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HIGH COURT FORM NO.(J) 2.
HEADING OF JUDGMENT ON ORIGINAL APPEAL.

District : Sonitpur.

IN THE COURT OF THE CIVIL JUDGE AT TEZPUR.

Present : **Sri P.C. Kalita, AJS,**

Thursday, the 29th day of May, 2014.

MONEY APPEAL NO. 03 of 2012.

1.M/S Green Valley Industry,
a registered Partnership firm,
having its principal place of business at
Main Road, PO Tezpur,
Dist. Sonitpur (Assam).
Represented its partner Sri Nakul Ch. Paul,
S/O Late Digambar Ch. Paul.
... Appellant.

-versus -

1. Sri Prabin Borah,
Proprietor of M/S Maruti Centre(India),
Maszid Road, Tezpur town,
Mouza - Mahabhoirab,
PO & PS - Tezpur
Dist. Sonitpur (Assam). Respondent.

This appeal coming on for final hearing or having been heard on 20th day of March, 28th April, and 6th May, 2014.

Mr. K.P. Singh,
Advocate For the appellant.

Mr. P.C. Sharma, Advocate For the respondent.

And having stood for consideration this day, the
29th May, 2014 the Court delivered the following Judgment : -

J U D G M E N T

1. This appeal has been preferred against the Judgment and Decree dated 23-12-2011 passed by the learned Munsiff No.1, Sonitpur, Tezpur in Money Suit No. 07 of 2008 whereby the plaintiff's suit was dismissed on contest with cost.

2. For better understanding the issues arisen in the present appeal, the facts of the case may be summarized as follows :

The appellant/plaintiff's case, in brief, is that the plaintiff is the Proprietor of M/S Green Valley Industries situated at Main road, Tezpur and deals in manufactures of Hume Pipes and other nets/fence product. The other partners have authorized and empowered Sri Nakul Ch. Paul, one of plaintiff, to institute the case. The plaintiff No. 2 had submitted that the defendant Prabin Borah has business relation with the plaintiff and during business transaction he had placed an order for 8 Nos of hume pipes and 25 bags of cements to be delivered at Solmara at defendants' cost. The plaintiff further stated that he had submitted an invoice bill No. 124 of Rs. 67,200/- for transportation and charges including labour for unloading the material at site and for that the defendant had paid cheque of RS. 69,500/- dated 24-01-2007 of State Bank of India and remaining amount was to be paid by the defendant on next day. The plaintiff also pleaded that when he had deposited the cheque for encashment, the cheque was dishonoured due to insufficient of fund. The plaintiff stated that when he approached for payment, the defendant again sought for time to make the payment and

as per assurance the plaintiff again presented the cheque on 10-04-2007 and 17-05-2007 but the cheque was dishonoured for the third time consecutively. The plaintiff further stated that he had issued notice to the defendant for payment of the amount due but the defendant did not pay any heed. Hence, this suit had been filed for recovery of the amount.

3. The defendant contested the suit by filing written statement stating, inter alia, that the suit is not maintainable in its present form. The defendant further denied that the plaintiff owe any outstanding balance of RS. 75,175/- from the defendant. The case of the defendant, is that when he had placed an order the plaintiff asked for payment in advance and when he had assured that he will pay after the delivery of goods the plaintiff insists for payment and as such the defendant had issued the cheque in favour of the plaintiff. The defendant further stated that the plaintiff intentionally did not supply the goods in time and for that reason he had to purchase the material from the market. The defendant further stated that when he had asked the plaintiff to return the cheque the plaintiff not only refused to return the cheque but he had maliciously filed this case. The defendant contended that he is not liable to pay for the goods which were not ordered by them and prayed to dismiss the suit with cost.

4. Upon the premises of the pleadings, the following issues have been settled :

- 1.** Whether there is cause of action for the suit?
- 2.** Whether the suit is maintainable in its present form?

- 3.** Whether the plaintiff had supplied hume pipes and cements amounting to Rs. 75,175/- to the defendants ?
- 4.** Whether the plaintiff is entitled to a decree as prayed for.
- 5.** To what relief/reliefs, the parties are entitled to ?

5. To prove the case, plaintiff examined 2 (two) witnesses including plaintiff Sri Nakul Ch. Paul and exhibited certain documents in support of its case.

On the other hand, defendant namely, Sri Prabin Borah examined himself as DW 1 to prove his case.

6. After hearing both sides, learned Trial Court dismissed the suit as a result of which this appeal is preferred by the appellant- plaintiff.

7. Learned Advocate for the appellant -Plaintiff submitted that the learned trial court miserably failed to appreciate the evidence on record and came to an erroneous decision, dismissing the suit. Learned advocate for the appellant also submitted that the appellant may be allowed to adduce additional evidence and exhibit few documents to prove its case. In support of his contention, learned advocate has placed reliance upon a decision reported in (2001) 10 SCC 619.

On the other hand, learned Advocate for the respondent submitted that the learned trial court rightly dismissed the suit of the plaintiff. So, the aforesaid impugned judgment required to be upheld. Learned

advocate for the respondent also submitted that there is no mention in the memo of appeal as to why the appellant could not adduce additional evidence but there is only a prayer in the prayer portion of memo of appeal.

DISCUSSIONS, DECISIONS AND REASONS THEREOF.

8. I have carefully perused the entire case records, evidence, both oral and documentary, available on record. Heard the argument advanced by learned advocates of both sides. I have also perused the decision cited by the learned counsel for the appellant. Now, let me examine the evidence on records to decide the case at hand.

