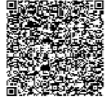


IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

220 RSA-4124-2013 (O&M)

Date of Decision: 24.07.2025

Accurate Trans Heat Pvt. Ltd. ....Appellant

Versus

M/s GMP Finishing Mill and another ....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Kanish Jindal, Advocate with
Mr. Arun Jindal, Advocate for the appellant.

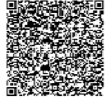
Mr. V.K. Sandhir, Advocate for the respondents.

NIDHI GUPTA, J.

1. Defendant No. 1-appellant has filed the present second appeal against the judgment and decree dated 28.01.2013 passed by the learned Additional District Judge, Amritsar, reversing the judgment and decree dated 23.08.2011 of the learned Civil Judge (Junior Division), Amritsar, whereby the suit for declaration filed by the plaintiffs/respondents No. 1 and 2 herein, had been dismissed.

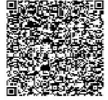
2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is being referred to as 'defendant No. 1', whereas the respondents as 'the plaintiffs'

3. Brief facts of the case are that the respondent-plaintiffs filed a suit for declaration to the effect that defendant No. 1 through defendant No. 2 had intentionally supplied a defective sample Fabric Dyeing Machine with complete accessories for a sum of ₹2,55,000/- to the plaintiffs vide Invoice No. 029 dated 10.10.2002. On account of the willful default being committed by the defendants, they are under



duty/liability to replace the defective machine above stated by providing a new machine of the same trademark and of the same value to the plaintiffs. As such, a decree for mandatory injunction was sought directing the defendants themselves, through their agents, privies and representatives to supply new sample Fabric Dyeing Machine with complete accessories to the plaintiffs in regard to which a defective machine was supplied vide Invoice No. 029 dated 10.10.2002. It was the pleaded case of the plaintiffs that part payment of ₹1,85,000/- had been made to the defendants by way of demand draft No. 815422 dated 08.10.2002. It was alleged that the machine supplied by the defendants did not work properly and suffers from various mechanical defects. These facts were brought to the notice of defendants vide intimations dated 26.12.2002 and 09.01.2003, but to no avail. Accordingly, the present suit was filed by the plaintiffs on 10.04.2004.

4. Upon notice, the suit was resisted by the defendants by way of filing written statement submitting therein that part payment of ₹2,16,000/-had been received from the plaintiffs. It was averred that the plaintiffs had used the machine for the period from 10.10.2002 from the date of purchase and delivery, up to 26.12.2002. It was stated that the plaintiffs had concocted the story about malfunctioning of the machine as defendant No. 1 had raised demand for outstanding amount to the tune of ₹49,200/- of the Invoice from the plaintiffs vide letter dated 21.12.2002. It is only thereafter that the concocted complaint was made that the machine was not functioning properly. As such, dismissal of the suit was prayed.

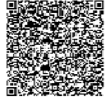
5. In replication, the plaintiffs had reiterated the contents of the plaint and denied the averments made in the written statement.

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

> *"1. Whether the plaintiffs are entitled to the relief of declaration and mandatory injunction as prayed for? OPP.*
>
> *2. Whether the suit of plaintiffs is not maintainable? OPD.*
>
> *3. Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD.*
>
> *4. Whether the suit of plaintiffs is time barred? OPD*
>
> *5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
>
> *6. Whether the suit of plaintiffs is bad for misjoinder and non-joinder of necessary parties? OPD*
>
> *6A. Whether this Court has no jurisdiction to try and entertain this suit? OPD*
> *(framed on 09.03.2011)*
>
> *7. Relief."*

7. Upon appraisal and consideration of the pleadings, as also the evidence adduced by the parties, the learned trial Court had decided issues No. 1, 2 and 6A against the plaintiffs; issue Nos. 3, 4, 5 and 6 against the defendants; and accordingly vide judgment and decree dated 23.08.2011, the suit of the plaintiffs was dismissed.

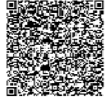
8. In appeal, the said judgment and decree of the learned trial Court was reversed, and the learned lower Appellate Court vide impugned judgment and decree dated 28.01.2013, allowed the appeal



filed by the respondent-plaintiffs. Hence, the present second appeal by the defendant.

