

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 376/2007

UPS JETAIR EXPRESS PVT LTD Appellant
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Advs.

versus

K.L.MAHAJAN & SONS & ANR Respondents
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

+ RFA 377/2007

UPS JETAIR EXPRESS PVT LTD Appellant
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Advs.

versus

WASAN EXPORTS & ANR Respondents
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

+ RFA 378/2007

UPS JETAIR EXPRESS PVT LTD Appellant
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Advs.

versus

SUMNESH AGGARWAL & ANR. Respondents
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

+ RFA 379/2007

UPS JETAIR EXPRESS PVT LTD Appellant
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,

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Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

Mr.Rayner Vishal Dass, Adv.

versus

B.D.MAHAJAN & SONS PVT. LTD. & ANR Respondents
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

+ RFA 381/2007

UPS JETAIR EXPRESS PVT LTD Appellant
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Adv.

versus

CHADHA SPORTS & ANR Respondents
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

+ RFA 382/2007

UPS JETAIR EXPRESS PVT LTD Appellant
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Adv.

versus

MAXWELL EXPORTERS & ANR. Respondents
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

+ RFA 391/2007

SUMNESH AGGARWAL & ANR. Appellants
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

versus

UPS JETAIR EXPRESS PVT LTD Respondent
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Adv.

+ RFA 393/2007

R.K.INTERNATIONAL & ANR. Appellants
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

versus

UPS JETAIR EXPRESS PVT LTD Respondent
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Adv.

+ RFA 394/2007

CHADHA SPORTS & ANR. Appellants
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

versus

UPS JETAIR EXPRESS PVT LTD Respondent
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Adv.

+ RFA 395/2007

B.D.MAHAJAN & ANR. Appellants
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

versus

UPS JETAIR EXPRESS PVT LTD Respondent
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Adv.

+ RFA 398/2007

K.L.MAHAJAN & ANR. Appellants
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

versus

UPS JETAIR EXPRESS PVT LTD Respondent
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Adv.

+ RFA 399/2007

SUMNESH AGGARWAL & ANR. Appellants
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

versus

UPS JETAIR EXPRESS PVT LTD Respondent
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Adv.

+ RFA 380/2007

UPS JETAIR EXPRESS PVT LTD Appellant
Through: Mr.Suhail Dutt, Mr.Vibhu Shankar,
Mr.Rayner Vishal Dass, Adv.

versus

R.K.INTERNATIONAL & ANR. Respondents
Through: Mr.Manish Gandhi, Adv. and
Mr.N.K.Verma, Adv.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
26.08.2008

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1. It is an unfortunate situation but it cannot be helped. Due to a total non-focused approach neither relevant issues have been framed nor proper evidence has been

brought on record. There has been occasioned a total miscarriage of justice.

2. Lest parties are prejudiced at the re-trial which would have to be held, learned counsel for the parties jointly pray that their consent may be recorded and impugned judgment and decree dated 29.3.2007 which are a subject matter of challenge in the appeals may be set aside with matter remanded for fresh trial in accordance with law after resettling the issues.

3. It may be noted that the contesting parties in RFA No.376/2007 and RFA No.398/2007 are the same. The cross appeals arise out of the same judgment and decree dated 29.3.2007 disposing of Suit No.114/2006. We further note that the contesting parties in RFA No.378/2007 and RFA No.391/2007 are the same. Both appeals are in the nature of cross appeals. They challenge the judgment and decree dated 29.3.2007 disposing of Suit No.69/2006. We further note that the contesting parties in RFA No.379/2007 and RFA No.395/2007 are the same. Both appeals are in the nature of cross appeals. They challenge the judgment and decree dated 29.3.2007 disposing of Suit No.115/2006. We note that the contesting parties in RFA No.381/2007 and RFA No.394/2007

are the same. Both appeals are in the nature of cross appeals. They challenge the judgment and decree dated 29.3.2007 disposing of Suit No.70/2006. We note that the contesting parties in RFA No.382/2007 and RFA No.399/2007 are the same. Both appeals are in the nature of cross appeals. They challenge the judgment and decree dated 29.3.2007 disposing of Suit No.67/2006. We note that the contesting parties in RFA No.380/2007 and RFA No.393/2007 are the same. Both appeals are in the nature of cross appeals. They challenge the judgment and decree dated 29.3.2007 disposing of Suit No.71/2006.

4. We note that in RFA No.377/2007 there is no cross appeal by the respondent.

5. UPS Jetair Express Pvt. Ltd. was a defendant in 7 suits filed by the respondents of RFA Nos.376 to 382 of 2007 and RFA No.380 of 2007. Partial claims were decreed in the suits. UPS Jetair Express Pvt. Ltd. has challenged the part of the decree against it where claims have been decreed against it. The appellants of other appeals have challenged the part of the decree where their claims have not been allowed.

6. In all the suits nature of transactions were the same, being entrustment of goods by the plaintiffs of the suit

to UPS Jetair Express Pvt. Ltd. for delivery at the place of destination in USA. Claims were made for violation of the contract between the parties and damages resulting thereupon.

7. Issues framed in the suits are identical and most unhappily worded. The issues read as under:-

"1) Whether the suit is bad for the privity of contract?OPD

2) Whether the suit is bad for suppression of material facts?OPD

3) Whether the suit is bad for not being filed by authorized person?OPD

4) Whether the suit is bad for not being properly valued?OPD

5) Whether the plaintiff is entitled for recovery of the suit amount, if so, what sum?OPP

6) Whether the plaintiff is entitled for interest, if so, at what rate and for which period?OPP

7) Relief."

