

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

% *Date of Judgment : 12.11.2010*

+ **RSA No.126/2010**

M/S PARADISE FOAM INDUSTRIES .....Appellant

Through: Mr.Sandeep Sharma, Advocate.

Versus

M/S PRAKASH ROADLINES, LTD & ANR. ....Respondents.

Through: Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

**INDERMEET KAUR, J. (Oral)**

1. This appeal has impugned the judgment and decree dated 18.3.2010 which had endorsed the finding of the Trial Judge dated 13.8.2009 whereby the suit of the plaintiff M/s Paradise Foam Industries Ltd. had been dismissed.

2. The plaintiff was the consignee; defendant no.1 was the common carrier; defendant no.2 was the consignor. On 18.4.1999 defendant no.2 had booked goods through defendant no.1 consisting of nine bundles of rubber foam vide consignment note 1239820. The agreed amount as per the plaintiff were freight charges of Rs.3660/-; as per the defendant no.1 it was Rs.5660/-. The consignment reached Delhi in May 1999. Delivery was not taken by the plaintiff as dispute had arisen about the freight

charges. Plaintiff had accordingly filed this present suit for damages.

3. The body of the appeal has not formulated any substantial question of law. This has been recorded in the order dated 18.8.2010. Time had been granted to the appellant to file additional affidavit incorporating his substantial questions of law. The additional affidavit filed by the appellant on 09.11.2010 has formulated six questions. They have been framed as questions of law and not as substantial questions of law which is the mandate of Section 100 of the Code of Civil Procedure (hereinafter referred to as the "Code").

4. Be that at it may, the oral submission on behalf of the appellant urged have been appreciated. It has been pointed out that the finding on issue no.3 was in favour of the plaintiff; the defendants could not have asked for an enhanced freight and this issue was decided against the plaintiff. The findings qua issues no.2 and 4 thus become contrary, as while disposing of these issues, it was held that the suit is not maintainable as no cause of action has accrued in favour of the plaintiff. This goes against the tenor of the decision on issue no.3.

5. The finding of the Trial Judge in this regard inter alia reads as follows:

".....

The onus to prove these issues was upon the plaintiff. It is pleaded by the plaintiff that the defendant no.2 booked some goods to the defendant no.1 for Delhi. The charges were fixed at Rs.3660/-. That on 22/5/99 when the AR of the plaintiff went to the defendant no.1, without assigning any reason, he refused to deliver the goods. Thereafter a legal notice dated 24/05/99 was sent to the defendant no.1 which was duly replied by the

defendant no.1 asking the plaintiff to pay Rs.5660/-. It is also pleaded by the plaintiff that despite his best efforts, the defendant no.1 failed to perform its part of contract.

8. The plaintiff filed the copy of the notice dated 24/05/99 Ex.PW-1/3, the copy of the reply dated 07/6/99 Ex.PW-1/4 and the copy of second legal notice dated 22/11/99 Ex.PW-1/6, and the reply dated 02/12/99 Ex.PW-1/7. The perusal of the same reveals that the reply cum notice Ex.PW-1/4 dated 07/6/99 given by defendant no.1 to the plaintiff, a sum of Rs.5560/- was demanded from the plaintiff as the freight charges plus delivery charges which were yet to be paid.

In substitution, where the plaintiff neither paid the freight charges nor the delivery charges to the defendant no.1 despite the consignment having reached at Delhi. In view of the above, no cause of action arise in favour of the plaintiff and against the defendant.”

6. This finding of the Trial Judge was endorsed by the first Appellate Court.

6. In no manner can these findings be held to be perverse. The finding on issue no.3 was that the defendant could have not asked for enhanced amount of freight i.e. Rs.5560/-. Nevertheless the plaintiff who had filed the suit had to establish his cause of action. Admittedly the freight charges had been fixed as per the plaintiff at Rs.3660/-. Both the courts below which were the two fact finding Courts had held that neither the freight charges nor the delivery charges had been paid by the plaintiff to the defendant no.1 in spite of the consignment having reached Delhi. It was rightly noted in the impugned judgment that the plaintiff could have minimized the loss by paying the admitted freight charges to defendant no.1 and take delivery of the goods but nothing of this sort was done by the plaintiff. The plaintiff had not brought any oral or documentary evidence to substantiate his claim. In these circumstances, the suit had been dismissed.

7. Apart from the fact that no substantial question of law has been embodied in the body of the appeal, no substantial question of law has also been urged or argued before this Court. Both the Courts below had appreciated the oral and documentary evidence to hold that the suit of the plaintiff deciphers no cause of action. There is no merit in the present appeal. Dismissed.

**(INDERMEET KAUR)**  
**JUDGE**

**NOVEMBER 12, 2010**  
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