

i.5

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Order: 06.11.2008

+

RFA 267/2007

NISHA AGGARWAL Appellant

Through: Mr. K.A.Singh, Adv. for
Mr. Sandeep Aggarwal, Adv.

versus

VIPESH SHAH & ORS. Respondents

Through: Mr. Dhruv Wahi with Mr. Vikram
Singh, Advocates for R- 2 & 3

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)

1. Vide impugned order dated 5.3.2005 plaintiff has been rejected holding that the appellant has not been able to show any cause of action viz-a-viz defendant No.2 and 3 much less at Delhi.

2. Defendant No.2 and 3 are Barclays Bank,

Birmingham Trade Center, United Kingdom and Barclays Bank, Willesden & Notting Hill Branch respectively.

3. Defendant No.1 is Vipesh Shah.

4. Suit filed by the appellant seeks damages in sum of £11,005/- together with interest @24% per annum.

5. It is stated in the plaint that the appellant is the proprietor of Navlakshmi Exports and defendant No.1 Vipesh Shah is carrying on business under the name and style of 'Natural Giftware' and is based in the United Kingdom. It is stated that defendants 2 and 3 are the bankers of Vipesh Shah. Stating that the appellant and Vipesh Shah entered into a contract requiring appellant to supply furnishing items to Vipesh Shah it is pleaded that after completing the requisite formalities the goods to be sent to Vipesh Shah were shipped on 22.3.1999 and that on 7.4.1999, along with a covering letter, plaintiff forwarded the documents pertaining to the export consignment to its banker namely Punjab National Bank to be forwarded to defendant No.3 with instructions that the documents should be handed over to defendant No.1 i.e. Vipesh Shah on acceptance of bill of exchange on 40 days

credit from date of bill of lading dated 27.3.1999.

6. Further pleading made are that the banker of the plaintiff i.e. Punjab National Bank transmitted the documents to defendant No.3 and that Vipesh Shah managed to obtain the documents and armed with the same got released the consignment at the port of destination and did not remit any money resulting in the plaintiff suffering a loss of the value of the consignment.

7. In para 34 of the plaint it is pleaded as under:-

“That the defendant No.2 and 3 being the bankers of defendant No.1 were under a moral obligation to collect the consignment consideration from defendant No.1. Since defendant No.2 and 3 had miserably failed in their duties, the plaintiff through its counsel on 15.3.2000 sent a legal notice calling upon the defendants No.2 and 3 to pay to the plaintiff the export consideration.”

8. Suffice would it be to state, and as per the legal knowledge of this Court, the only concept of a legally enforceable moral obligation is under Hindu law as per which a son owes an obligation to clear the pious debts of his father. The law of contract does not envisage any moral obligation of any party.

9. Be that as it may, from a perusal of the plaint and in

particular para No.12 which reads as under:-

“That on 07.04.99, the plaintiff alongwith its covering letter forwarded the entire export consignment documents amounting to Pd.Str.13,088/- to their bankers namely Punjab National Bank, Shakti Nagar Branch, Delhi 110007 to be forwarded to Barclays Bank, Willesden & Notting Hill Branch, P.O.Box: 3750, London NW 10 6 AQ, United Kingdom, the bankers of the defendant no. 1, with instructions that the documents will be handed over to the defendant no. 1 on acceptance of the Bill of Exchange for 40 days credit from the day of bill of lading dated 27.03.99.”

the inevitable conclusion is that the case pleaded in the plaint is that defendant No.3 was to deliver the documents to defendant No.1 provided he accepted the bill of exchange which had a 40 days credit.

10. Having herself pleaded so in the plaint, the plaintiff can make no grievance if the defendant No.3 bank handed over the documents to defendant No.1 without realizing the value of the export consignment.

11. Learned counsel for the appellant i.e. the plaintiff has not been able to show any pleading in the plaint much less a document wherefrom it could be gathered that defendant Nos.2 and 3 were obliged under the transaction to ensure that defendant No.1 paid for the consignment.

