



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
220 **RSA-5606-2014 (O&M)**
Date of decision: 16.01.2025

M/S Pioneer Timber Products & Another

...Appellant(s)

Vs.

M/S Brite Paints and Chemicals

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. S.D. Bansal, Advocate
for the appellants.

Mr. Rose Gupta, Advocate
for the respondent.

NIDHI GUPTA, J.

The defendants are in second appeal before this Court against the concurrent findings of both the Courts below whereby the suit for recovery of Rs.1,89,786/- (i.e. Rs.1,21,008/- as principal amount and Rs.68,778/- as due amount on account of non-supply of C-Forms, 24% per annum on the amount of Rs.1,21,008/- with effect from 01.07.2001 till its actual realisation), filed by the respondent/plaintiff has been decreed by both the Courts below, with slight modification.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court.

3. Brief facts of the case as set out in the plaint are that the plaintiff is carrying on business in the name and style of M/s Brite Paints & Chemicals and dealing in paints, primer and chemicals. The plaintiff appointed its attorney and suit was filed on his behalf. The plaintiff has



been supplying paints and primer to the defendants. There were running payments by the defendants to the plaintiff and the last payment received from the defendants was on 30.06.2001 and on that date plaintiff received a sum of Rs.32,522/- as part payment. Though material worth Rs.7,64,195/- has been supplied to the defendants from time to time, however, C-forms have not been supplied by them despite repeated request. It is further stated in the plaint that as on 1.7.2001 principal amount due towards material supplied was ₹1,21,008/ – and along with interest at the rate of 24% per annum, a sum of ₹68,778/– was payable by defendants due to non-supply of C form, and on this amount too plaintiff was entitled to interest. It was further stated that legal notice was served on the defendants through registered AD as well as UPC post on 5.4.2004 requesting defendants to clear the outstanding liability along with interest within 15 days, yet, defendants failed to clear the liability. The notice sent under registered AD was received ‘unclaimed’ and ‘not met’. The defendants were deliberately avoiding Service. However, they were duly served with notice under UPC. Accordingly, plaintiff filed the suit for recovery claiming ₹1,89,786/– as the amount due on account of non-supply of C form along with interest at the rate of, 24% per annum with effect from 1.7.2001 till realisation.

4. Upon notice, the defendants put in appearance before the learned trial Court and filed written statement resisting the suit.



Replication was filed by the plaintiff denying the averments made in the written statement and reiterating those made in the plaint.

5. On the basis of the pleadings of the parties, following issues were framed: -

- “1. Whether the plaintiff is entitled to recover Rs. 1,21,008/- ?OPP*
- 2. Whether the plaintiff is entitled to recover interest of Rs. 68778/- ? If so, at what rate ? OPP*
- 3. Whether plaintiff has got no cause of action to file the present case ? OPD*
- 4. Whether the plaintiff has no locus standi to file the present case ?OPD*
- 6. Whether the suit is not maintainable ? OPD”*

6. During the pendency of the case, an application for framing of additional issues was filed on behalf of the defendant which was allowed and following additional issues were framed:-

- “6-A. : Whether the suit of the plaintiff has been filed within limitation ? OPD*
- 6-B : Whether the suit filed by the incompetent person is sustainable in law ? OPD”*

7. Thereafter, on the basis of oral and documentary evidence adduced by the parties, the Id. Trial court vide judgment and decree dated 1.9.2010 decreed the suit of the plaintiff with costs for recovery of Rs.1,89,786/- along with interest @ 12% per annum from the date of filing the suit till realisation of the decretal amount.

8. The defendants filed Civil Appeal No.70/338 dated 08.10.2010. In Appeal, vide judgment and decree dated 01.05.2014, the



judgment and decree of the learned trial Court was modified; and it was directed that *"...A decree for recovery of Rs.112564/- (Rs.One Lac Twelve thousand five hundred sixty four only) is passed in plaintiff's favour against the defendants along with costs and interest @ 12% p.a. from the date of filing of the suit till the date of realization of decretal amount..."*

9. Learned counsel for the appellants/defendants very briefly and succinctly submits that the learned Courts below have passed the impugned judgments and decrees on the basis of surmises and conjectures without discussing or considering the pleadings and evidence brought on record by the defendants. Even the evidence on record has been misread by the learned Courts below in particular the evidence of PW1. Even the relevant case law cited by the defendants was not considered by the learned Courts below. The defendants had submitted written arguments which were not considered while passing the impugned judgments and decree. There are material illegalities in passing the decree for recovery. The suit was barred by limitation and bad for non-joinder and misjoinder of parties and therefore, the plaintiff/respondent is not entitled to recover. It is accordingly prayed that the impugned judgments and decrees be set aside.

