

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 309 of 2006

Decided on : July 31, 2006

Kapil Dev Bansal

.....Appellant.

VERSUS

Gurchanran Dass Vij

.....Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ajay Kumar, Advocate.

For the Respondent : Mr. S.R. Sharma, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent-plaintiff filed a suit for recovery of a sum of Rs.1,37,820/- against the appellant-defendant alleging that he had supplied building material worth Rs.80,000/- to the appellant-defendant on his asking and that the appellant-defendant issued a cheque for Rs.80,000/- on 5.10.1995 but when the cheque was presented to the bankers of the appellant-defendant the same was not honoured.

3. Appellant-defendant contested the suit. He denied that any material had been supplied to him. It was alleged that as a matter of fact the cheque was issued on the assurance by the respondent-plaintiff that he would be supplying the material worth more than the amount of the cheque by 5.10.1995 but the plaintiff had

Whether the reporters of the local papers may be allowed to see the Judgment?

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supplied only three trucks of material worth not more than Rs.4,000/- and that therefore he had instructed his bankers not to make payment of the cheque.

4. Both the Courts below have returned a concurrent finding that the plaintiff had supplied 40 truck-loads of material to the appellant-defendant and that it was after the receipt of the aforesaid material that the appellant-defendant issued the cheque.

5. I have heard the learned counsel for the parties and gone through the record.

6. The two Courts below have given sound reasons in support of their finding. The reasoning is based upon the right appreciation of the evidence and the presumption drawn from the evidence led by the parties. Appellant-defendant though pleaded that he had issued the cheque on an assurance by the respondent-plaintiff that he would supply material worth more than Rs.80,000/- by 5.10.1995, yet in his deposition in the Court, he has stated that negotiations for supply of material had taken place on 5.10.1995 and on the same date he had issued a cheque for Rs.80,000/- by way of advance. This is contrary to the pleaded version. This contradiction in the pleadings and the evidence lends corroboration to the testimony of the respondent-plaintiff that he had supplied the material and it was thereafter that the cheque was issued.

7. Learned counsel for the appellant has urged that the material allegedly supplied by the respondent-plaintiff consisted of *Bajri*, which is an item with regard to which sales tax is payable and also some forms under the Mining Act and Rules are required to be

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filled but no such papers were produced nor were any receipts which were supposed to have been issued to the appellant-plaintiff regarding receipt of material were produced. The non-production of the sales tax record or mining forms etc. is not relevant for deciding the present question. As regards the receipts, which were supposed to have been issued by the appellant-defendant after having received the material, the plaintiff has said that such receipts were issued and the same had been returned to the appellant-defendant when the cheque was issued on 5.10.1995. The explanation appears to be plausible.

8. For the foregoing reasons, I see no merit in the appeal. No substantial question of law arises. Hence, the appeal is dismissed.

CMP No.507/2006

Infructuous.

July 31, 2006(sd)

**(Surjit Singh)
Judge.**