



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
234 **RSA-4967-2017(O&M)**
Date of decision: 24.03.2025

Jain Sons Exports unit no. 1 & Another

...Appellant(s)

Vs.

Nitin Woollen Mills & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Arun Singal, Advocate
for the appellants.

Ms. Harjinder Kaur, Advocate for
Mr. T.P. Singh, Advocate
for the respondents.

NIDHI GUPTA, J.

Present second appeal has been filed by the defendants against judgment and decree dated 11.07.2017 passed by learned Additional District Judge, Panipat whereby judgment and decree dated 04.08.2016 passed by the learned trial Court dismissing the suit of the plaintiffs/respondents herein, has been set aside; and the appeal filed by the plaintiffs has been allowed decreeing the suit of the plaintiffs holding them entitled to recovery Rs.1,49,628/- along with interest @ 12% per annum from the date of filing the suit till its actual realisation.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. appellants as "defendants" and respondents as "plaintiffs".



3. Brief facts of the case as set out in the plaint are that plaintiff No.1/respondent No.1 herein, is a partnership firm. Plaintiff No.2/respondent No.2 herein, namely Rakesh Goel, and one Yogesh Goel are partners in the said Firm. Plaintiff No.2 was authorised to file the present suit on behalf of plaintiff No.1. Appellant No.2/defendant No.2 is stated to be the authorised signatory of appellant No.1/defendant No.1-Firm.

4. It was pleaded by the plaintiffs in the plaint that the defendant No.2 had placed a Purchase Order No.732 dated 01.11.2010 to the plaintiffs; whereafter the plaintiffs had sent 15 bags of yarn to the defendant at the rate of Rs.132/- per kg. Total weight of the yarn sent by the plaintiffs to the defendant was 1077.600 kg i.e. net 1077 kg. It was averred that the defendants had purchased the aforesaid goods vide Bill No.165 dated 01.11.2010. The goods were stated to have been received by the defendants and marked its stamp on the back side of the Bill. Value of the said goods was stated to be Rs.1,49,628/- including VAT @ 5% and surcharge. The defendant was to pay the aforesaid amount within 15 days from the date of purchase as per the prevailing custom in the market. After expiry of 15 days, the plaintiff had called defendant No.2 for payment of the aforesaid amount but the defendants had prolonged the matter on one pretext or the other. On 27.11.2010, the plaintiff No.1 had sent a legal notice to the defendants which was duly received by them. After notice, the



plaintiffs again approached the defendants to make the payment, but they refused to do so. Earlier also, the defendant Firm had issued a cheque to the plaintiff Firm for a sum of RS.1,26,932/-. The plaintiff Firm is maintaining proper account books. Accordingly, aforesaid transaction was duly reflected in Form LS-9 of VAT. On 10.02.2011, the defendant refused to pay the aforesaid amount. Hence, present suit was filed on 05.09.2016.

5. Notice of the suit was given to the defendants who appeared and resisted the suit by filing written statement. Besides formal objections, it was pleaded in the written statement that suit is not maintainable, the plaintiff has no locus standi and cause of action etc. The defendant denied all the averments made in the plaint and prayed for dismissal of the suit.

6. No replication was filed.

7. On the basis of pleadings of the parties, following issues were framed by the learned trial Court vide order dated 30.09.2011:-

“1. Whether the plaintiff is entitled for a decree for recovery of Rs.1,49,628/- alongwith interest @ 18% per annum as alleged?OPP

2. Whether the suit of the plaintiffs are not maintainable in the present form?OPD

3. Whether plaintiffs have no cause of action and locus-standi to file the present suit? OPD

4. Relief.”



8. On the basis of pleadings and oral & documentary evidence adduced by the parties, the learned trial Court decided issue No.1 against the plaintiff; and issues No.2 and 3 against the defendants and in favour of the plaintiffs as no evidence was produced by the defendants to show that the suit of the plaintiffs was not maintainable or that plaintiffs had no cause of action or locus to file the suit etc; and accordingly vide judgment and decree dated 04.08.2016, the learned trial Court had dismissed the suit of the plaintiffs holding the plaintiffs not entitled to recover Rs.1,49,628/- or interest thereupon.

9. In appeal, the learned Lower Appellate Court reversed the above said judgment and decree of the learned trial Court and decreed the suit of the plaintiff vide judgment and decree dated 11.07.2017 thereby holding that the respondents/plaintiffs were “...held entitled to recover Rs.1,49,628/- along with interest @ 12% per annum from the date of filing the suit till its actual realisation...”. Hence, present second appeal.

