

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

+ **RFA 79/2001**

% 1st February, 2011

Shri Om Parkash,
Sole Proprietor,
South Delhi Taxi Service,
Opp. Asiad Village,
Hauz Khas, New Delhi-110016

..... Appellant

Through: None

VERSUS

1. State of Bihar through its Chief Secretary,
Old Secretariat, Patna.

2. Shri K. Ram, Deputy Commissioner,
Bihar Bhawan, Kautilya Marg,
New Delhi-110021

..... Respondents

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 3.1.2011. No one appears for the parties although it is 11.50 a.m. This case is effective item no.11 on the Regular Board of this court today. I have therefore perused the record and I am proceeding to dispose of the matter.

2. The challenge by means of the present regular first appeal under Section 96 CPC is to the impugned judgment and decree dated 20.11.2000 whereby suit for recovery by appellant/plaintiff was dismissed against the respondents/defendants and which amount was claimed by the appellant/plaintiff on account of having supplied taxis on different dates to the respondent no.1.

I may note that the suit was originally filed for Rs.3,37,503.20 p. and during the pendency of the suit, on an application under Order 12 Rule 6 CPC, the suit was decreed on admitted amount of Rs.1,04,460.80 p. The impugned judgment therefore deals only with the disputed amount of Rs.2,33,042.40 p.

3. I note that the trial court has dealt with the relevant issues, being issues no.1, 2 and 5, in paras 8 to 12 of the impugned judgment and decree, by holding that the appellant/plaintiff failed to prove the slips counter signed on behalf of the respondent no.1 towards utilization of the taxis and which was necessary to prove because only that can show that the taxis were in fact supplied and with respect to which payment was claimed by the appellant/plaintiff. paras 8 to 12 read as under :

“8. Issues 1, 2 & 5

Since these issues are inter-related, they are being taken up together. The plaintiff had submitted 10 bills with 6 forwarding letters and he had stated that the outstanding payment contained in these bills have not been received. It is the case of the plaintiff that the driver of the taxi used to report to the clerk on duty at the office of the defendant who used to maintain taxi hiring registered and used to give a slip with relevant entry and the taxi hiring register was checked at the evening by the defendant no.2. he has stated that Sh. Panchanand Mishra had given the photocopies of

the register and 480 duty slips which have been collectively exhibited as exbt. PW1/32. The photocopy of the register has been exhibited as exbt. PW-1/31. In the cross examination, the plaintiff, PW-1 has admitted that receipt no.200 dated 19.02.95 and receipt no.273 dated 03.03.91 are unsigned. It has come in the evidence of the plaintiff that he does not know who had signed that duty slips and the name of the driver was Jai Kishan Sharma, who is at present in his service. Sh. Jai Kishan Sharma, PW2 has stated in his evidence that the entries regarding the taxis provided by the plaintiff are made in the taxi hiring register, exbt. PW-1/31. He has stated that sometime the users of the taxis were under the influence of alcohol and they refused to sign the duty slips and he had told this to the counter clerk at Bihar Bhawan and he was told that it would make no difference if the duty slips are not signed. He has stated that defendant no.2 told him not to enter into any verbal altercation with the user of the taxi as they were VIPs. The duty slips which are unsigned and some the duty slips on which signatures are not legible, payment has not been made by the defendant. As regards, the remaining duty slips which are duly signed, the same is admitted in the written statement and a decree for Rs.1,04,460.80 p. has already been passed on 27.7.96.

9. Sh. Panchanand Mishra, Assistant Manager at Bihar Bhawan has categorically stated in his evidence that the defendant is liable to make the payment for the duty slips which are signed by various signatories of the defendant. It has come in the evidence that Sh. S P Singh, S K Prasad, Jagmohan Mishra, Baliram Singh were posted at reception counter of Bihar Bhawan during the relevant period. Sh. Panchanand Mishra DW-1 has categorically given duty slip numbers and the dates in his evidence which are not signed by the authorized person of the defendant no.1. it has come in his evidence that the duty slips from page no.511 to page 629 on the judicial record are signed by the authorized persons. In the evidence of Sh. Panchanand Mishra recorded on 17.9.99 the details of the duty slip numbers which are either signed by unauthorized persons or are unsigned is given. Receptionist used to make the entries in the register and the Chief Administrator Officer used to check the entries.

10. Sh. Panchanand Mishra has categorically denied that he had never given telephonic instructions to the plaintiff to provide the taxis at Bihar Bhawan. DW-1 has categorically stated in his evidence that he has denied the duty slip no.262 because it is unsigned and the signatures

on the denied duty slip no.550 and admitted duty slip no.539 are not similar. Since Sh. Panchanand Mishra was posted at Bihar Bhawan during the relevant period therefore, he was in a position to admit or deny the signatures on the duty slips. The plaintiff has not summoned any of the reception counter clerk to get the disputed signatures/initials on the duty slips reveals that some of the disputed slips are pertaining to use by committee members or for official work and are completely vague. This highlights the misuse aspect.

11. However, the plaintiff has placed on the record a bunch of photocopies which are stated to be of taxi hiring register but the same have not been put to Sh. Panchanand Mishra who is said to have handed over these photocopies to the plaintiff. Neither the initials made on the said photocopies are established to be of defendant no.2 nor any evidence is led to get the entries in the so-called copies of taxi hiring register proved. It has not been shown as to why Sh. Panchanand Mishra would deny the signatures on the disputed duty slips. Nothing has been suggested to this witness as to why he would deny the signatures or initials of the concerned receptionists/clerks who are said to have made the relevant entries in the taxi hiring register. Even the initials of the defendant no.2 on the copies of the so-called taxi hiring register are not proved.

12. In view what is stated above, I am of the considered opinion that the plaintiff is not entitled to any amount on the duty slips which are not signed by authorized persons or which are unsigned. Accordingly, these issues are decided against the plaintiff and in favour of the defendant.”

4. I do not find any illegality or perversity in the approach of the trial court in the above paras and passing the decree because any person who claims to have supplied taxis has to necessarily prove that the services of taxis were utilized by the respondent no.1/State of Bihar. Unless and until, a counter slip is signed showing that taxis were in fact used, allowing of a claim would result in an unfair financial burden on respondent no.1. I may note that the Assistant Manager of the respondent no.1 at Bihar Bhawan namely Sh. Sh. Panchanand Mishra has admitted the liability so far as those

slips where the signatures appear on behalf of the respondent no.1 for having utilized the taxi facilities. The trial court has rightly held that there was no reason for Sh. Panchanand Mishra to deny certain signatures, which as per the case of respondent no.1 were not having signatures on behalf of respondent no.1. The officer of the respondent no.1 was acting in the course of his official duties and no animosity is pleaded against the said officer for making the deposition against the plaintiff. The testimony of Sh. Panchanand Mishra has rightly been believed by the trial court.

5. In view of the above, I do not find any illegality or perversity in the impugned judgment/decreed to persuade me to interfere by setting aside the impugned judgment/decreed.

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

Trial court record be sent back.

FEBRUARY 1, 2011
vld

VALMIKI J. MEHTA, J.