

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

+ **RFA 575/2002**

% **16th November, 2011**

M/S ADI HITECH TEXTILES (P) LTD. Appellant
Through : Mr. Rajat Katyal, Advocate.

versus

M/S SAWHNEY BROTHERS Respondent
Through : 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. This appeal is on the Regular Board of this Court since 4th July, 2011. Today, the appeal is effective item No. 6 in the Regular Matters. Nobody appears on behalf of the respondent, although, it is 3:30 p.m. I have, therefore, heard the learned counsel for the appellant and after perusing the record, am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 24th July, 2002. By the impugned

judgment, the trial Court disposed of, by a common judgment, two suits. One suit was filed by the appellant against the respondent (being the subject matter of connected RFA 573/2007 being suit No.6/1998 claiming payments with respect to two bills dated 31st October, 1994 and 11th November, 1994 Ex. PW1/D1 and PW1/D2 and which suit was held to be time barred and hence dismissed. The second suit which was disposed of by the impugned judgment, and which is the subject matter of this RFA was a suit No. 155/1996 filed by the respondent against the appellant claiming damages from the appellant allegedly on account of loss caused to the respondent by defective goods being labels supplied by the appellant. This suit 155/1996 was filed for recovery of Rs.3,97,600/- which included an amount of Rs.2,80,000/- towards losses suffered on account of defective labels supplied. The other amount claimed was towards interest @ 24% amounting to Rs.1,17,600/-. The alleged defective labels which were supplied by the appellant to the respondent were said to have been fixed by the respondent on garments which it exported abroad.

3. The trial Court by the impugned judgment has decreed the suit No.155/1996 of the respondent/plaintiff by holding that the letters Ex.PW1/2 to PW1/5 showed that labels supplied were defective and

consequently it was held that loss was caused to the respondent/plaintiff. Trial Court has also referred to a realization certificate of the banker of the respondent namely, M/s Indian Bank dated 22nd September, 1999 Ex.PW2/1, showing that the amount realised from the importer of the goods in Pannama (to whom the goods were sold by the respondent) was after allowing reduction in invoice value @10%. The date of realization of the amount was 7th March, 1995.

4. Learned counsel for the appellant has argued that a reading of the plaint shows that the cause of action is basically contained in paras 6 and 7 thereof which plead the facts of the exported goods being rejected by the customers and thereafter, in paras 8 and 9 of the plaint reference is made to the two disputed bills dated 31st October, 1994 and 11th November, 1994, Ex. PW1/D1 and PW1/D2 with respect to which it was stated that payments were not made as the labels supplied under these bills were stated to be defective. It is argued that these two bills were not the subject matters of the present suit No. 155/1996. Learned counsel for the appellant also drew the attention of this Court to the cross-examination of the witness of the respondent, Sh. Trilok Singh Swahney who was a partner of the respondent and who deposed as PW1 and which deposition showed that in the cross-examination this witness admits that the labels supplied by the two

disputed bills were not used by the respondent and no consignment using of these labels was sent to the importer. Infact, witness PW1 admits that no consignment using labels under the bills Ex.PW1/D1 and PW1/D2 was sent to the importer, and in fact the defective consignment of the labels under these bills was re-sent to the appellant herein.

5. The basic thrust and the main substance of the argument on behalf of the appellant by its counsel, is that with respect to the alleged loss claimed of Rs. 2,80,000/- there is not a single document filed by the respondent whether it be a letter to the appellant mentioning that these labels were defective or any document/letter of the alleged buyer abroad stating that the exported garments were to be paid @10% less because the labels were defective. It is argued that the bank certificate merely refers to 10% received less for the invoice No.6084 without giving any reason why such lesser payment is given. It is argued that after all such lesser payment well may have been given due to reasons which could have included delay in supply, defective garments and so on.