10. Per contra, learned counsel for the respondent/plaintiff opposes the prayer made on behalf of the appellants and submits that the judgments of the learned Courts below suffer from no infirmity. All the evidence and pleadings on record have been considered in minute detail



by the learned Courts below and only thereafter has recovery been permitted. It is further pointed out that the defence put forth by the defendants before the learned Courts below was that the material supplied by the plaintiff was not of good quality; and that the General Power of Attorney holder had no authority to file the present suit. It is submitted that both the said issues have been dealt with cogently vide the impugned orders.

11. No other argument is raised on behalf of the parties.

12. I have heard learned counsel for the parties and perused the case file in great detail.

13. The defendants have challenged the recovery effected against him by asserting that there is no business transaction between the parties after 31.03.2001. However, the said assertion of the defendants is falsified from the bill bearing No.433 dated 30.03.2001 (Ex.P5) as well as another bill No.147 dated 17.07.2001 (Ex.P8), relied upon by the plaintiff. From a perusal of both the said bills it is clear that same have been signed by one and same person in token of receipt of articles against those bills. From bill (Ex.P8) it is proved that there were business transactions after 30.03.2001.

14. In seeking recovery from the defendants, the plaintiff had further relied upon Bills (Ex.P1 to P9). However, it was the contention of the defendant that amount claimed against bills bearing Bill no. 330 dated 25.12.2000; Bill no.361 dated 09.01.2001; Bill no.402 dated



24.02.2001; Bill no.405 dated 28.02.2001; Bill no.427 dated 26.03.2001; and Bill no.433 dated 30.03.2001 – for Total amount of Rs.1,09,763/- was not legally maintainable as material delivered against said bills was not usable. Thus, although it was admitted by the defendants that up to 31.03.2001, material for sum of Rs.1,09,929/- was supplied, however, it was sought to be projected that the supplied material was defective material. However, it was established that the defendants failed to prove the material to be defective in any manner and even if it was defective the defendants should have returned it back. Admittedly, this was not done.

15. It had been further contended by the defendants that in this regard, the defendants had written letters (Ex.DW1/1 and Ex.DW1/2) to plaintiff to lift the said primer, but the plaintiff had failed to do so. Defendants had also issued debit note dated 04.04.2001 (Ex.DW1/3). However, even the said contention of the defendants is liable to be rejected as a perusal of letter (Ex.DW1/1) shows that there is only mention of bills No.330, 361, 402, 405 and there is no mention of bills No.427, 433; whereas while issuing debit note (Ex.DW1/3) defendants have mentioned bills no.427 and 433 besides the other bills to the effect that articles supplied against the said bills were defective. No reliance can be placed upon these letters as undisputedly the defendant is not the author of these letters and defendant does not mention anywhere as to who has written the said letters. The Defendants have further not examined Postman to prove that said letters were actually delivered at given address or not.



16. The defendants had further examined DW2 to prove that entire payment already stood paid to the plaintiff. DW2 had produced statement of account as Ex.DW2/1 and Ex.DW2/2 as per which the account of plaintiff firm was squared off and made Nil as on 31.03.2001. However, the said account statements are again falsified as the defendants have admitted in pleadings that they have made last purchase on 17.07.2001. Moreover, DW2 has admitted during cross examination that the documents Ex.DW2/1 and Ex.DW2/2 were prepared at the time of filing of affidavit.

17. As regards the plea of the defendants that C-forms were supplied at time of making of payment, the finding is that DW2 has admitted in cross examination, that he was maintaining the record of the C-forms. He admitted that no date has been mentioned at counter file of C-form and there is no signature of plaintiff on counter file. Accordingly, in view of the above facts, the Issue no.1 as to 'Whether the plaintiff is entitled to recover the amount?', was decided in favour of the plaintiff.