Issue No. 1

Whether there is cause of action for the suit?

9. The plaintiff M/S Green Valley Industries represented by its partner Sri Nakul Ch. Paul, in his plaint pleaded that the plaintiff's Firm supplied Hume Pipes and other articles to the defendant but the defendant failed to make payment of the materials supplied. The defendant has denied the aforesaid allegation of the plaintiff. Thus, it appears that there is a cause of action for the suit.

Issue No. 2.

Whether the suit is maintainable in its present form?

10. The defendant in his written statement stated that the suit is not maintainable. According to defendant, the plaintiff No. 1 is a Partnership Firm consisting of several partners. Plaintiff has exhibited the registration certificate of the firm as Ext.1 Perusal of the Exhibit 1, it reveals that

the said registration certificate is an unregistered document signed by Notary. Admittedly, the plaintiff firm is an unregistered firm. So, the plaintiff has to show that the suit was maintainable in view of provisions of section 69 (2) of the Indian Partnership Act, 1932.

Section 69 (1) and 69(2) of the Indian Partnership Act, 1932 reads as follows : -

“(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

Sec. 69 (2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.”

In view of the above, it is seen that section 69 of Indian Partnership Act, 1932, creates a bar for institution of a suit on behalf of unregistered firm against a third party. From the Ext 1 , i.e. the Deed of Partnership, apparently, it is an unregistered document which is signed by a Notary. Thus, it is crystal clear that the plaintiff firm is an unregistered firm. Therefore, I hold that the suit is not maintainable in view of the bar as envisaged u/s 69 of the Indian partnership Act, 1932.

Issue No. 3.

Whether the plaintiff had supplied hume pipes and cements amounting to Rs. 75,175/- to the

defendants?

11. Sri Nakul Ch. Paul (PW 1), who represented the plaintiff firm, in his plaint and deposition stated that the defendant Prabin Borah maintained business relation with the plaintiff. PW 1 further stated that during their business transaction the defendant had placed an order on 20-001-2007 for 8 Nos of hume pipes and 25 bags of cements to be delivered at Solmara at defendant's cost. PW 1 had stated that he had submitted an invoice bill No. 124 for Rs. 67,200/- for transportation and charges including labour charges for unloading the materials at defendant's place. The plaintiff has exhibited the order of defendant dated 20-01-2007 as Ext. 3, invoice No. 122 dated 24-01-2007 as Exhibit 4, Bill No. 285 for Rs. 19,350/- as Exhibit 5. It is also in the deposition of PW 1 that defendant had paid a cheque of RS. 69,500/- dt 24-01-07 of State Bank of India but when he had deposited the same cheque for encashment, the cheque was dishonoured due to insufficient fund. PW 1 further stated that he approached the defendant for payment of the amount but the defendant sought for time to make payment. As per assurance the plaintiff again presented the cheque on 10-04-2007 and on 17-05-2007 but the cheque was dishonoured again. Thereafter, the plaintiff issued notice upon the defendant. Ext. 6 is the Return memo by SBI Manager dated 25-01-2007, Ext. 7 is the advocate's notice, Ext. 8 is the Return memo by SBI Manager dated 10-04-07 and return memo by SBI Manager dated 17-05-2007 as exhibit 9.

Mr. Prabin Borah, defendant, has denied that he had received any goods from the plaintiff. The said Prabin

Borah as DW 1 stated that the cheque was handed over to the plaintiff as security to deliver the ordered goods but the plaintiff failed to supply the goods. DW 1 asked for the cheque but the plaintiff refused to return back the cheque. Perusal of Ext.3, order of defendant dated 20-01-2007, Ext. 4 - invoice No. 124 dated 24-01-2007 and Exhibit 5 - Bill No. 285 for Rs. 19,350/-, failed to show that the defendant had received the said goods and the defendant had put his signature thereon. Thus, it appears that the plaintiff has failed to prove the fact that the said goods were delivered and received by the defendant by adducing cogent evidence. Therefore, this issue is decided in the negative.

Issue No. 4 and 5.

Whether the plaintiff is entitled to a decree as prayed for and to what relief/reliefs, the parties are entitled to?

12. Learned advocate for the appellant submitted that the appellant may be allowed to adduce additional evidence and exhibit few documents to prove its case. Perusal of the memo of appeal, it appears that there is no mention in the memo of appeal as to why the appellant could not produce the additional evidence in the trial court but there is only a prayer in this regard in memo of appeal. Therefore, the plea of the learned advocate is not acceptable.

In view of the above discussions made in Issue No. 2 and 3, I hold that the plaintiff is not entitled to any relief as prayed for.

13. In the light of above discussion and decisions, I find that the appellant/plaintiff has failed to prove its case.

Hence, I do not find any reason to interfere with the impugned judgment and decree dated 23-12-2011 passed by the learned Munsiff No.1, Tezpur in Money Suit No. 07 of 2008.

Hence, the appeal fails and is dismissed on contest with cost and the impugned Judgment and decree dated 23-12-2011 passed by the learned Munsiff No.1, Tezpur in Money Suit No. 07 of 2008 is hereby upheld.

Prepare a decree.

14. Send down the record of the case/suit to the learned Court below along with a copy of this judgment.

Given under my hand and seal of this Court on this 29th day of May, 2014.

(P.C. Kalita)
Civil Judge,
Sonitpur::Tezpur.

Dictated and corrected by me.

(P.C. Kalita)
Civil Judge,
Sonitpur:: Tezpur.

Transcribed by me.

(R. Hazarika),
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