

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

+ **RFA No.609/2001**

% **8th March, 2011**

M/S. BADRI DAS SITA RAM & ORS. Appellants

Through: None.

VERSUS

M/S. JAGDISH PRASHAD LALTA PRASHAD 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 case is on the 'Regular Board' of this Court since 17.1.2011. Today, it is effective item No.4 and though it is 2.50 P.M. nobody has chosen to appear for the parties. I have, therefore, perused the record and am proceeding to dispose of the appeal.

2. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 8.8.2001 whereby the suit of the respondent/plaintiff for recovery of Rs.97,050/- was decreed. The suit was decreed on account of the fact that it was proved by the respondent/plaintiff

that he had paid a sum of Rs.64,000/- to the appellants/defendants by means of a pay order bearing No.334344 of State Bank of Bikaner & Jaipur, Khari Baoli Branch, Delhi and which amount was not returned by the appellants/defendants to the plaintiff.

3. Before the trial Court, the appellants/defendants took up the stand that the sum of Rs.64,000/- was repaid to the plaintiff in cash as per receipt dated 27.3.1982, Ex.DW1/1 signed, by one Lalta Prasad for and on behalf of the plaintiff. The trial Court has however held the receipt dated 27.3.1982 to be a forged and fabricated document. The relevant paras of the impugned judgment and decree are paras 14 to 18 and which read as under:-

“14. As seen in the written statement, the case of the defendant is that business dealings between the parties started on 17.8.81. During the period 17.8.81 to 21.1.82, a sum of Rs.24,09,500.92 was credited to the plaintiff account in the books of the defendant. Prior to January, 82 mills were sending oils through commission agents but thereafter there was change in the policy of the Government inasmuch as mills started sending goods directly to the customers charging central sales tax at the rate of 1%, consequently the dealings between the plaintiff and the defendants came to an end. According to the defendant after the dealings came to an end, accounts were gone into and a sum of Rs.64,000/- was found payable by the plaintiff to the plaintiff and this amount was paid to Lalta Prasad vide receipt dated 27.3.82 and, therefore, it was alleged that no amount is now payable by the defendant to the plaintiff. The factum of receiving Rs.64,000/- vide receipt dated 27.1.82 has been denied by the plaintiff in replication. The onus of proving the fact that this payment was made by the defendant to the plaintiff vide receipt dated 27.3.82 was very heavy upon the defendants. Keeping in view the fact that factum of receiving any such payment was denied by the plaintiff.

15. It is the case of the plaintiff that this receipt is forged and fabricated and has been created after filing of the suit with a view to

create a defence and for raising this contention, reference was made to the legal notice Ex.P-7 sent by the plaintiff to the defendants. A perusal of this notice dated 14.8.84 reveals that the plaintiff asserted that the plaintiff had delivered one pay order bearing no.334344 dated 14.9.81 for Rs.64,000/- of State Bank of Bikaner & Jaipur, Khari Baoli Branch, Delhi towards sale price of Arandi Oil and this pay order was duly encashed by the defendant. It was further alleged in the notice that the defendant failed to deliver Arandi Oil and, therefore, the plaintiff demanded refund and return of the sale price paid in advance but the defendant had failed to pay the same and as such by virtue of this notice, the defendant was called upon to pay Rs.64,000/- alongwith interest at the rate of Rs.1.50% p.m. This notice was duly received by the defendant who sent a reply Ex.P-8 through Shri Budh Dev Gupta, Advocate. This reply is very important inasmuch as in this reply, the defendant has categorically denied receiving any pay order from the plaintiff on account of sale price of Arandi Oil. There is absolutely no averment in this reply that on final settlement of the account, a sum of Rs.64,000/- was found due to the plaintiff and same has been paid against receipt to Lalta Prasad partner of the firm.

