

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 546/2004**

M/S.JAY RAPID ROLLERS LTD. (THRU' ITS LIQUIDATOR)

..... Appellant

Through: Mr.S.K.Luthra, Adv. for Official Liquidator.

versus

M/S. MODERN PIPE COMPANY

..... Respondent

Through: Mr.R.K.Jain, Adv.

DATE OF DECISION:

% 19.09.2008

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. (Oral)

CM Nos.13105-13106/2004

1. Delay in filing the appeal as also delay in re-filing the appeal is condoned.

2. The 2 applications stand disposed of.

CM Nos.13108/04 and 1589/2006

The 2 applications are disposed of as infructuous for the reason the appeal is being heard for final disposal today itself.

RFA No.546/2004

1. The appellant has failed to secure a favourable order in the suit filed by the respondent under Order 37 of the Code of Civil Procedure 1908.

2. Application seeking leave to defend filed by the appellant has been found to be without any merit. It has been held that the projected defence was frivolous, vexatious, tainted and mala fide.

3. Respondent's suit was predicated on a cheque drawn on the account of the appellant maintained with the Oriental Bank of Commerce, Industrial Finance Branch, New Delhi. The cheque dated 31.8.1999 is in sum of Rs.3,08,794.20. It has been drawn in favour of the respondent

and has been signed by the Managing Director of the appellant.

4. The cheque was returned dishonoured by the banker when presented for encashment.

5. Seeking leave to defend, the appellant projected a defence as under:-

“6. That the delay of one day if at all it can be said that there is a delay, is not at all intentional, even on the facts and merits of the case, no case is made out in favour of the plaintiff and against the defendant as the defendant submits that only a sum of Rs.67,000/- is due and payable by the defendant to the plaintiffs and the plaintiffs have misused the Cheque which was left with the Defendants which was duly signed by the Managing Director of the Defendant Company and the Purchaser Manager of the Defendant Company after buying the material forgot to fill-up the exact amount and left the blank signed cheque with the plaintiff, it is pertinent to mention that the said cheque has been filled-up later fraudulently by the Plaintiff's to the tune of the said amount.”

6. Learned Trial Judge has held that the defence projected is without any substance for the reason it was not believable that the Purchase Manager would have left the cheque blank after purchasing the goods.

7. We may only further state that if the appellant had purchased goods worth only Rs.67,000/-, reference ought to

have been made by the appellant to the bill under which goods worth only Rs.67,000/- were purchased; the bill could have been produced.

8. Under Section 118 of the Negotiable Instruments Act 1882, a statutory presumption arises that a cheque is for valuable consideration.

9. Under the law, a presumption arises that a negotiable instrument is duly drawn before it is signed.

10. We find the assertion in the application seeking leave to defend that goods were purchased only in sum of Rs.67,000/- is unsupported with any material particulars pertaining to the bill raised by the respondent while selling the goods.

11. We further note that it was not pleaded in the application seeking leave to defend that in the books of account of the appellant an entry in sum of Rs.67,000/- was made pertaining to the cheque in question and relatable to the alleged purchase of goods worth Rs.67,000/-.

12. We concur with the view taken by the learned Trial

Judge that no plausible defence has been projected.

13. The appeal is dismissed.

14. Since the appeal has been dismissed the decree obtained by the respondent would become executable. We note that pursuant to orders passed in C.R.No.954/2001 between the parties, and pertaining to the instant suit, appellant had deposited 50% of the decretal amount with the learned Trial Judge.

15. Learned counsel for the appellant states that since the appellant company is in liquidation, the amount cannot be released to the respondent whose remedies are stated to be to stand in a queue along with other unsecured creditors and receive payment under the decree as and when the official liquidator invites claims and declares the dividend.

16. It is not in dispute that 50% of the decretal amount was secured before the appellant company went into liquidation. Thus, we are of the opinion that the said amount has to be released in favour of the respondent.

17. We direct the learned Trial Judge to release the 50%

of the decretal amount along with interest to the respondent.

18. No costs.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

SEPTEMBER 19, 2008
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