

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

+ **RFA No. 117/2000**

% 18th January, 2011

ANIL SETH

Through: Appellant
Mr. K.K.Sharma, Sr. Adv.
with Ms. Bhanita
Advocate.

VERSUS

RAVI GARG

Through: Respondent
None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The matter is effective item no.10 on the 'regular board' but none appears for the respondent although it is 2.30 pm. I am therefore, with the assistance of the learned senior counsel for the appellant, proceeding to hear and decide the matter.

2. The challenge by means of the first appeal under Section 96 of the Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 1.12.1999 whereby the suit of the respondent/plaintiff has been

decreed against the appellant/defendant for Rs.60,950/- with costs and interest. It may be stated that the parties are related to each other because the appellant's wife's sister is the wife of the respondent/plaintiff.

3. The suit was filed for recovery of a sum of Rs.62,000/-, a sum, which is mentioned in two documents exhibited as Ex.P-1/Ex.DW-1/P-1, Ex.P-2/DW1/P1 which are respectively a promissory note and a receipt. The case set up by the respondent-plaintiff was that those documents acknowledge the receipt by the appellant of the sum of Rs.62,000/-. Though, various issues were framed and the judgment of the trial court is a detailed judgment decreeing the suit holding that the amounts were paid by the respondent/plaintiff to the appellant/defendant and which amounts were not refunded, the basic issue which has been urged on behalf of the appellant/defendant is that on the same date on which the promissory note and receipt dated 20.9.1986 were executed, the respondent/plaintiff also in the evening thereof executed the document Mark 'D' by the Trial Court showing complete settlement, (and which in fact should have been exhibited - an aspect I will advert to a bit later). This document Mark D dated 20.9.1986 in the handwriting of the respondent/plaintiff shows that there was a complete settlement of all dues between the appellant and the respondent. It is also relevant to mention at this stage that the appellant and respondent were dealing with each other in their claimed individual capacities however payment to each other were made through their companies. The company of the respondent /plaintiff was M/s Future Systems Pvt. Ltd. (and it is from this

company that the cheques were said to be paid to the appellant/defendant) and the other company is M/s Seth Construction Pvt. Ltd. of which the appellant is the Managing Director.

4. The aforesaid facts clearly show not only the close relations between the parties but also that the amounts which were paid inter se the parties were basically the amounts paid inter se the two companies.

5. Before the trial court, the appellant led evidence and deposed to the fact that when the respondent/plaintiff came to the house of the appellant, there was a quarrel and the issues were resolved in the evening on the very same date i.e. 20.9.1986 the date when the promissory note, receipt were executed, and as per which settlement, the respondent/plaintiff in his own hand wrote the document marked D that there was a complete settlement and no dues were left pending between each other.

6. Since, the deposition of the appellant as DW-1 in the trial court would be necessary to decide this issue, the following examination-in-chief is reproduced:-

“DW1 Anil Seth s/o Sh. A.P. Seth r/o c-12 Hauz Khas, New Delhi

On SA

I know the pltff. for more than 20 yrs. I came in his contact in the normal course of life. Thereafter he started visit my house and mixing with my family members. He specifically attempted to mix and have friendly relations with my sister in law named Bharti. Plaintiff wanted to have a relationship with my sister in law. When I came to know about the evil designs of the pltff. I strongly opposed the same but in a decent manner just to avoid any seen at my house and attempted to keep the good relations in society. Thereafter despite my position they

got married. I did not attend the marriage as a matter of protest, nor did my wife so I do not know the kind of marriage solemnized with the plaintiff and Bharti. Thereafter he came to my house and started quarreling and fighting with me and my wife. In this process my property was also damaged. I have lodged the report in the PS Hauz Khas. The hostility between me and the pltff. of the serious nature and kept of increasing day by day. He also threatened that I will take every possible to embarrass you in the family circle including by filing the false case of recovery which is otherwise settled but he will create from the entries made in the accounts without any actual outstandings and will make the basis of the case. Unless the defdt. Withdraw the police complaint regd. by the defdt. vide diary no.16A on 23.3.87. Further said in the year March 87. Copy of the same is already marked A. The marriage between my sister in law Bharti and the pltff. is not peaceful and even a case of petition to divorce has been filed and withdrawn 2/3 times. Pltff. couple of months back came to my house and picked up quarrel with my wife. He also damaged the wind screen of my car outside my house and damage other property. On these circumstances and damages caused by the pltff. my wife also filed the case against the pltff. The case is still pending in criminal court Patiala House Court. I do not number of the case. At no point of time I had any business transaction with the pltff. However before the marriage issue came on the scene and before I came to know that pltff. is having any designs on my sister in laws certain entries of account were exchanged for accounting purpose. But I never taken any loan from the pltff. He used to issue cheque and he used to pay cash for accounting purposes. When the fight came ahead we both decided to close the exchange of entries and the pltff. gave me a no due certificate. The no due certificate on 20.9.86 and the same is signed by the pltff. himself and written at hiw own hand writing which is on record in original the same is marked as D. The document can not exhibited as defdt. is not author of the document. After the above no due certificate he executed and signed by the pltff. it was decided to give and take if any amount is due and payable either of the parties. Thereafter he said that after settling the exchange of entries a sum of Rs.2,600/- and some interest on the said amount is due for. On that amount I paid Rs.5,000/- on the same date, and the matter

was settled for all time to come and nothing was due against me.” (Emphasis added)

7. A reference to the aforesaid deposition as DW-1 shows that it is duly proved that the document dated 20.9.86 was in the handwriting of the respondent/plaintiff. The appellant also deposed that the document contained the signature of the respondent/plaintiff. Not only that, there is no suggestion in cross-examination of appellant/defendant that this document Mark D is not in the handwriting of the respondent/plaintiff and that it does not bear the signatures of the respondent/plaintiff. In my opinion, once it is shown that the parties were closely related to each other and there is deposition with regard to the document, a holograph, which has come from the custody of the relevant person, and the same is also duly signed and also that there was no cross examination on this aspect, in my opinion, this was thus sufficient to prove the document which thus ought to have been exhibited and referred by the trial court as evidence in this case. Once we read in evidence the document in question Mark D, and which now I am marking the same as Ex.DX-1, it is to be held that there was full and final settlement between the parties. I am supported in my view for exhibiting the document by the decision of the Supreme Court in ***Gulzar Ali vs. Sate of H.P (1998) 2 SCC 192*** which lays down that Section 47 of the Indian Evidence Act 1872 is not exhaustive of the method of proving a document. It thus becomes clear from Ex.DX-1 that inter se the parties all the disputes were settled and nothing remained payable from one to the other. This conclusion has also to be read in the light of the deposition with respect to the averments

made in the written statement of the appellant/defendant having the strained relations between the parties and also the fact that there are certain criminal cases pending between them because in such circumstances a holograph document assumes a vital significance. In such a scenario if there exists crucial a document being a holograph in my opinion, it is entitled to the highest weight.

8. Since the entire judgment of the trial court does not discuss this document marked as Ex.DX-1, and I have held that this document can be looked into for purpose of evidence, the impugned judgment and decree cannot stand and is liable to be set aside. The interest of justice requires that a quietus be put to litigation between close relations and which is the requirement of the document Ex.DX-1.

9. Accordingly, accepting the appeal, I dismiss the suit of the respondent/plaintiff for recovery. Decree sheet be prepared. Since the appeal has been accepted, the amount deposited by the appellant in this court, along with accrued interest, if any, be refunded to the appellant. Trial court record be sent back.

JANUARY 18, 2011
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VALMIKI J. MEHTA, J.