent who stood surety for payment of sales tax from defendant-respondent No. 2 and 3 had successfully withdrawn the same by writing a letter dated 6.6.1989. The afore-mentioned letter was received by defendant respondent No. 3 as well as by defendant-appellant. !t has further been shown that defendant-appellant had written a letter Ex.P.5 to respondent Nos. 2 and 3 to furnish fresh surety. It was further pointed out that the surety would not be discharged from its liability before 6.12.1989 because in the surety bond it was stipulated that surety can be discharged only after a period of six months from the date of letter of withdrawal. Hence, the surety was discharged on 6.12.1989, Recovery notice was issued by the department to plaintiff-respondents on 25.4.1990 i.e., much after the surety was discharged. Even the demand letter Ex.PX.C vide which demand was raised from respondent No. 3 was received by the firm on 26.12,1989. Therefore, no liability could be fastened on the plaintiff-respondent No. 1 for standing surety in respect of defendant respondent No. 3.

Reliance in this regard has been placed on a judgment of this Court in Pawan Kumar Gupta v. State of Haryana, 1999 S.C.T. 228.

2. In respect of defendant-respondent No. 2, the Courts below have held that the defendant-appellant had failed to prove that despite taking fresh surety in respect of defendant-respondent No. 2, previous surety of plaintiff-respondent No. 1 was still subsisting and, therefore, plaintiff-respondent No. 1 stood discharged as a surety as has been held by this Court in Ishar Singh Vs. Ram Saran Dass and Others, .

3. After hearing the learned counsel, I do not feel persuaded to take a view different than the one taken by the Courts below because the question whether the surety continued to remain liable or it was discharged is a mixed question of law and facts and would not call for interference of this Court u/s 100 of the Code. There is not substantive question of law raised by defendant-appellant nor according to me it would arise warranting admission of the appeal.

4. The question of jurisdiction of the Civil Court to entertain such a suit would not be barred because defendant-State in the facts and circumstances of the case cannot be acting within the four corners of the Haryana General Sales Tax Act, 1973. Therefore, the bar of Section 62 of the Act would not be attracted in the present case. Moreover objection u/s 62 has not been pressed by the defendant-appellant in either of the Courts below. Therefore, there is no substance in this appeal and the same is liable to be dismissed. 5. For the reasons recorded above, this appeal fails and the same is dismissed.