10. Learned counsel for the appellants/defendants inter alia submits that the suit of the plaintiffs has been wrongly decreed by the learned Lower Appellate Court as it is an admitted fact on record that the original order No.732 dated 01.11.2010 was never brought on file by the respondents. It is submitted that despite an order dated 28.09.2015 passed by the learned trial Court directing the plaintiffs to produce



original Purchase Order No.732 dated 01.11.2010, yet, the plaintiffs failed to do so. It is submitted that accordingly, the learned trial Court had rightly dismissed the suit of the plaintiffs.

11. It is further submitted that in reversing the well-reasoned judgment of the learned trial Court, the learned Lower Appellate Court has wrongly held that it was proven on record that the plaintiffs had duly supplied material to the defendants by way of Bill (Ex.P3) alleged to have been issued by one Nitesh Mittal. It is submitted that however, the said Nitesh Mittal has not been examined in the witness box to prove the said Bill. Moreover, there is discrepancy in the Purchase Order (Ex.P10) which shows that order of purchase of 1200 kg yarn was placed @ Rs.130/- per kg; whereas as per the Bill (Ex.P3), 1077 kg yarn was supplied at the rate of Rs.132/- per kg. It is submitted that accordingly, the said reliance placed by the learned Lower Appellate Court upon Ex.P3 was also not called for. Furthermore, the Purchase Order is of 1 pm whereas the Bill is of 10:10 am i.e. the said Bill (Ex.P3) was issued prior to even placing of the Purchase Order (Ex.P10). It is accordingly submitted that the judgment and decree of the learned Lower Appellate Court is based on misreading of the evidence. Even PW2 has never admitted that supply was made by the plaintiff Firm to the defendant. In fact, PW2 has denied Ex.P3. Moreover, the seal on the back of Ex.P3 is not of the defendant No.1. This fact has been admitted by PW2 when he was called



for examination. It is accordingly prayed that the impugned judgment and decree of the Lower Appellate Court be set aside.

12. On the other hand, learned counsel for the respondents/plaintiffs opposes prayer made on behalf of the appellants and submits that no ground is made out to interfere in the well-reasoned judgment and decree of the learned Lower Appellate Court.

13. I have heard learned counsel for the parties and gone through the record with their able assistance. I find merit in the submissions advanced on behalf of the appellant.

14. It is admitted fact on record that the plaintiffs failed to produce the original purchase order No.732 dated 01.11.2010. Only a photocopy thereof was brought on record as Ex. P-10. Accordingly, the appellant/defendant had moved an application seeking direction to the plaintiff to produce the original Purchase Order bearing PO No.732 dated 01.11.2010 for proper adjudication of the case. The said application was allowed by the learned trial Court vide order dated 28.09.2015(Annexure A1), directing the plaintiff *"...to produce original purchase order P.O. No. 732 for proper adjudication of the case..."*. Even then, the plaintiff had failed to produce the original order. As such, an adverse inference is liable to be drawn against the plaintiff.

15. Furthermore, there is an admitted discrepancy in the order as placed by the defendant and the supply made by the plaintiff.



The Purchase Order (Ex.P10) shows that order of purchase of 1200 kg yarn was placed @ Rs.130/- per kg; whereas as per the Bill (Ex.P3), 1077 kg yarn was supplied at the rate of Rs.132/- per kg. One of the grounds on which the learned lower Appellate Court has allowed the appeal filed by the plaintiffs is that the plaintiffs had stated that as they had only 1077 kg of yarn in their stock, as such, as per Ex.P3, only 1077 kg yarn was supplied to the defendant Firm. Even if the said version is accepted, plaintiff is still unable to explain the difference in the rate of ₹130/- between Purchase Order (Ex.P10) and Supply Bill rate of ₹132/-. There is nothing on record to indicate as to with whom the 'oral negotiations' had taken place in this regard. Ld. Counsel for the plaintiff has also been unable to explain as to how the Purchase Order is of 1 pm whereas the Bill is of 10:10 am i.e. the Bill (Ex.P3) was issued even prior to placing of the Purchase Order (Ex.P10).

