

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD

IInd Appeal No.07 of 2009
IInd Appeal No.08 of 2009.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Appellant	Ghulam Muhammad through Mr. Muhammad Suleman Unar Advocate.
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Respondent:	M/s Anand Kohistan Cotton Ginning & Pressing & Oil Mills absent
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Date of hearing	07.08.2015.
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Date of decision	17 .08.2015
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NAZAR AKBAR, J.- By this common Judgment, I intend to dispose of IInd Appeals No.07 and 08 of 2009 filed by the appellant against Judgments and Decrees dated 04.06.2009 passed by the learned District Judge, Jamshoro @ Kotri dismissing appellant's Civil Appeals No.20 and 21 of 2007 and maintaining the Judgments and Decrees dated 18.10.2007 passed by leaned Senior Civil Judge, Kotri in F.C. Suit No.21/2002 and 22/2002 filed by the respondent. The facts of both appeals are identical and arising out of two similar transactions between the parties.

2. The brief facts of the two suits are that the respondent/plaintiff, a registered partnership firm comprising of five partners namely 1. Hotumal, 2. Rohesh Kumar, 3. Kanayio alias Kanyiolal, 4. Kishanchand, and 5. Kewal @ Kewalram, carrying on business of Cotton Ginning and Oil Mills at Khadro Town, District Sanghar filed F.C. Suit No.21 of 2002 for recovery of Rs.2,89,745/- and F.C. Suit No.22 of 2002 for recovery of Rs.17,15,059/- against the appellant. The appellant/defendant was running a business of Oil

Mills by the name and style of (i)“National Oil Mills and (ii) Sakrani Oil Mills” situated at Kotri. In the year 2000-2001, the respondent/plaintiff supplied cotton seeds weighing 1,44,225 kg to the appellant/defendant’s Mills amounting to Rs.12,04,757/- against payment of Rs.9,15,012/-. The amount of Rs.2,89,745/- remained outstanding against the appellant/defendant. The appellant/defendant illegally withheld the amount of Rs.2,89,745/- since May, 2001, therefore, respondent/plaintiff filed Suit No.21/2002 for recovery of Rs.2,89,745/- alongwith markup at the bank rate from 01.06.2001 till the amount is realized. The respondent/plaintiff claimed that through another transaction he has also provided cotton seeds weighing 10,49,613 kg to the appellant/defendant’s Mills namely National Oils Mills and Sakrani Oil Mills for the value of Rs.82,27,621/-, and received only Rs.65,12,562/-, and there remained outstanding amount of Rs.17,15,059/- against the appellant/defendant, who have illegally withheld the same. The respondent/plaintiff, therefore, filed another suit No.22/2002 for recovery of Rs.17,15,059/- with mark up against the appellant. The respondent/plaintiff further stated that the appellant/defendant also made false claim of advance amount of Rs.600,000/- against the plaintiff and another firm namely M/s Anand Kohistan Cotton Ginning and Oil Mills and leveled allegations of humiliation, disgrace etc, against partners of the plaintiff namely Kewal Ram and Daya Ram.

3. The appellant/ defendant contested both the suits and in his written statement denied the claim of the respondent/plaintiff. He assailed maintainability of the suit on the ground that at the time of transaction between the parties, the plaintiff/respondent was not a registered firm, therefore, suits were not maintainable in law. The appellant/defendant has

already left the Mills in question and same were in possession of new owners namely Irfan and Ahmed Sakrani. He admitted that he had business transaction with Daya Ram and Kewal Ram for supply of cotton seeds from August, 2000 to May, 2001 but due to supply of substandard quality of cotton seed, he stopped further transaction. The appellant/defendant claimed that he had filed a suit for recovery of advance amount of Rs.600,000/- against the plaintiff/respondent in the court of learned IInd Senior Civil Judge, Hyderabad and in counterblast, the respondent/plaintiff filed these suits.

4. Learned trial court framed following identical issues with the difference of amount for recovery in issue No.4:-

1. Whether this court has no jurisdiction to try the present case?
2. Whether the suit is barred by any law?
3. Whether the plaintiff firm had ever remained in business transaction with the defendant and supplied cotton seed during the year 2000 upto May, 2001 to the defendant?
4. Whether the plaintiff firm is entitled to recover the amount of Rs.2,89,745/- (in Suit No.21/2002) and Rs.17,15,059/- (in Suit No.22 of 2002) alongwith markup as prayed in the suit?
5. Whether the plaintiffs have cause of action to bring the present suit against the defendant?
6. Whether the plaintiff is entitled to relief as prayed for?
7. What should the decree be?