18. The relevant findings in respect of the above facts are found in Para 17 of the judgment dated 1.9.2010 of the Id. trial court, which reads as follows: –

"17. Now, the question remains to be solved is whether the plaintiff is entitled to recover the amount as claimed by way of present suit. In this regard, the learned counsel for the plaintiff has relied upon the copies of bills Ex. P 1 to Ex. P 9 as well as true copy of the statement of account allegedly prepared from the original Ledger being maintained by the plaintiff in ordinary course of the business. It is the case of the plaintiff that during



the period of business transactions between the plaintiff and the defendants, the defendants had been purchasing the material on credit basis and was making the payment from time to time against his running account of purchasing of the material with the plaintiff and the said amount was being deducted from the balance amount in the credit of defendants and now as per the said statement of account as on 16.7.2001 a total sum of Rs. 1,21,008/- was due towards the defendants, which the defendants have failed to pay inspite of repeated requests and reminders and ultimately the plaintiff has issued a legal notice Ex. P 10 demanding the said due payment. It is further the plea of the plaintiff that inspite of that legal notice, the defendants have failed to make the due payment against purchase of articles, which resulted into the present suit and that now the plaintiff is entitled to a total sum of Rs. 1,89,786/- on account of principal as well as interest due as on the date of filing the suit and further the plaintiff is entitled to recover the future interest on the said amount from the date of filing the suit till the realization of decretal amount. On the other hand, the defendants has denied the above claim of the plaintiff on the ground that the entire payments of the plaintiff were made from time to time and the amounts claimed against the Bills bearing No. 330 dated 25.12.2000, Bill No. 361 dated 9.1.2001, Bill No. 402 dated 24.2.2001, Bill No. 405 dated 28.2.2001, Bill No. 427 dated 26.3.2001 and Bill No. 433 dated 30.3.2001, amounting to Rs. 1,09,763/- is not legally maintainable because the material i.e. primer supplied against the said bills was not usable and the defendants in that regard have written several letters (Ex. DW 1/1 & Ex. DW ½) to the plaintiffs to lift the said primer but the plaintiff failed to do so, hence the plaintiff is not entitled to claim the amount against the said



unsuable articles and in this regard the defendants have also issued a debit note dated 4.4.2001 (Ex. DW 1/3), hence the plaintiff is not entitled for any amount on account of these bills. But this contentions of the defendants are not sufficient to discard the claim of the plaintiff. Because a perusal of letter Ex. DW 1/1 reveals that in the said letter there is only mention of bills No. 330, 361, 402 and 405 and there is no mention of bills No./ 427 & 433, whereas, while issuing the alleged debit note (Ex. DW 1/3) dated 4.4.2001 the defendants have also mentioned the bills No. 427 and 433 besides the other bills to the effect that the articles supplied against the said bills were defective. Further, a perusal of these letters it is revealed that the contesting defendants is not the author of these letters and he has also not mentioned as to who has written these letters on behalf of the defendants and even the defendants have not examined the said author of these letters. Even the defendants have also not examined the Postman of the concerned Post Office to prove that the said letters were actually delivered at the given address or not. Further in order to prove that the entire payment has been made to the plaintiff concern, the defendants have also examined DW 2 Ram Kumar Saini, who has proved the statement of account allegedly maintained by the defendants firm as Ex. DW 2/1 and Ex. DW 2/2 and stated that as per the said statement of account the account of the plaintiff firm was squared off and made Nil on 31.3.2001, whereas, first of all as discussed above, there is admission on the defendants even in their pleadings that they have made last purchase on 17.7.2001 and it has already been held that the part payment against the due amount was paid by the defendants, whereas, the DW 2 examined by the defendants has proved on record the statement of account which is only



upto 31.3.2001, hence the same is incomplete and cannot be taken into consideration. Otherwise also, in view of the admission on the part of DW 2 in this cross examination, these statement of account cannot be taken into consideration because in his cross examination DW 2 has deposed that the documents Ex. DW 2/1 and Ex. DW 2/2 i.e. statement of accounts were prepared at the time of filing of his affidavit. Further the plea of the defendants is that the defendants that whatever is that the defendants that whatever goods were purchased against the bills, the 'C' Forms were also supplied at the time of making the payment of that very bill, but this submission of the defendants is also without any merit in view of the reply of DW 2 during his cross examination. DW 2 Ra, Kumar Saini in his cross examination has deposed that he had been maintaining the record of 'C' form along with Sh. B.L. Saini and that he can tell about the same only after going through the record. Thereafter, cross examination of this witness was deferred for want of record of 'C' forms. Thereafter, when this DW 2 again appeared for his further cross examination and brought the record as demanded by the learned counsel for the plaintiff and he admitted as correct that no date has been mentioned at the counter file of 'C' form, which have been brought by him. He also admitted as correct that there is no signatures of the plaintiff on the counter file. So, under these circumstances, the testimony the DW 2 also does not prove the case of the defendants.”