8. To any reader the inappropriateness of the issues is writ large.

9. Qua Issue No.1 we fail to understand how can a suit be bad for privity of contract.

10. From the pleadings of the parties we note that the

defence was predicated on lack of privity of contract between the defendant and plaintiff No.1 of each suit. On said pleadings the appropriate issue, if at all required to be framed should have been: Whether there is no privity of contract between the defendant and the plaintiff No.1. If yes, to what effect?

11. What is the relevance of issue No.2?

12. Suits were for recovery. The suits were not where the discretionary jurisdiction of the Court was invoked. Thus, irrespective of any suppression, the maintainability of the suit could not be questioned. That apart, we do not understand as to how can a suit be bad for suppression of material facts.

13. If claim relates to the discretionary jurisdiction of the court and if it is pleaded in defence that the plaintiff has suppressed material facts, the issue to be framed has to be worded as: 'Whether the plaintiff is not entitled to any relief on account of suppression of material facts? OPD'

14. On Issue No.3, suffice would it be to note that a suit cannot be bad for not being filed by an authorized person. No suit can be good or bad. If the authority of the person instituting the suit is in question the correct issue to be framed is: 'Whether the suit has been validly instituted and whether

the plaint has been signed and verified by a duly authorized person? OPP'

15. On Issue No.4 suffice would it be to note that no suit can be bad for not being properly valued. If valuation of a suit and court fee paid is a matter in issue, the proper issue to be framed is: 'Whether the suit has not been valued correctly for the purposes of jurisdiction and court fee? If yes, to what effect. OPD.' If the issue relates only to the payment of court fee, the proper issue to be framed should be: 'Whether the plaint is liable to be rejected on account of deficient court fee? OPD'

16. We have commented on issues No.1 to 4 to bring home the callous manner in which the learned Trial Judge has framed the issues and the inappropriate language used while framing the issues.

17. But, what is more relevant is that the real issues which has arisen between the pleadings of the parties have not been framed.

18. We do not give our justification for the same because learned counsel for the parties do not desire as they fear that anything stated by us may inadvertently prejudice their case. Parties desire that their consent be recorded to set

aside the impugned judgments and decrees in challenge in the afore-noted appeals; suits be restored for de-novo trial ignoring the existing evidence after framing appropriate issues.

19. We accordingly allow all the appeals and set aside the impugned judgments and decrees dated 29.3.2007 in all the appeals.

20. As agreed between learned counsel for the parties following issues are framed in all the suits.

"1) Whether there is no privity of contract between plaintiff No.1 and the defendant? If yes, effect thereof? OPD.

2) Whether the suit has been instituted under valid authorization and whether the plaint has been signed and verified by a duly authorized person?OPP

3) Whether the defendant is in breach of its contractual obligations under the contract between the parties as alleged in the plaint?OPP

4) If issue No.3 is decided against the plaintiff, whether the defendant is guilty of negligence as pleaded in the plaint? If yes, to what effect?

5) Whether the plaintiff is entitled to the sum claimed in the plaint?OPP

(N.B.: This issue would include determination of the defence of liability being limited as pleaded in the written statement.)

6) Whether the plaintiff is entitled to any interest from the defendant? If yes, at what rate and for

what period.

7) Relief."

21. Before concluding we may note that pertaining to general damages claimed in the suits filed by the plaintiffs, findings have been returned by the learned Trial Judge, which we direct, by consent of parties, would not be treated as binding. Since fresh evidence would be led, the learned Trial Judge who has to re-decide the suits would take a decision uninfluenced by any finding returned in the impugned decisions.

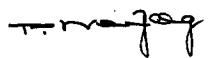
22. We request the learned Trial Judge who has to re-decide the matter to expedite the trial of the suits and make an endeavour to dispose of the same as early as possible.

23. Parties are directed to appear before the learned Trial Judge on 1.10.2008.

24. One further direction is being issued with consent of the parties. UPS Jetair Express Pvt. Ltd. has deposited the decretal amount as per decree passed against it in the appeals filed by it. This decretal amount would be retained if UPS Jetair Express Pvt. Ltd. does not furnish security in the amount deposited by it to the satisfaction of the learned Trial Judge. If it furnishes security of the amount deposited paid, security

being to the satisfaction of the learned Trial Judge, on receipt of security UPS Jetair Express Pvt. Ltd. would be permitted to receive back the amount deposited by it.

25. No costs.
26. TCR be returned through special messenger.
27. Dasti to learned counsel for the parties.


PRADEEP NANDRAJOG, J.


SUNIL GAUR, J.

AUGUST 26, 2008
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+ RFA 378/2007

SUMNESH AGGARWAL & ANR. Respondents
Through : Mr. Manish Gandhi, Adv.

ORDER
18.08.2011

1. The parties have jointly filed the application for a direction for release of the amount deposited by the appellant in terms of the orders dated 23rd July, 2007 and 4th December, 2007.

RFA No. 378/2007

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3. In the facts and circumstances of these cases, the applications are allowed and the Registrar General is directed to release a sum of Rs.2,14,285/- to respondent No.2. The remaining amount along with interest accrued on the total amount deposited by the appellant be released to the appellant.

4. CMs disposed of.

5. Copy of this order be given 'Dasti' to learned counsels for both the parties under signature of Court Master.


J.R. MIDHA, J.

AUGUST 18, 2011
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