12. In this connection, the documents filed by the plaintiff and relied upon may be noted. The bill of exchange dated 27.3.1999 referred to in the plaint and drawn by the appellant i.e. the plaintiff reads as under:-

“BILL OF EXCHANGE

After 40 days from the date of Bill of Lading i.e. 27/3/99 pay this first/second being unpaid bill of Exchange to the order of Punjab National Bank, New Delhi amounting to GBP 13088.00 (Pond Sterling Thirteen thousand Eighty eight pond only) value received against Invoice No.NLE-007/98-99 Dated 5/3/99 for GBP 13088.00 against Bill of Lading No. MUM/019282 Dated 27/3/99 and Invoice NLE 007 Dated 5/3/99.

To
NATURAL GIFTWARE
29 ST Pauls Avenue
Kenton Harrow
Middlesex HA 3 9 PR

FOR NAV LAKSHMI EXPORTS

Sd/

AUTHORISED SIGNATORY”

13. The letter dated 7.4.1999, under the caption *“Forwarding of consignment of export documents to U.K”* written by the appellant to its banker i.e. Punjab National Bank, reads as under:-

"To,
The Manager
Punjab National Bank,
Shakti Nagar,
Delhi-110007.

Ref:- Forwarding of Consignment of export
Document to U.K.

Dear Sir,

You are requested to forward the following export consignment document amounting to GBP 13088.00 (Great Briteen Pond, Thirteen thousand eighty eight ponds only).

BARCLAYS BANK
WILLESDEN & NOTTING HILL BRANCH
P.O. Box 3750
LONDON NW 10 6 AQ
A/C No. 90302899
Sort Code – 20-96-55.

With the instructions that document will be handed over to the company namely NATURAL GIFTWARE 29 ST PAULS AVENUE KENTON, HARROW MIDDLESEX HA 3 9PR On Acceptance of Bill of Exchange for 40 days from the date of Bill of Lading No.MUM/019282 dt. 27/3/99.

Encls:-
EXPORT CONSIGNMENT DOCUMENTS

1.	Invoice No.007 Dt. 5/3/99	7 Copies
2.	Packing List dt. 5/3/99	4 Copies
3.	G.S.P. Certificate Dt. 17/3/99	3 Copies
4.	Handloom Certificate Dt.16/3/99	3 Copies
5.	Certificate OrignDt.16/3/99	3 Copies
6.	Purchase order Dt.8/2/99	1 Copies

7. Bill of Lading No. MUM/019282 3 Original
/3 Photocopy
Dt.27/3/99 Non-negotiable
8. Bill of Exchange Dt.27/3/99 3 Copies
9. GR No.AP 959969 Dt.5/3/99 1 Original
/1 Photocopy
10. TPO of Rs.500/- Dt. 7/4/99

Do the needful & oblige.

Thanking you,

Yours faithfully,
For M/s NAV LAKSHMI EXPORTS

Sd/-

AUTHORISED SIGNATORY”

14. The communication transmitted by the Punjab National Bank to defendant No.3 inter alia contains the following instructions:-

“Delivered documents against acceptance”

15. It also contains the following special instructions:-

“Please acknowledge receipt of document.

Kindly confirm due date of payment as 5.5.1999.

Under UCC publication 522 (1993 revised).

If documents remain unpaid by the due date of payment. Kindly return the same.”

16. Letter dated 7.4.1999 relied upon by the

plaintiff/appellant, reference whereof has been made in the plaint, makes it clear that the instructions issued to the defendants No.2 and 3 were to hand over the documents to Natural Giftware on acceptance of bill of exchange which was raised on 40 days credit from the date of bill of lading. Thus, the appellant/plaintiff cannot make out any case against defendants 2 and 3. Indeed, the suit against said defendants is a frivolous suit and appears to have been filed to arm-twist said defendants inasmuch as defendant No.1 is beyond the reach of the plaintiff.

17. We find no infirmity with the view taken by the learned Trial Judge.

18. For predicating a frivolous cause and harassing defendants 2 and 3 we impose exemplary cost in sum of Rs.50,000/- against the appellant and in favour of respondents 2 and 3.

PRADEEP NANDRAJOG, J.

J.R.MIDHA, J.

**NOVEMBER 06, 2008
mm**