6. In my opinion, the arguments as raised by learned counsel for the appellant are well merited and therefore the appeal deserves to be allowed. From a reading of the plaint and the cross-examination of

PW1, there is no doubt that the labels which were supplied with the invoices dated 31st October, 1994 and 11th November, 1994 Ex.PW1/D1 and PW1/D2 were never used by affixing them on garments. Admittedly, these labels were never used on the exported garments and were infact admitted to have been returned by the respondent. This fact also becomes clear from the letters written by the respondent to the appellant being Ex.PW1/2 to PW1/5 which are dated 16th February, 1995, 28th July, 1995, 5th December, 1995 and 1st January, 1996 respectively. So far as these letters are concerned the contents thereof make it quite clear that they do not in any manner establish that supplies prior to Ex.PW1/D1 and Ex.PW1/D2 of labels by the appellant to the respondent are defective as reference in these letters are only qua labels supplied vide Ex.PW1/D1 and Ex.PW1/D2. Except a self serving statement, both as regards the defective nature of the labels and with regard to quantification of loss at Rs.2,80,000/-, there is nothing in the trial Court record to substantiate the defectiveness of the labels or quantification of loss for which the subject suit was filed and which pertained to labels supplied prior to the bills Ex.PW1/D1 and Ex.PW1/D2.

7. In my opinion, there is strength in the argument as raised by learned counsel for the appellant that the suit was filed by the respondent only to deny the payment of the bills Ex.PW/D1 and PW/D2

to the appellant, inasmuch as the so called defective labels under these two invoices were sent back to the appellant as alleged by respondent only during the pendency of the suit.

8. It is necessary that there has to be reasonable evidence which brings about preponderance of probabilities to support the case of the respondent/plaintiff. Since the case of the respondent/plaintiff was that labels supplied by the appellant were defective and which were supplied prior to those mentioned in Ex. PW1/D1 and Ex.PW1/D2, it was therefore necessary to file correspondence *inter se* between the parties or correspondence *inter se* the buyer abroad and the respondent to show that the said earlier labels were defective. As stated above, there is not a single document on record to show defectiveness of the labels supplied prior to Ex.PW1/D1 and Ex.PW1/D2. So far as the quantification of loss is concerned except filing the bank certificate Ex.PW2/1 there is nothing on record to show as to how the loss of Rs.2,80,000/- as claimed in the plaint has been caused on account of the alleged defective labels supplied. I agree with the learned counsel for the appellant that there is no reference of any nature in the document Ex.PW2/1 being the bank certificate dated 22nd September, 1999 showing that reduction of 10% in invoice value has been brought about on account of defective labels as was alleged by the respondent. Since this is the only document which exists in the

trial Court to allegedly show for quantification of loss qua the alleged defective labels, I would reproduce the same in its entirety and the same reads as under:-

“FX
NEW DELHI MAIN BRANCH
P-45/90 Connaught Circus,
New Delhi-110001,
DT. 22.9.1999

M/S. Sawhney Brothers,
A-4 & 6 Nizammuddin West,
New Delhi-110013.

Dear Sirs,

Sub: Issue of Realisation of Certificate Regarding Your
Invoice No. 6084 Drawee: M/s OKEY INTL. PANAMA.

With reference to your letter no. SB/9/99 dt. 17.9.99 regarding issue of Bank Certificate for Captioned Bills, we inform you that these bills have been realized after allowing reduction in Invoice Value as per details given below.

<u>Your Inv. No.</u>	<u>Our REF NO.</u>	<u>AMOUNT</u>	<u>AMT</u>	<u>REDUCTION IN INV</u>
6084	C/511464	USD.83355.75	USD 7500.17	USD.8355.58

AND DT OF REALISATION DT. 7.03.95 (Date of Reduction 29.04.98)

Yours faithfully,
MANAGER”

A plain reading of this letter clearly shows that nothing is mentioned therein about reduction on the value of invoices and a lesser realization of 10% was on account of defective labels and not because of any other reason.

9. Therefore, in my opinion, the trial Court has committed a grave illegality in holding that the respondent/plaintiff proved its case that the labels were defective or that the quantification of loss was properly done. There being no evidence whatsoever except the self serving statement of the respondent/plaintiff, the respondent/plaintiff therefore had clearly failed to discharge the onus of proving that the labels supplied by the appellant were defective or that loss was caused on account of allegedly defective labels amounting to Rs.2,80,000/-.

10. In view of the above, the present appeal is allowed and impugned judgment and decree dated 24th July, 2002, so far as in suit No. 155/1996 filed by the respondent is set aside. The suit of the respondent/plaintiff being suit No.155/1996 titled as Sawhney Brothers v. M/s Adihi Tech. Textiles Pvt. Ltd. shall stand dismissed leaving the parties to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

NOVEMBER 16, 2011/*AK*