19. It had further been asserted by the defendants that PW1 had admitted in his testimony that payment was being made by the defendants Bill-wise. However, the said contention is incorrect as PW1 has



clarified in cross examination that disputed bills are dated 25.12.2000, 09.01.2001, 24.02.2001, 28.02.2001, 26.03.2001, 30.03.2001 and last payment was made by defendant on 30.06.2001. Relevant findings are in para 18 of the trial court order dated 1.9.2010, which reads as follows: –

“18. Further to rebut the case of the plaintiff, the learned counsel for the defendants has relied upon the testimony of PW 1 Sh. Sat Parkash and submitted that he himself, during his cross examination, has admitted that the payment was being made by the defendants bill-wise, however, this submission of the learned counsel for the defendants is also without any merits. Admittedly, PW 1 during his cross examination has deposed that the payments of some of the bills were paid bill-wise, however, the disputed bills are dated 25.12.2000, 9.1.2001, 24.2.2001, 28.2.2001, 26.3.2001 and 30.3.2001, further he voluntarily stated that however, the defendants were paying in the running accounts and the last payment was made by the defendants on 30.6.2001. Otherwise also from the records as well as the pleadings and evidence of the defendants, it is clear that the defendants has been taking different pleas. On one hand, it has been submitted on behalf of the defendants that they have been making the payments of material supplied to them at the time of issuance of bill, whereas, the record as produced on record as well as the evidence led by the defendants itself shows that they have been making the part payments against the bills issued by the plaintiff firm. It has been admitted by the defendants themselves that even upto 31.3.2001, the material for a sum of Rs. 1,09,929/- was supplied but for that the defendants have taken the plea that the same was defective material and they have requested the plaintiff to lift the said defective material,



but as already submitted the defendants have failed to prove that the said material was defective in any manner. Otherwise also, if the material was defective and on the alleged requests of the defendants, if the plaintiff was not lifting the alleged defective material, then the defendants must have made the efforts to deliver back the said alleged defective material but no such has been made by the defendants. Further in order to prove the due amount, as already mentioned the plaintiff has proved on record the statement of account pertaining to the running account of the defendants as Ex. P 9 and on demand of the learned counsel for the defendants, the original statement of account was produced by PW 1 in the court and during his cross examination the learned counsel for the defendants has raised the objection that on the relevant pages the name of the firm to which the said statement of account belongs was not written and during arguments he submitted that in view of the above reason the statement of account cannot be relied upon in the present case against the defendants, however, this plea of the learned counsel for the defendants is without any merits in view of the own admission of the defendants who themselves have admitted the issuance of bills in the name of defendants details of which have been given in the true copy Ex. P9 of the original statement of account produced by the plaintiff in the court, hence the defendants have failed to discard the genuineness and correctness of the said bills and as per the said statement of account as on 16.7.2001, a principal sum of Rs. 1,21,008/- plus Rs. 68,778/- on account of non-supply of C-Forms i.e. total sum of Rs. 1,89,786/- was due to be recovered from the defendants, which the plaintiff has been able to prove successfully. Further the plaintiff has claimed the interest on the due amount at the rate of 24% per



annum from the date the amount became due i.e. 1.7.2001 till the realization of decretal amount and for claiming the interest at the rate of 24% per annum, the plaintiff has relied upon the copies of bills of material issued to the defendants and submitted that there is a clause that interest at the rate of 2% per month will be charged for payment after due date. However, the court is of the considered view that the rate of interest at the rate of 24% per cent per annum is very exaggerated and it would be in the interest of justice, if the plaintiff is awarded the interest at the rate of 12% per annum and that too from the date of filing the suit till the realization of decretal amount.

