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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 303/2002

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20th September, 2011

SHAH AUDIO VISION CENTRE & ORS.

..... Appellants

Through: Mr. Dhruv Malik, Advocate.
VERSUS

M/S HI-TONE ELECTRONICS

..... Respondent

Through: Mr. R.S.Kela, Advocate.

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. Arguments in this case were concluded on 23.8.2011 and at which stage, counsel for the appellants sought adjournment to seek instructions if the decretal amount can be paid however concession can be granted with respect to pendente lite and future interest. The case was again listed on 1.9.2011 and one week's more time was sought and granted. Today, however counsel for the appellants states that he has no instructions from the appellants and therefore, the appeal be decided on merits.

2. By means of this Regular First Appeal under Section 96 of the Code of Civil Procedure (CPC), a challenge is laid to the impugned judgment and decree dated 12.12.2001 of the trial court which decreed the suit for recovery of respondent/plaintiff for Rs.1,30,000/- with interest. The suit was decreed on account of failure of the appellants/defendants to pay the price of electronic goods supplied.

3. The facts of the case are that there were dealings between both the parties, plaintiff and defendant no.1 being partnership firms, and as per the contractual dealings, the appellants/defendants had been purchasing electronic goods on credit basis from time to time from the respondent/plaintiff and for which, bills were accordingly raised. The bills which were the subject matter of the suit related to the period from 4.10.1991 to 23.3.1992 and the details of the 16 bills totaling to Rs.96,062.12 are given in para 5 of the plaint. Though, respondent/plaintiff earlier sent a notice in which an excess credit of Rs.25,000/- was given however, subsequently, the entry was reversed because the payment of Rs.25,000/- was not made by the appellants/defendants but were made by another concern M/s Jagdish Electronics under its covering letter dated 19.7.1991. An amended notice dated 25.9.1993 had thereafter been sent claiming the amount of Rs.96.062.12. On the failure of the appellants/defendants to pay the amount, the subject suit came to be filed. The basic defence of the appellants/defendants in the written statement was that though, they had purchased the goods, however, the goods being defective were

returned to the respondent/plaintiff and therefore, nothing was due from the appellants/defendants to the plaintiff. One more defence was with respect to the lack of territorial jurisdiction of the courts at Delhi.

4. After completion of the pleadings, the trial court framed issues and the three relevant issues which have been argued before me are issue nos. 1,5 and 6, which read as under:-

- “1. Whether this court has no jurisdiction to entertain and try the present suit? OPD
5. Whether the plaintiff is entitled to the amount claimed in the plaint ?OPP
6. Whether the defendant is entitled to the amount claimed in the counter-claim?OPD”

5. So far as the argument as to lack of jurisdiction of the courts at Delhi, I find the argument without substance because admittedly, payments by means of bank drafts were made by the appellants/defendants to the respondent/plaintiff at Delhi, I therefore, hold that the trial court rightly held that the courts at Delhi had territorial jurisdiction.

6. With respect to the amounts which have been claimed to be due, the trial court has given the following conclusions:-

(I) Since the appellants/defendants admitted to have received the goods onus of proof lay upon them to show that the goods were in fact returned and which onus of proof was not discharged including for the

reason that the books of account were not filed by the appellants/defendants.

(ii) The documents being the letter and challan dated 21.5.1992 exhibited as Ex.DW2/PX1 and Ex.DW2/PX2 were forged and fabricated because the respondent/plaintiff sometimes used to give blank documents to the appellants/defendants inasmuch as, the appellants/defendants used to submit tenders on behalf of the respondent/plaintiff for which, they received commission on supply and the appellants/defendants had fabricated other blank letters dated 21.5.1992 with the corresponding challans showing return of the goods.

(iii) There was no question of return of the goods under the letters dated 21.5.1992 Ex.DW2/PX1, Ex.DW2/PX5 and Ex.DW2/PX9 inasmuch as, admittedly, when the books of account of the appellants/defendants was closed on 31.3.1992 (the appellant-firm was dissolved on this date) there were no stocks as per the books of account and thus there did not arise return of goods in May 1992.

