

**Prabhakar Traders Vs. Veejay Traders and ors.**

**Prabhakar Traders Vs. Veejay Traders and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/635107](http://sooperkanoon.com/635107)

**Court :** Punjab and Haryana

**Decided On :** Aug-03-2009

**Reported in :** (2010)157PLR255

**Judge :** Hemant Gupta, J.

**Appellant :** Prabhakar Traders

**Respondent :** Veejay Traders and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**Hemant Gupta, J.**

1. The plaintiff is in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, accepting the appeal filed by the defendants and dismissing the suit of the plaintiff.

2. The plaintiff-appellant filed a suit for recovery of R\$.39,097.52p on the ground that the plaintiff deals in the sale of foodgrains. Defendant No. 1 is a registered firm, whereas defendant Nos. 2 to 5 are the registered partners of the said firm dealing in purchase of paddy etc. The defendant-firm purchased on credit paddy worth Rs. 32,505.38p from the plaintiff and took the same to their firm at Phagwara. The bills mentioned in the plaint were issued to the defendants and the

defendants issued the declaration form ST-XII under their signatures after verifying the correctness thereof, The goods purchased by the defendants were duly entered into account books and the price thereof was duly debited in the name of the defendants. Thus, the plaintiff is entitled to recover the amount for which, the defendants have purchased paddy.

3. Defendant No. 5 Jagdish Chand filed his separate written statement admitting the claim of the plaintiff to the effect that the defendant firm purchased on credit paddy worth Rs. 32,505.28p and the defendant firm issued declaration forms admitting and verifying the correctness of the bills. The other defendants in their written statement denied any purchase of paddy from the plaintiff or issuing of any declaration form by any partner of the firm. The said defendants denied that any goods were purchased from the plaintiff. It is mentioned that defendant No. 5 is maternal uncle of the plaintiff and his wife is one of the partners of the plaintiff-firm. The said Jagdish Chander owes lot of amount to the answering defendants and in order to have wrongful gain and cause harm to the answering defendants, he has got false suit filed by the plaintiff against the answering defendants.

4. The learned trial Court had decreed the suit, but the learned first Appellate Court reversed the findings holding that evidence of PW1- Ram Rachhpal, the munim of defendants is not sufficient to fasten the liability on the defendants, it found that he had no authority to verify the bills on behalf of the defendants. The declaration forms Exhibit PW1 to PW8 were found to be not signed by any partner of the defendant-firm. As per the defendants such declaration forms are not signed by Bhagwan .Dass, but Fingerprints expert Shri K.S. Puri has opined that such declaration forms are signed by Bhagwan Dass. Keeping in view the contrary expert opinion produced by the parties, the learned first appellate Court excluded such declaration forms out of consideration.

5. While examining the statement of Sunil Dutt, partner of the plaintiff-firm, the Court found that the plaintiff has not produced the record of the market committee which record would have proved the case of the plaintiff. Still further, the admission of defendant No. 5 was held to be not binding on other defendants.

6. I have heard learned Counsel for the appellant on the following substantial questions of law:

1. Whether the admission of one of the partners will bind the partnership firm and the other partners?

2. Whether the decree can be passed against defendant No. 5 on the basis of his admission in the written statement?

7. Learned Counsel for the appellant has vehemently argued that defendant No. 5 has admitted the claim of the plaintiff and such admission of a partner of the firm will bind the firm and other partners in view of the implied authority of a partner in the affairs of partnership firm. In the alternative it was argued that on the basis of admission of defendant No. 5, the suit can be decreed for the recovery of the amount claimed by the plaintiff and the suit could not have been dismissed in its entirety. Reliance has been placed on Harihar Rajguru Mohapatra and Anr. v. Nabakishore Rajaguru Mohapatra and Ors. A.I.R. 1963 All 45 and Bhura and Anr. v. Bahadursingh and Anr. : A.I.R. 1976 Rajasthan 249.

8. The argument of the learned Counsel for the appellant is not tenable. Section 19 of the Partnership Act, 1932 (for short 'the Act') deals with the implied authority of a partner as an agent of the firm. Sub-section (2) of Section 19 of the Act, specifically excludes implied authority of a partner to admit any liability in a suit in the absence of any usage or custom of trade to the contrary. Still further Section 22 of the Act deals with the mode of doing an act so as to bind a firm. Section 19 and 22 of the Act read as under:

19. Implied Authority of partner as agent of the firm.- (1) subject to the provisions of Section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of partner to bind the firm conferred by this section is called this 'implied authority.'

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to-

(a) submit a dispute relating to the business of the firm to arbitration;

- (b) open a banking account on behalf of the firm in his own name;
- (c) compromise or relinquish any claim or portion of a claim by the firm;
- (d) withdraw a suit or proceeding filed on behalf of the firm,
- (e) admit any liability in a suit or proceeding against the firm,
- (f) acquire immovable property on behalf of the firm,
- (g) transfer immovable property belonging to the firm, or
- (h) enter into partnership on behalf of the firm.

xx xx xx

22. Mode of doing act to bind firm.- In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.

9. Therefore, the admission by defendant No. 5 that paddy worth Rs. 32,505.28p was supplied to the firm, cannot be used to bind either the defendant-firm or its partners.

10. The judgments referred to by the learned Counsel for the appellant are not relevant for the issue raised in the present appeal. In Bhura's case (supra), the admission of one of the persons, jointly interested in a suit was found to be relevant. In Harihar Rajguru Mohapatra's case (supra), the admission of one of the parties was found to be binding on another, where they were having joint interests. In the present case, the admission of defendant No. 5 is sought to be used as a partner of the firm against the firm and other partners. Section 19 of the Act, does not empower a partner of the firm to admit the liability in a suit or proceedings against the firm. In view of the said provisions, the judgments referred to by the learned Counsel for the appellant are not applicable to the issue raised in the present appeal.

11. Coming to the second substantial question of law that the decree is required to be passed as defendant No. 5 admitted the claim of the plaintiff. However, a perusal of the written statement filed by defendant No. 5 would show that he has not admitted that he is liable to make the payment of paddy allegedly purchased by the plaintiff. He has stated that the defendant-firm purchased on credit paddy worth Rs. 32,505.28p. In para 3 of the written statement filed by defendant No. 5-Jagdish Chand, it is pleaded to the following effect:

Para No. 3 of the plaint is admitted to be correct. The defendant firm purchased on credit paddy worth Rs. 32505.28ps as detailed in para No. 3 of the plaint and brought the same paddy to Phagwara. The defendant firm issued Declaration Forms for each Bill admitting and verifying the correctness of the Bills.

12. A perusal of the above averments in the written statement would show that defendant No. 5 has worded the admission cleverly. He has recited that the defendants have purchased the paddy on credit and issued the declaration forms. He has not purchased paddy himself. It is well settled that the admission has to be clear and categorical. In the absence of clear and categorical admission of defendant No. 5, admitting the claim of Rs. 32,505.28p against him, the decree cannot be passed on the basis of such admission.

13. Consequently, I do not find any patent illegality or material irregularity in the findings recorded or that the findings recorded give rise to any substantial question of law in the present second appeal.

14. Hence, the present appeal is dismissed.