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IN THE HIGH COURT OF DELHI

Judgment reserved on : September 25, 2008

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Judgment delivered on : October 20, 2008

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RFA No.215/2004

MOHINDER SINGH

..... Appellant

Through: Mr. K.C.Dua, Advocate

versus

THE NSIC LTD. & ORS.

..... Respondents

Through: Mr. Sanat Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. The present appeal under Section 96 of the Code of Civil Procedure has been preferred against the judgment and decree dated 27.01.2004 passed by the learned Trial Court wherein suit filed by the respondent No.1 company for recovery of money from appellant and respondents Nos.2 and 3 stands decreed.

2. Backdrop leading to filing of the present appeal are that the respondent No.1 company had filed a suit for recovery of Rs.3,11,459.11 together with interests and costs against the appellant and respondents Nos.2 and 3. As per the averments made in the suit, four hire purchase agreements (three agreements were dated 31.12.1987 and one agreement was dated 08.07.1991) were entered into between the respondents in respect of certain machines. The respondent No.1 company was the owner and respondents Nos.2 and 3 were the hirer of the machines. The relevant terms of the agreements were that the respondents Nos.2 and 3 were required to deposit earnest money with the respondent No.1 company and thereafter make necessary payments at regular intervals to the respondent No.1 company. The payments were required to be made either at Delhi or Ludhiana. To secure the payment under the said agreements, a contract of guarantee was entered into between the appellant who was the father of respondent No.3 and respondent No.1 company wherein the appellant undertook to make payment in case of default committed by the respondents Nos. 2 and 3 in making payment under the said hire purchase agreements. The respondent Nos. 2 and 3 defaulted in making the stipulated payment and the books of accounts of the respondent No.1 company evidences that

Rs.2,45,584.11 is due and payable against the respondent nos.2 and 3 and therefore the present suit was filed against the respondents Nos. 2 and 3 and the appellant who was the guarantor of the said respondents.

3. Respondents Nos.2 and 3 chose not to contest the suit and therefore were proceeded ex-parte by the learned Trial Court.

4. The appellant averred in his written statement that the dispute which arose between the respondents under the hire purchase agreements was settled. Pursuant to the settlement, the respondent No. 3 paid a sum of Rs.95,000/- in cash and issued three cheques in sum of Rs.35,000/- each in favour of the respondent No.1 company. With the settlement arrived at between the respondents, resulting in making of cash payment and issuance of cheques, obligations under the original hire purchase agreements stood discharged. In essence, the plea was that the settlement arrived at between the parties amounted to a new agreement between the respondents, the subject-matter of which was the performance of the settlement. Since the obligations under the original hire purchase agreements stood discharged, the contract of guarantee which was entered into between the appellant and the respondent No.1 company for securing the performance of

obligations of the respondents under the original hire purchase agreements stood terminated and therefore the appellant is not liable to pay the amount claimed by the respondent No.1 company.

5. A preliminary objection as regards the jurisdiction of courts at Delhi was also raised by the appellant on the ground that the contract of guarantee excluded the jurisdiction of courts at Delhi in as much it stipulated that the disputes arising between the parties shall be adjudicated only by the courts at Ludhiana.

6. On basis of the pleadings of the parties, following issues were framed by the learned Trial Court:-

“1. Whether this court has jurisdiction to try and entertain the present suit?OPD

2. Whether the suit is barred by limitation?OPD

3. Whether the defendant no.3 stands discharged from the surety due to novation, as so alleged in preliminary objection No.1 of the written statement?

4. Whether the suit has been signed, verified and filed by a duly authorized person? OPP

5. Whether the plaintiff is entitled for recovery of the suit amount?OPP

6. Whether the plaintiff is entitled to interest, if so, then at what rate and to what extent?OPP

7. Whether the plaintiff is entitled for the recovery of the possession of the hired machines or in the alternative for its residual value?OPP

8. Relief.”

7. At the trial, the respondent No.1 company examined one Mr.Rajeev Jain, who was the Development Officer (Law) of the respondent No.1 company and one Mr.Rajesh Kumar who was the Deputy Manager (Accounts) of the respondent No.1 company as PW-1 and PW-2 respectively. Both the witnesses deposed on the lines of the averments made in the plaint. They denied that any settlement was arrived at between the respondents. The alleged cash payment of Rs.95,000/- made by the respondent No.3 was denied. The factum of issuance of three cheques in sum of Rs.35,000/- by the respondent No.3 was admitted however it was explained that the said cheques were issued towards payments due and not towards settlement as alleged by the appellant and that the said cheques were dishonoured.

8. On behalf of the appellant, appellant himself stepped into the witness box as DW1/D3. In his testimony, he reiterated the stand taken by him in his written statement.

9. We need not note the documentary evidence led by the parties inasmuch as no serious grievance has been raised

by the appellant with regard to appreciation of documentary evidence by the learned Trial Court.

10. After considering the case set up the parties in its totality, vide judgment and decree dated 27.01.2004, the learned Trial Court decreed the suit filed by the respondent No.1 company and directed the appellant to pay a sum of Rs.2,54,584.11 to the respondent No.1 company together with interest @17% per annum from the date of filing of the suit till the date of realization.

11. The first grievance raised by the appellant is that the learned Trial Court erred in holding that the courts in Delhi have the jurisdiction to adjudicate upon the present suit.