7. The relevant conclusions and findings of the trial court are contained in paras 23 to 26 of the impugned judgment, which read as under, and with which conclusions I am in complete agreement with:-

“23. It was the burden of the defendants to establish that they had returned the goods relating to invoices No. 8599 dated 04.10.91, 8605 dated 08.10.91, 8607 dated 09.10.91 and 482 dated 14.10.91. They have alleged in the Written Statement that they had debited the amount of the said invoices in their account books. The account books have not been, however, produced. DW 2

C.K.Shah explains that the account books were not in his possession. However, he admits that the account books could be available in the office of the defendants. So, I see no reason why the account books could not be produced. Non-production of the account books would give rise to an inference against the defendants.

24. The defendants claim that they had returned some goods on 23.03.91, 09.05.91, 28.8.91, 30.05.91 and 01.11.91. The plaintiff does not deny that the said goods were returned for repairs but it claims that all the goods were sent back after repairs along with fresh supplies. If the claim of the plaintiff had been untrue, the defendants would not have omitted to mention these goods in their reply Ex.PW1/13 dated 20.10.93. The fact that nothing was said about the goods which had been sent for repairs in the reply Ex.PW1/13, shows that the goods had been actually returned to the defendants.

25. The defendants have further claimed that they had returned goods of the value of Rs.80,000/- on 21.05.92. DW 2 C.K.Shah has produced letters Ex.PW1/D4 PW1/D8 and PW1/D12 whereby the plaintiff is alleged to have acknowledged the receipt of goods. He has also produced the delivery challan as Ex.PW1/D5,D7, Ex.PW1/D9, D11 and PW1/D13 to D17, which bear signatures of A.K.Jain, PW1 A.K.Jain has explained that his signatures had been obtained on blank forms for the purpose of submitting quotations to the Government. Ordinarily, I would not have believed the explanation. The prudent person will sign a delivery challan for the purpose of submitting quotation. In the present case, however, the truth is brought out by Ex.PW2/PX1 and DW2/PX2. These two documents show that quotations were being submitted on the forms of delivery challan. DW2 C.K.Shah admits this fact. He states that when direct supplies were made to the Government by the plaintiff through the agency of defendants, they used to receive commission. This shows that quotations were being submitted to the Government and for that purpose stationary of the defendants was being used. In any case, DW2 C.K.Shah admits that defendant No.1, which was a partnership firm, was wound up within a month after the death of Umesh Bai. Umesh Bhai expired on 14.02.92. This means that the defendant firm was wound up by the middle of March, 1992. DW2 C.K.Shah further admits that there was no stock with the defendant firm at the time of winding up. This admission

clinches the issue. If there were no stocks with the defendant firm in the middle of March, 1992, there could be no question of returning any stocks on 21.05.92. Moreover, DW2 C.K.Shah states on cross examination that at the time of winding up, balance sheets were prepared and the assets and liabilities were shown therein. Those balance sheets could have been produced to show that some stocks was lying with the defendants in March, 1992. Non-production of the same gives rise to an adverse presumption against the defendants.

26. Thus, on consideration of evidence, I find that the defendants have not been able to prove that they returned the goods of the four disputed invoices dated 04.10.91, 08.10.91, 09.10.91 and 14.10.91. They have also not been able to prove that they returned goods on 21.5.92. As regards the other goods which were admittedly sent back for repairs, the defendants did not make any claim in the reply Ex.PW1/13 and, therefore, I have no doubt that those goods were duly sent back by the plaintiff after repairs. On the other hand, I find that the supply of goods is not in dispute. The claim of the plaintiff is corroborated by the account books."

(Emphasis supplied)

8. In addition to the aforesaid reasons given by the trial court, I note one other important reason for holding that the letters dated 21.5.1992 were forged/fabricated and they were signed in blank by the respondent/plaintiff was because the challans accompanying these letters dated 21.5.1992 pertained to some of the goods which were in fact never sold by the respondent/plaintiff to the appellants/defendants. Such fact along with the statement of the witness of the defendants/appellants Sh. Chandra Kant Shah, DW-2 who admitted that quotations were being submitted by the appellants/defendants in the forms of delivery challans and the defendants/appellants used to receive commissions for the direct supplies which were made by the

respondent/plaintiff to the Government, shows that the appellant never returned the goods to the respondent.

9. A civil case is decided on balance of probabilities. The balance of probabilities rightly show that the respondent/plaintiff was entitled to receive the balance due for the supplies made inasmuch as, the appellants/defendants had never returned back the goods and the same was falsely alleged to deny the respondent/plaintiff his dues.

10. No other point or issue was urged before me.

11. The appeal is accordingly dismissed leaving the parties to bear their own costs.

SEPTEMBER 20, 2011
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VALMIKI J. MEHTA, J.