

IN THE HIGH COURT OF DELHI

CRP No.1/2007

Sh.Shyam Goenka Petitioner
! through: Mr.S.K.Anand, Advocate

VERSUS

\$ Zevrat Premsons (India) Pvt.Ltd. Respondent
^ through: Mr.R.K.Singla, Advocate

% DATE OF DECISION: 07.03.2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

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)

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1. The petitioner impleaded as defendant is aggrieved by an order dated 9.11.2006. The order has disposed of an application filed by the petitioner seeking leave to defend. Holding that the application seeking leave to defend discloses no triable issue and hence was liable to be dismissed, surprisingly enough, learned Trial Judge concluded the order by requiring the plaintiff to prove its case.

2. It is urged in the petition that there is a hiatus in the reasoning and the concluding part of the impugned order.

3. I would have expected the plaintiff of the suit to have come to this Court with tears in his eyes in as much as, after holding that the defendant failed to project a case which entitled it to leave to defend, it was the plaintiff who was still called upon to lead evidence. Be that as it may, since the defendant approached this Court, noting the apparent conflict in the reasoning and the conclusion in the impugned order, notice was issued.

4. In the interregnum, the learned Trial Judge realised the apparent error committed and rectified the error by recalling the concluding part of the impugned order requiring plaintiff to prove the case. The result was that the suit was decreed.

5. Accordingly, instant petition has been considered with reference to, as if, vide impugned order the leave to defend has been declined. The concluding direction in the impugned order has been ignored.

6. Before merits of the controversy are being considered, an order dated 10.12.2007 passed by the learned Metropolitan Magistrate where under a dispute pertaining to the cheque which has been referred to in the plaint has been

compounded is being noted. The order passed by the learned Metropolitan Magistrate reads as under:-

“10.12.07

Present: Complainant alongwith counsel
Sh.R.K.Singhla
Accused alongwith counsel
Sh.S.K.Anand

An application for cancellation of NBW has been moved.

After negotiating and consulting between the parties following agreement has been reached between the parties.

1) That accused shall pay 12 months installment in the sum of Rs.ONE LAC each. This amount shall be adjusted in final payment to be made by the accused to the complainant as per the final decision of the Civil recovery suit. It is jointly stated at bar by both the sides that matter is coming on 6.3.08 in revision before Hon'ble High Court of Delhi/Civil court. Accused has paid a sum of Rs.ONE LAC today in cash to the complainant.

2) In view of the above agreement the NBW stands canceled. Signatures of both the sides identified by their advocates is taken on this ordersheet. This order has been passed with consent of both the parties as well as their counsels.

It is also agreed between the parties that the complainant upon receiving the actual amount to be paid alongwith interest shall return the dishonoured cheques also the criminal cases and civil suit then stands disposed. The accused shall also withdraw the criminal cases, if any filed against the complainant. It is also stated by the accused that he had also given five cheques on 22.5.07 out of two

cheques of Rs.25,000/- each have been honoured and three cheques of Rs.FIVE LAC, FIVE LAC AND NINE LAC were dishonoured.

Put up for payment of the next installment on 10.1.08.

It is made clear to the accused that in case of absence of the accused he should sent the installment amount and in case in default the payment the whole compromise is over. In view of the above submissions NBW against accused stands canceled.

Accused is admitted to court bail on his furnishing P/B and S/B in the sum of Rs.25,000/-. B/B furnished and accepted.

Copy of this order be given dasti to both the sides.”

7. Learned counsel for the petitioner accordingly prays that in view of the settlement between the parties the impugned order be set aside leaving it open to the learned Civil Judge to decide the controversy whether even principal amount is payable. Learned counsel for the respondent disputes the tenor of the settlement as is sought to be projected and urges that the settlement before the learned Metropolitan Magistrate pertained only to the adjudication of the interest claimed in the suit and not the principal sum.

8. The principal sum claimed in the suit and indeed in respect whereof a cheque has been issued is Rs.11,99,929/-. I note that the cheque has been issued in sum of Rs.12 lacs.

9. Prima facie, the settlement between the parties concludes the issue of liability of the principal sum payable. It has to be restricted to the claim for interest.

10. I now revert to the merits of the impugned order.

11. The plaintiff filed a suit against the petitioner claiming a decree in sum of Rs.17,39,929/-. Summary remedy was invoked. The suit was predicated on an invoice/bill No.200 dated 22.10.2002. It was further alleged that in partial payment of the bill, 2 cheques bearing No.177148-49 dated 10.4.2003 and 10.5.2003 respectively, each in sum of Rs.4 lacs were issued by the petitioner. That the cheques were dishonoured. That thereafter petitioner issued another post dated cheque No.582275 dated 8.11.2003 in sum of Rs.12 lacs to clear the entire payment under the bill. It was further pleaded that the gold ornaments under the bill were duly received by the petitioner evidenced by the endorsement on the bill under the signatures of the petitioner recording: '*received goods.*'

12. It was stated that the cheque in sum of Rs.12 lacs when presented for encashment was returned by the banker with the remarks 'insufficient funds'. Interest was claimed in the suit @ 18% p.a. from the date of the bill.