16. In this back-ground, the receipt Ex.DW1/1 relied upon by the defendant becomes very crucial.

17. As stated above, the testimony of DW-1 cannot be looked into inasmuch as same is in complete and, therefore, inadmissible in evidence. His son appeared as DW-2 and although he has deposed that a sum of Rs.64,000/- was paid by his father to the plaintiff against receipt Ex.DW1/1 and Lalta Prasad signatory to the receipt was a partner of the plaintiff firm. However, in cross-examination, he had admitted that he does not know Lalta Prasad and he has never seen him. Under these circumstances, there is no question of identification of signature of Lalta Prasad by this witness and in fact he has nowhere deposed that he identifies the signature of Lalta Prasad on this receipt. PW-1 Shyam Sunder has categorically deposed that he can identify the signature of Lalta Prasad and receipt mark A(which was later on exhibited as Ex.DW1/1) does not bear the signature of Lalta Prasad at point A. Under these circumstances, mere exhibition of the document does not ipso-facto prove the document.

18. In order to prove this receipt, the defendant had examined DW-3 Mrs. R K Vij handwriting expert. She has deposed that she had examined the disputed signature dated 27.2.82 written as Lalita Prasad in English marked as Q-1 and compared the same with comparative signatures on C forms as 1 to 50 and she gave her report Ex.DW2/1 and according to her, the disputed signature is

written by Lalita Prasad the writer of the admitted signature under reference. However, cross-examination of this witness is worth nothing inasmuch as, as per the record at the time of admission-denial of documents, Lalita Prasad had appeared and he had denied his signature on this receipt Ex.DW1/1 and while making endorsement that signatures are not his, he affixed his own signature at point A. It was admitted by DW-3 Mrs. R K Vij that she did not compare this admitted signature of Lalita Prasad with the signature at point B on the receipt. However, according to her she did not do so because it is a caution writing written in the court to deny the signature. Moreover, a perusal of this receipt goes to show that it is same what unusual inasmuch as on the plain paper, first of all, revenue stamps have been affixed and thereafter the contents have been written. Signature of Lalita Prasad appear on the blank portion. In normal practise, the signatures are taken on the revenue stamp which is not so in the present case. Although this is so evident from the receipt that after affixing revenue stamp, contents have been typed later on. However, the handwriting expert has denied this suggestion which reflects that since she was appointed by the defendant, she was deposing in his favour. A perusal of admitted signature of Lalita Prasad on various documents reveals that same has been signed as Lalita Prasad only. However, in the disputed receipt besides Lalita Prasad surname is also mentioned and this fact was admitted by DW-3 that surname mentioned at the end of the disputed signature is not mentioned in any one of the admitted signature beginning from 1 to 50. In view of the aforesaid discussion coupled with the most crucial fact that there is no mention of payment of this amount by the defendant to Lalita Prasad in reply to the notice, factum of making payment of Rs.64,000/- by the defendant to the plaintiff is not proved.”(underlining added)

4. I do not find any illegality or perversity in the findings and conclusions of the trial Court because it was proved that the defendants/appellants had received amount of Rs.64,000/- for supply of Arandi oil, which however, was not supplied. The trial Court has also noted that when a legal notice Ex.P7 was sent to the appellants/defendants, in reply the notice Ex.P8 sent by the appellants/defendants there was complete denial of the receipt of amount of Rs.64,000/-, however, subsequently in the suit the defence was changed that though the amount of Rs.64,000/- was

received, the said amount was in fact repaid back to the plaintiff/respondent vide receipt dated 27.3.1982. Trial Court is also justified in not relying upon the statement of the handwriting expert on the ground that handwriting expert did not compare the disputed signature with the signature of Lalta Prasad as per the record available at the time of admission/denial. The trial Court has also referred to the fact that the revenue stamp was fixed first and contents were typed later on. The trial Court also noted that in the disputed receipt the name of Lalta Prasad is followed by surname whereas in no other admitted signature from 1 to 50 there is surname mentioned at the end.

5. I do not find any illegality or perversity in the impugned judgment which calls for interference by this Court in appeal. Trial Court has rightly held that onus of proof that the amount was repaid was upon the appellants/defendants and which was held not discharged inasmuch as the receipt Ex.DW1/1 was a forged document especially taking into account the fact that on the very first opportunity this defence was not taken up when reply to the legal notice was sent and wherein there was only a complete denial of having received the amount of Rs.64,000/-.

6. The appeal, therefore, being devoid of merit is dismissed, leaving the parties to bear their own costs. Interim orders are vacated. Security bond furnished by the respondent is discharged and may be returned back to the respondent/plaintiff. Trial Court record be sent back.

MARCH 08, 2011
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VALMIKI J. MEHTA, J.