20. In appeal, the Id. First Appellate Court, vide judgment and decree dated 1.5.2014, partly allowed the appeal of the defendants by modifying the judgement and decree dated 1.9.2010; and passed Decree for recovery of Rs.1,12,564/- in favour of plaintiff along with interest 12% per annum. The learned lower Appellate Court held that Issue no.2 can't be sustained; that Ex. P6 which is invoice cum delivery challan No.54 dated 30.04.2001 for amount of Rs.11,383/-, cannot be read to the benefit of plaintiff as the document Ex. P6 is carbon copy supplied by PW1 and bears no sign of recipient on duplicate copy. Moreover, DW1 had denied in cross examination that delivery against Ex.P6 was ever received by defendant company. Even as per Copy of statement of account Ex. P9, entry of invoice No.54 is for Rs.11,383/-, and there is no signature on the statement. Even when PW1 was asked to bring original ledger, yet, copy of the ledger was not produced. On the basis of admissions, plaintiff was held entitled to



recover Rs.1,09,763/-. Thus, it was held that the amount due to the credit of plaintiff came out to Rs.1,09,763/- + Rs.2,801/- = Rs.1,12,564/- and not Rs.1,21,008/- as reflected in Ex.P9.

21. Relevant findings returned by the learned First Appellate Court in this regard are as under:-

“19. Plaintiffs have brought on record the disputed bills Ex.P-1 to Ex.P-8 and the statement of account Ex.P-9, So far as amount in respect of bills Ex. P-1 to Ex.P-5 and Ex.P-7, Ex. P-8 is concerned, the same is not in dispute and the defendants admit having received the supply against the bills. Ex.P-6 is the invoice-cum-delivery challan No.54 dated 30.04.2001 for an amount of Rs.11383/-. The document which is a carbon copy has simply been brought on record by PW-1 Sat Parkash. There is no signature of the recipient on the duplicate copy nor any admission in the written statement of defendants in respect of the invoice, rather DW-1, Aditya Sharda has categorically denied in his cross examination that delivery against bill NO.54 dated 30.04.2001 for Rs.11383/- was ever received by defendant company. The invoice Ex.P-6 has not been duly proved and it is not plaintiff's case that the same was issue by PW-1 Sat Parkash. Therefore, Ex.P-6 is a document which cannot be read to the benefits of the plaintiff.

20. Plaintiff has also relied upon copy of statement of account Ex.P9 wherein there is an entry of invoice No.54 for Rs.11383/-. The statement of account does not bear any signatures and has merely been tendered by PW-1 Sat Parkash. It has been argued that PW-1 Sat Parkash was asked to bring the original ledger which he did. Copy of the ledger



has not been produced on record. In these circumstances, the court cannot rely upon the statement of account Ex.P-9 to base a finding. On the basis of the admissions in the written statement, plaintiff is held entitled to recover Rs.1,09,763/- from the defendants being the amount of goods which was supplied to the defendants.

21. Admittedly, defendants purchased primer against bill No.98 dated 30.05.2001 vide bill Ex.P-7 and primer worth Rs.8131/- vide bill No.147 dated 17.07.01 Ex.P-8. Defendants' case that payment of these two bills was made vide cheque amounting to Rs.32552/- is duly reflected in statement of account Ex.P-9. Thus, the amount due to the credit of the plaintiff comes to Rs. 109763/- plus Rs.2801/-= Rs.112564/- and not Rs. 121008/- as reflected in Ex.P-9. Plaintiff is held entitled to recovery of Rs.112564/-.

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24. So far as contention of learned counsel for defendants that Sh. Sat Parkash was not the duly authorized person to file the suit is concerned, learned Trial court has correctly observed that Ex.DX was the General power of Attorney executed by proprietor of the plaintiff firm in favour of Sat Parkash authorizing him to look after and manage the affairs of the firm in and around U.T., Chandigarh ... It cannot, therefore, be held that suit was not filed by duly authorized person."

22. Learned counsel for the appellants is unable to dispute or controvert the above said evidence/findings or give any satisfactory explanation for the same. From the facts and evidence as noticed above, it is very clear that the amounts as modified by the learned Lower Appellate Court were due against the defendant. As such, I find no ground whatsoever is made out to interfere in the concurrent findings returned



by the learned Courts below after detailed examination and consideration of the records.

23. **Dismissed.**

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

16.01.2025

Sunena

**(Nidhi Gupta)
Judge**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No