9. It is, *inter alia,* submitted by learned counsel for the appellant that in the written statement filed before the trial court, the defendant No. 1 had specifically denied the averments made by the plaintiffs in the plaint and had also specifically stated that no defective machine was supplied to them. It is contended that, therefore, in view of the specific denial by the appellant, it was incumbent upon the plaintiffs to prove that the machine had mechanical defect. However, the plaintiffs had produced no Expert Report to show that there was any defect in the machine. The plaintiffs have not placed on record any engineering report regarding the alleged malfunctioning of the machine. Even no complaint was made by the plaintiffs to the defendants in respect of any malfunction. The plaintiffs have not examined any Engineer or Technical Expert to show that the machine is defective in nature, therefore, without any Technical Expert or Engineer opinion on the working ability of the machine, it cannot be stated that the machine was faulty. No Operator, Supervisor or any other person who actually operated the machine was examined by the plaintiffs. Thus, in actual fact, the appellants have failed to proved that the machine was defective. Yet, the learned lower Appellate Court without any justifiable reason had held that defective machine was supplied.

10. Ld. Counsel further submits that in fact, the machine had been misused by the respondents in as much as the record reveals that only a sample machine had been sent to the plaintiffs. However, the

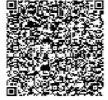


plaintiffs were using the same for commercial purpose. Thus, defendants cannot be held liable for the misuse of the machine by the plaintiffs.

11. Ld. Counsel contends that the machine was supplied vide Invoice No. 029 dated 10.10.2002. The plaintiffs had used the machine for the period from 10.10.2002 from the date of purchase and delivery up to 26.12.2002. The appellant made a demand for payment of ₹49,200/- vide letter dated 21.12.2002. It is only thereafter that the grievance qua supply of faulty machine was raised by the plaintiff.

12. It is lastly submitted that case of the plaintiffs has to stand on its own legs, and they have to prove their case. However, in the present case, the plaintiffs have failed to do so. It is accordingly prayed that the judgment and decree dated 28.01.2013, passed by the learned lower Appellate Court be set aside; and the judgment and decree dated 23.08.2011 passed by the learned trial Court be restored.

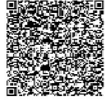
13. *Per Contra,* learned counsel for the plaintiff-respondents vehemently opposes the submissions of learned counsel for defendant No. 1 and submits that plaintiff had paid valuable money consideration for the machine received by them. As such, it is incorrect for learned counsel for the appellants to state that only a sample machine was sent. Learned counsel submits that the machine was supplied with complete accessories, therefore, it was not a sample machine. It is submitted that it is also incorrect for the appellant to assert that the machine was being misused by the plaintiffs. It is stated that there is no basis upon which the appellant can assert misuse of the machine by the plaintiffs as no technical expert was sent by the defendant to examine the machine. It is



submitted that even though letters dated 26.12.2002 and 09.01.2003 were written by the plaintiffs to the appellant, yet the matter not got checked by the defendant and even no reply was sent to the said letters. In fact, faulty goods have been delivered to the plaintiffs. As such, it was incumbent upon the appellants to replace the defective machine by providing new machines. Further, it is submitted by learned counsel for respondent-plaintiffs that judgment and decree of the lower Appellate Court suffers from no infirmity, as all that has been directed therein is that *'a time period of six-months is provided to Respondent No. 1 to effect repairs of the machine supplied and in case the same is beyond repair to supply a fresh machine'.* Accordingly, it is prayed that the present second appeal be dismissed.

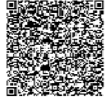
14. In rebuttal, learned counsel for defendant No. 1 submits that the fact that sample was sent is evident from the delivery challan Ex. D-2, wherein it is categorically mentioned that a sample machine had been sent. Learned counsel for defendant No. 1 also refers to the statement of PW-1 Ganesh Behal, Partner of plaintiff firm, who had admitted in his cross-examination that the machine was not got checked from any Technical Expert. Therefore, it is prayed that the present second appeal may be allowed; and the impugned judgment and decree passed by the Lower Appellate Court dated 28.01.2013 be dismissed.

15. No other argument has been raised by learned counsel for the parties. I have heard learned counsel and perused the case file in detail.



16. I find merit in the submissions advanced on behalf of appellant-defendant No. 1.The first point in dispute is whether the machine supplied by the appellant was a sample machine or not. A perusal of the head note of the plaint itself shows that the plaintiffs have themselves averred that *'... defendant No. 1 through defendant no. 2 had intentionally supplied the defective sample Fabric Dyeing machine.... '*.From this very admission, it is clear that the plaintiff was very much aware that a sample machine had been supplied to them. Even a perusal of the delivery order Ex. D-2(available at page 223-A of the trial Court record) shows that *'SAMPLE FABRIC DYEING MACHINE WITH COMPLETE ACCESSORIES AND DYE KITCHEN'* was delivered to the plaintiffs. Thus, it is established on record that only a sample machine had been supplied by the appellant to the plaintiffs; and therefore, the same could not have been used for commercial purposes.