16. It is in this background that the learned trial Court had non-suited the plaintiffs on account of following findings:-

"13....The plaintiff has produced on record the purchase order Ex. P 10. The perusal of the documents shows that Jain Sons Export has placed an order of 1200 Kg. Yarn with the rate of 130/-, total amount of Rs. 1,56,000/- The plaintiff has also produced on record Ex. P3, which is alleged to be the bill no. 165 by which the plaintiff has sold the goods to the defendant in the said bill the quantity of the yarn is shown as 1077 Kgs. For the rate of 132/- and the bill amount of total in 1,49,



628/-. The defendant denied that they have not purchased any such goods from the plaintiff firm rather the documents has been falsely prepared by the plaintiffs.

Both the documents Ex. P 10 i.e. the purchase order and the bill invoices No. 165, placed on record and the comparison of the documents has shows that the variation in the quantity and the rate of goods in the purchase order. The quantity was shown as 1200 Kg. and the rate of 130/- Rs, but in the bill invoices of the No. 165 the quantity shown as of 1077 Kg. for the rate of 132/- Rs. Both two documents differ from each other. The Ex. P 3 i.e. bill invoices No. 165 bears the name of Nitesh Mittal through whom the bill was prepared or sent, but the said Nitesh Mittal was not examined by the plaintiff to prove the existence of the documents Ex. P3. Since the said Naresh Mittal was not examined as a witness by the plaintiff, the documents placed on record is not said to be duly proved. In view of the above discussion, this court has the considered opinion that plaintiff has failed to discharge the onus. Therefore, issue no. 1 is decided against the plaintiff.”

17. However, in allowing the plaintiff’s appeal, the learned Lower Appellate Court has taken note of the fact that “...bill Ex.P3 which bears seal of respondent-defendant no.1 firm on its back as a token of receipt of goods so supplied...”. However, DW2 Rajender Yadav, Manager of the defendant No.1 Firm (who had appeared for both, the plaintiffs as PW2 well as for defendants as DW2), has admitted in his re-examination conducted on 01.03.2016 that as a normal practice, no doubt when any



goods comes into the defendants' Unit, stamp of the defendant Firm is affixed on the backside of the bill. However, "*on the backside of the bill (Ex.P3), the stamp of Jain Sons Export is not affixed.*" Clearly, therefore, the judgment of the learned Lower Appellate Court is based on a misreading of the testimony of DW2 in this regard. Moreover, PW2/DW2 is the authorised person/Manager of defendant No.1 Firm and therefore, he could depose regarding the affairs of defendant No.1 Firm. As such, no adverse inference can be drawn that Ruchi Jain, proprietor of defendant No.1 Firm did not step into the witness box.

18. It was also denied by PW2/DW2 in his cross-examination dated 09.07.2015 (Annexure A2) that "*...In this record no where the signature of the Vinay Jain is there. Vinay Jain is not authorized signatory...*". Learned Lower Appellate Court therefore wrongly held that defendant No.2 is authorised signatory of defendant No.1. It has also been held by the learned Lower Appellate Court that Nitesh Mittal who had prepared Bill (Ex.P3) was not required to be examined in the witness box to prove the said Bill, particularly when bill bears stamp of defendant No.1 Firm on its back on a token of receipt of goods. However, this reason is fallacious as, the learned Lower Appellate Court has overlooked that PW2/DW2 has admitted thrice in his cross-examination that defendant No.2 has nothing to do with defendant No.1; that Purchase Order No.732 is not signed by the defendant No.2; and even Nitesh Mittal who had



prepared the Bill (Ex.P3), has not been examined by the plaintiffs. Judgment of the learned Lower Appellate Court is based on selective reading of the evidence of DW2.

19. At the risk of repetition, from the above facts, it is clear that a comparison of the Purchase Order (Ex.P10) and bill invoices No.165 (Ex. P-3) shows that there is unexplained variation in the quantity and rate of goods in purchase order. Both documents differ from each other. Moreover, Bill No.165 (Ex.P3) bears name of Nitesh Mittal through whom the bill was prepared or sent but said Nitesh Mittal was not examined by plaintiffs to prove the existence of documents (Ex.P3). Since Nitesh Mittal was not examined, therefore, documents placed on record were not said to be duly proved.

20. In view of the above, present appeal is **allowed**. The judgment and decree dated 11.07.2017 holding the respondents/plaintiffs *"...entitled to recover Rs.1,49,628/- along with interest @ 12% per annum from the date of filing the suit till its actual realisation..."*, is set aside; and the suit filed by the plaintiffs stands dismissed.

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

24.03.2025

Sunena

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)

Judge