

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

% *Date of Judgment: 30.11.2010*

+ **RSA No.221/2010**

CTA APPARELS (P) LTD. Appellant
Through: Mr.V.D'Costa, Advocate.

Versus

RAJIV GUPTA Respondent
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)

CM No.21431/2010 (for exemption)

Allowed subject to just all exceptions.

RSA No.221/2010

1. This is a second appeal. On behalf of the appellant, it has been urged that the Courts below had failed to appreciate that a full and final settlement had been arrived at between the parties when a sum of Rs.3,37,742.40 had been paid by the defendant to the plaintiff; debit note had been executed by the defendant on the said date; the purchase order also gave a right to the defendant to stop payment if the goods were defective. It was in these circumstances, that the balance amount claimed by the plaintiff was not paid. These have raised substantial questions of law.

2. The body of the appeal has formulated the following three substantial question of law; they read as follows:

“1. Whether the date of intimation of late delivery will be the date of issuance of debit note.

2. Whether the admission of PW-1 admitting that the payment was made to the Respondent was subject to acceptance of goods by him was barred by Section 91 of the Indian Evidence Act.

3. Whether the act of using the Defaulted goods in case the same are not taken back by the respondent will make the Appellant liable to pay the entire cost of the such defaulted goods.”

3. All these questions are fact based statements and cannot be gone into in a second appeal. The two fact finding courts have appreciated and re-appreciated both the oral and the documentary evidence to arrive at a conclusion that the plaintiff was entitled to a decree. The substantial questions of law formulated, if required to be answered would again initiate a third fact finding enquiry which this Court is not permitted to do so. This Court is vested with jurisdiction only if a substantial question of law arises. No such substantial question of law having arisen, the appeal is dismissed *limine*.

INDERMEET KAUR, J.

NOVEMBER 30, 2010
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