5. On behalf respondent/plaintiff, in Suit No. 21 of 2002 P.W. 1 Kanya Lal was examined at Ex.57, who produced Photostat copy of Register of Firm dated 05.09.2001 at Ex.58, original Register of Khata showing transaction at pages No.90 and 92 as Ex.59, original goods transport receipts 16 in number at Ex.60/1 to 60/16, P.W. 2 Muhammad Rafique at Ex.67, P.W3 Arif Hussain at Ex.74 and then plaintiff closed his side. The

appellant/respondent Ghulam Muhammad examined himself at Ex.90 and one D.W Moinuddin at Ex.95 and then closed his side.

6. In suit No.22/2002, the plaintiff examined Daya Ram as P.W-1 at Ex.42 who produced copy of Register of Firm dated 05.09.2001 at Ex.43, original receipts of supply of material at Ex.44/1 to 44/112, copy of notice dated 15.02.2001 at Ex.45 and original Register of Khata showing transaction at pages 107 and 411 at Ex.61 and 62. P.W-2, Rafique Ahmed and P.W-3, Arif Hussain were examined and then plaintiff closed his side. The appellant/ defendant examined himself at Ex.90 and D.W-2, Mohiuddin at Ex.95 and then closed his side.

7. After hearing learned counsel for the parties, learned trial court decreed both the suits of the respondent by separate Judgments both dated 18.10.2007 which were assailed by the appellant before the learned appellate court but both the appeals were dismissed by two separate Judgments dated 16.03.2009. Against concurrent findings, the appellant has preferred these Second Appeals No.7 and 8 of 2009.

8. In both the appeals before the First appellate court, the respondent despite service remained absent. In second appeal before this court, the respondents have not entered their appearance. However, I have heard learned counsel for the appellant and perused the record.

9. These appeals are against the concurrent findings of trial court as well as the appellate court based on the sound reasoning supported by the evidence adduced by the respondent and the appellant at the trial. The learned counsel for the appellant has not pointed out any misreading or non-reading of evidence nor he has been able to point out any legal lacuna in the

findings of the trial court or appellate court. The scope of IInd Appeal is a limited to the three grounds mentioned in Section 100 of CPC which reads as follows :-

“ 100. Second appeal. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely:-

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2)

None of the ingredients of the aforesaid Section 100 CPC has been found in the memo of appeal or in the grounds of appeal. The learned counsel for the appellant has failed to point out anything contrary to law or to some usage having the force of law in the appellate judgments and decrees. He has also failed to point out failure of the appellate court to determine any material issue of law. He has vehemently stressed that the findings of the courts below are hit by section 17 of Registration Act, 1908 as the respondent firm was registered subsequently. However, when confronted with the question that how the Registration Act, 1908 can bar filing of suit by registered firm he was unable to elaborate on his argument.

10. On merit, the trial court has decreed the suits of the respondents on the basis of admissions of the appellant and his father. The respondents by overwhelming documentary evidence have proved their claim of the recovery of unpaid price of cotton seed supplied by the respondent to the

appellant. The material evidence on the point of supply of seeds during the period mentioned in the plaint was admitted by the appellant himself when he conceded that he had entered into the transaction with the respondent and he has stopped receiving the cotton seeds only when he found that the quality of the seeds provided by the respondent was of substandard quality. However, he fell short of substantiating his claim of supply of sub-standard seeds by the respondents. He never returned the goods on account of its quality to the respondents and further to his disadvantage he took a false plea of advancing a sum of Rs.6,00,000/- to the respondents for which he even filed a F.C. Suit No. 44 of 2002 in the court of Senior Civil Judge, Kotri for recovery of said advance amount. Unfortunately his suit was dismissed and no appeal was preferred. He failed to prove even receipt of security deposit amounting to Rs.6,00,000/- which he claimed as defence plea to frustrate claim of respondent in their suits. The evidence of D.W-2 on behalf of the appellant who happened to be father of the appellant was even more damaging when in his examination in chief he stated that Daya Ram and Kewal Ram were owners of Kohistan Factory situated at Hala Naka Hyderabad and after some time they started giving bad quality cotton seeds which had been refused to accept by the defendant namely Ghulam Mohiuddin. In the cross examination his father again admitted that it is correct to suggest that my son used to run the National Oil Mill and Sakrani Oil Mills at SITE Kotri. He further stated in the cross that he never worked in the business of his son and he does not know about the internal affairs of the business of his son. In view of the failure of the appellant to establish his claim as against the pleadings of the respondent the trial court decreed the two suits by discussing the evidence and appellate court affirmed the judgment of trial court again on the basis of evidence and thus both the

courts had acted perfectly within the law. There was no error or defect in the procedure provided by Civil Procedure Code and therefore, the appellant has not even alleged any substantial error or defect which could have possibly produced error or defect in the decision of the case on merit.

In view of the above discussion both the appeals are dismissed with no order as to cost.

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JUDGE.

A.K/-