17. Furthermore, DW-1 Om Parkash, Manager of the appellant-Firm had categorically deposed that the plaintiffs had been informed that it was a sample machine which was intended only for taking production of samples and said machine was not meant for regular commercial use. Despite that the plaintiffs had operated the machine improperly and commercially, as a result of which the machine had developed defects. As such, case of defendant No. 1 stands proved that only a sample machine has been sent which could not have been used for heavy machine work. DW-1 had further deposed that therefore, the defendants

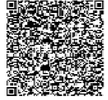


could not be blamed for the malfunctioning of the machine as the plaintiffs themselves have been mis-utilizing the machine.

18. It has further been submitted by learned counsel for the appellant that the alleged malfunction of the machine was concocted only in order to avoid making payment of the balance amount due against the plaintiffs. DW-1 had deposed that malfunctioning of the machine has been alleged only in order to avoid payment of the remaining sale consideration. There is some merit in this submission on behalf of the defendants as, admittedly, the plaintiffs had used the machine from the date of purchase and delivery-10.10.2002, up to 26.12.2002, during which time no complaint was made by the respondents. It is only when the appellant made a demand for payment of balance amount of ₹49,200/- vide letter dated 21.12.2002, that the plaintiffs immediately wrote complaint letters dated 26.12.2002 and 09.01.2003.

19. As regards the issue as to whether the machine was actually faulty and defective or not, it has been submitted by the plaintiff that despite letters written to the appellant, no technician was sent by them to examine the machine and to correct the defects. In fact, it is on this basis that the learned Lower Appellate Court had drawn an adverse inference against the appellant as follows: -

> *"From the above admission of Respondent No. 1 M/S Accurate Trans. Heat Pvt. Ltd. it is clear that neither they sent any Mechanic to check the machine nor they have tried to verify as to what is the defect with the machine. It is the duty of the manufacturer/supplier to atleast check the cause of malfunctioning of the machine regarding which*

complaint was sent by the applicant-plaintiff within two months. Without checking the machine, the Respondent No. 1 cannot claim that appellants had misused the machine, therefore, the same developed a defect. Just by sitting at Surat, the Respondent No. 1 cannot take this plea that the appellant-plaintiffs have used the machine for commercial production and it was meant for sample production only….."

20. Accordingly, on the basis of the above, the learned Additional District Judge had concluded that a defective machine had been supplied to the plaintiffs. However, the abovesaid reasoning of the Lower Appellate Court is patently erroneous and unsustainable as PW-1 Ganesh Behal, Partner of plaintiff firm, has admitted in his cross-examination that *'We have not got checked the machine in question from any technical expert regarding non-functioning of the machine, however, the machine was inspected by the technicians of defendant no. 1. I cannot tell orally the names of such technicians but can tell the same after seeing the record. It is correct that earlier we had field a complaint before the District Consumer Disputes Redressal Forum. It is correct that the same was dismissed by the said Forum'.* Thus, it is admitted by plaintiff witness himself that machine was examined by the technician of the appellant. Admittedly, no Mechanical Report has been submitted by the plaintiffs to prove that the machine was defective and not working in proper condition. In this regard, it is also imperative to note that it is the allegation of the plaintiffs that the machine was not working properly. As such, onus was upon the plaintiffs to prove malfunction. The onus of this cannot be shifted upon the appellant. It is

established position in law that case the plaintiff has to stand on his own legs. Thus, there is nothing on record to show and it is not proved that the machine was not working properly.

21. It is my view that the abovesaid testimony of PW-1 clinches the entire issue. From the above testimony of PW-1 it is proved that the reasoning of the learned Lower Appellate Court on the basis of which the suit of the plaintiffs has been decreed is contrary to the evidence on record. It is the own case of the plaintiffs that no Mechanical Report was produced by them; and that the machine was also examined by the technicians of appellant-defendant No. 1. Thus, the very basis on which the suit of the plaintiffs has been decreed is borne out to be incorrect.

22. It has also come on record that the plaintiffs had filed a complaint before the Consumer Dispute Redressal Forum, Amirtsar which had been dismissed vide order dated 26.03.2004.

23. In view of the facts and submissions noted here-in-above, the present appeal is **allowed.** The impugned judgment and decree dated 28.01.2013 is **set aside;** and the judgment and decree dated 23.08.2011 passed by the learned trial Court is upheld and **restored.**

24. Pending application(s) if any also stand(s) disposed of.

24.07.2025 **(NIDHI GUPTA)**
rishu **JUDGE**

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No