12. The hire purchase agreements Ex.PW-1/5 to Ex.PW-1/7 stipulate that the payment which is required to be made thereunder could be made either at Delhi or Ludhiana and that courts at Delhi 'alone' shall have jurisdiction to adjudicate upon the disputes pertaining to hire purchase agreements. Whereas contracts of guarantee Ex.PW-1/9 and Ex.PW-1/10 which was executed to secure the performance of obligations arising under the hire purchase agreements stipulated that payment could be made at Ludhiana and courts at Ludhiana 'alone' shall have jurisdiction to adjudicate upon the disputes pertaining to contract of guarantee.

13. The dispute raised by the respondent No.1 company in the suit related to performance of obligations under the hire purchase agreements whereas defence taken by the appellant was the termination of the contract of guarantee due to discharge of obligations under the hire purchase agreements due to settlement arrived at between the parties. Therefore, in essence, the dispute in the suit pertains to performance/discharge of obligations under the hire purchase agreements and not to contract of guarantee and thus had to be adjudicated upon by the courts at Delhi as per stipulation in the hire purchase agreements. The stipulation in the contract of guarantee pertaining to exclusive jurisdiction of courts at Ludhiana would have come into play only when dispute pertained to contract of guarantee.

14. Even otherwise, the courts at Delhi would have had jurisdiction irrespective of stipulation of jurisdiction of Delhi courts in hire purchase agreements as the payment under the hire purchase agreements could have been made either at Delhi or Ludhiana. It is settled law that part of cause of action arises at a place where money is expressly or impliedly payable under a contract. (See the decision of the Hon'ble Supreme Court reported as **ABC Laminart Pvt Ltd v AP Agencies, Salem** AIR 1989 SC 1239)

15. The second grievance raised by the appellant is that the learned Trial Court has not correctly appreciated the law relating to discharge of obligations under the contract due to an accord.

16. We need not catena of authorities on the issue save and except the decision of this court reported as **Jindal Aromatic v South Coast Spices Exports Pvt Ltd** 106 (2003) DLT 798 wherein the law relating to discharge of a contract due to an accord was summarized as under:-

“The legal position which emerges from the aforesaid judgment is that an accord discharges the performance of obligations under the contract. A dispute pertaining to satisfaction furnishes a fresh and independent cause of action, until and unless it is provided that the performance of the satisfaction was a condition precedent for discharge under the contract. If promise is received in satisfaction, it is a good satisfaction, but if the performance and not the promise is intended to operate in satisfaction, then there will be no satisfaction without performance. Wherever there is an accord, obligations under the original contract would be discharged until and unless it is specifically provided that the performance of satisfaction would discharge the obligations under the contract.” (Emphasis Supplied)

17. In a given case, whether a promise or performance thereof is intended to operate as satisfaction would depend upon the pleadings of the parties, evidence led and other facts and circumstances of the case.

18. In the instant case, the circumstance that no document recording the alleged satisfaction/settlement was executed by the parties is strongly suggestive of the fact that the performance of the alleged satisfaction/settlement was a condition precedent for discharge of obligations under the hire purchase agreement.

19. In such circumstances, it cannot be held that alleged cash payment of Rs.95,000/- and issuance of cheques by the respondent no.3 has discharged the obligations under the hire purchase agreement and has resulted in termination of the contract of guarantee.

20. There is yet another aspect of the matter.

21. In reply to the defence set up by the appellant, the respondent No.1 company categorically pleaded that the cheques were issued by the respondent no.3 towards the due payment and not towards settlement as alleged by the appellant. The factum of cash payment of Rs.95,000/- by the respondent No.3 was denied by the witnesses of the respondent No.1 company in their testimony. The letter dated 01.02.2000 Ex.DW-3/3 issued by the respondent No.1 company and addressed to respondent No.3 records that the cheques in question were issued by the respondent No.3 towards discharge of his liability under the hire purchase agreements.

22. Appellant has led no evidence to establish that the cash payment of Rs.95,000/- was made by the respondent No.3 or that the cheques in question were issued by the respondent No.3 towards settlement arrived at between the parties and not towards due payment under the hire purchase agreements. Few letters written by the appellant to the respondent No.1 company recording that the cash payment of Rs.95,000/- was made by the respondent No.3 or that cheques in question were issued by the respondent No.3 towards settlement arrived at between the parties has been produced in evidence by the appellant. Nothing much turns on said letters as they are self-serving documents.

23. It is further relevant to note an interesting feature of the testimony of the appellant. In his testimony as DW1/D3, the appellant, had first deposed that the factum of settlement of dispute between the respondents was told to him by respondent No.3 and had later on deposed that he is not on talking terms with the respondent No.3.

24. If the appellant was not on talking terms with the respondent No.3 then how come the respondent No.3 told him about the factum of settlement of dispute between the respondents, remains a mystery?

25. The appellant had set up the plea of settlement of

dispute between the respondents, therefore, the onus of proving the same was upon him which onus has not been discharged by him.

26. For the reasons stated above, we find no merits in the appeal.

27. In the result, the appeal is dismissed with costs.

28. TCR be returned.

PRADEEP NANDRAJOG, J.

J.R.MIDHA, J.

October 20, 2008
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