13. Seeking leave to defend a fairly interesting defence

was projected. Pertaining to the 2 cheques issued in sum of Rs.4 lacs it was pleaded as under :-

“G. That the defendant has given very good business to the plaintiff and therefore the plaintiff developed close relation with defendant. The plaintiff requested the defendant to give some cheque to obtain some credit from the bank/financing institution. The defendant, being in good faith and with the motive to promote plaintiff, gave the cheques No.177148 dated 10.4.03 and 177149 dated 10.5.03 for Rs.400000/- each without any legal liability.”

14. Pertaining to the cheque in sum of Rs.12 lacs it was pleaded as under :-

“Thereafter again the plaintiff requested the defendant for giving one cheque and the defendant gave cheque No.582275 dated 8.11.03 for Rs.1200000/-without any legal liability. The said cheques were never given for repayment of dues and same do not corroborate with the bill amount. Thereafter the defendant requested the plaintiff for business favour and the plaintiff denied doing any thing for defendant. The defendant requested the plaintiff to return said three cheques but the plaintiff denied on the plea of misplacement of the same. The plaintiff threatened the defendant to teach lesson in future. The plaintiff has filed the present case. The plaintiff also received advance money by cheque. Statement of account is annexed.”

15. Pertaining to the bill No.200 dated 22.10.2002, admitting receipt of the goods under the bill as also the correctness of the bill defence taken was as under :-

'That the defendant has paid the cost of

articles under the bill No.200 dated 22.10.2002 to the plaintiff in cash and adjustment of previous credits. There is no outstanding dues against the defendant.'

16. Suffice would it be to record that on what date cash was paid and in what amount, none has been stated. What were the previous credits and in what manner have been adjusted, none has been disclosed. The story of return is thus but a moon shine.

17. The issuance of the cheques in sum of Rs.4 lacs and 12 pacs, as pleaded, is obviously also a moonshine.

18. As noted from the pleadings of the defendant pertaining to the 3 cheques it has to be noted that according to the defendant the cheques were issued to enable plaintiff to obtain credit from a bank/financial institution.

19. How does one obtain a credit from a bank or other financial institution on a cheque? Obviously by discounting the same. When a post dated cheque is issued, a banker or a financial institution purchases, by way of negotiation, the cheque and pays immediate money to the holder of the cheque. In the instant case, the cheques were not post dated. I fail to understand as to in what manner the holder of the cheque in due course would obtain any credit from a banker. Why should a banker purchase the cheque which is already

payable on demand? Obviously, the defence is a complete moonshine.

20. Under the circumstances the amount payable under the bill has to be paid and for that no triable issue has been raised.

21. It may be noted that the defence that a bill cannot constitute a written agreement between the parties for the purposes of maintainability of a suit under Order 37 CPC has been repelled by the court concerned with reference to judicial pronouncements. Indeed, a bill which is acknowledged by a defendant constitutes a written contract/agreement between the parties and can form the foundation of a suit under Order 37 of the Code of Civil Procedure.

22. I refrain from opining on the issue of interest for the reason parties have agreed before a learned Metropolitan Magistrate that issue of interest may be decided by the learned Trial Judge. I note that the criminal complaint related to the cheque in sum of Rs.12 lacs referred to in the plaint.

23. In harmony with the order passed by the learned Metropolitan Magistrate on 10.12.2007 I accordingly dispose of the petition setting aside the impugned order dated 19.11.2006 and dispose of petitioner's application seeking leave to defend granting limited leave to defend, in that, the

defendant would be entitled to defend the suit and litigate only with respect to the interest payable and rate thereof.

24. I record that no case is made out for granting leave to defend pertaining to the principal sum payable under the bill. I further record that the settlement before the learned Metropolitan Magistrate concludes the liability of the petitioner to pay the principal sum of Rs.12 lacs.

25. Needless to state, the consequential decree passed by the learned Trial Judge would be limited to the principal sum of Rs.12 lacs. Only issue of interest would be gone into.

26. I further record that the decree pertaining to Rs.12 lacs be not executed till the period of one year lapses as per the compromise between the parties.

27. Parties are directed to appear before the learned Trial Judge on 30.4.2008.

28. No costs.

March 07, 2008
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PRADEEP NANDRAJOG, J.