

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

% *Date of Judgment: 24.01.2011*

+ **RSA No.110/2002**

M/S NEERAJ AGENCIES Appellant
Through: Mr.J.R.Bajaj, Advocate.

Versus

M/S HAWKINS COOKERS LIMITED Respondent
Through: Mr.Nitin S. Tambwekar and
Mr.B.S.Sai Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 10.5.2002 which has modified the decree of the trial judge dated 16.1.1999. Vide the judgment and decree dated 16.1.1999 the suit of the plaintiff seeking recovery of money had been decreed in the sum of Rs.56,519/- along with interest @ Rs. 15 % per annum. The set-off claimed by the defendant had been permitted in the sum of Rs.10,358/- and Rs.25,066/- which was also awarded with interest @ 15% per annum. The impugned judgment had modified the decree to the extent that the suit of the plaintiff remained decreed but the counter claim/set-off decreed in favour of the defendant had been set-aside.

2. The substantial questions of law have been formulated on page 16 of the body of the appeal; they read as follows:

1. What is the effect of conflicting interpretation of the contract given by the Courts below?
2. Whether the findings of a fact on no evidence without evidence is legal and sustainable?
3. Whether the Honourable High Court can re-appreciate the evidence ignored by the First Appellate Court and arrive at its own conclusion?

3. Plaintiff and the defendants had dealings with one another. Defendant no.1 was a dealer of the plaintiff company and the defendants no.2 and 3 were partners. Defendants purchased goods from the plaintiff which were sold in the open market. Admittedly Ex.PW-1/26 i.e. the Special Bonus Scheme (w.e.f. 1.4.1986 to 30.9.1986) was binding upon the parties. It has been detailed by the Courts below and has been adverted to. There was no dispute to the fact that the defendants had achieved the dealer target in terms of the aforementioned scheme but the question about the achievement of the town target was in dispute. The contention of the plaintiff was that the town target not having been achieved by the defendants; they were not entitled to the full bonus in terms of Ex.PW-1/26; his entitlement was only of 50% of the bonus. This was disputed by the defendants and the full 100% bonus was claimed by him which was claimed in the set-off propounded by him.

4. Trial Court had awarded the set-off in favour of the defendants; it was of the view that the definition of the town target has not been given in Ex.PW-1/26; the plaintiff having failed to detail as how the town target had not been achieved by the defendants, the counter claim of the defendants on this count had been granted to him.

5. The impugned judgment had modified the set-off which had

been granted in favour of the defendants. Court had adverted to Ex.PW-1/26 and its clauses contained therein and after the scrutiny of the same was of the view that the defendants not having achieved the town target are entitled to 50% of the bonus. The relevant extract qua this finding is as follows:

“After having carefully gone through the Special Bonus Scheme exbt.PW-1/26. I find that the learned trial court was not correct on arriving at a conclusion that the town target is not defined. Clause(i)(a) defines the town target stating that the country has been divided into eight town groups ranging in the sale from less than 199 Hawkins Pressure Cookers per annum to more than 45,000 Hawkins Pressure Cookers per annum in a town. In clause (ii) of the Special Bonus Scheme exbt.PW-1/26, it is clearly stated in case of non-achievement of town target, the qualified dealer will be entitled to only 50% of the bonus due to him. Admittedly, the respondent/defendant has received 50% of the bonus due to him but he relies upon the target given in this Scheme to contend that individually he had achieved this target and therefore, he is entitled to 100% bonus.

After carefully gone through the evidence of both the sides on record, I find that the respondent/defendant has nowhere stated in his evidence nor he has suggested to the appellant in the evidence that he was not aware of the Special Bonus Scheme, exbt.PW-1/26. Reference to the document exbt,PW-1/27 said to be pertaining to earlier Scheme is of no consequence because Special Bonus Scheme, exbt.PW-1/26 is itself clear and explicit in its terms and conditions. It has come in the evidence of the respondent that he had voluntarily participated in the Special Bonus Scheme in question and he had not asked the representative of the appellant company regarding the town target during discussion. The respondent has admitted in his evidence that he had participated in this Special Bonus Scheme without going through the literature which was obviously enclosed with the scheme and he had never demanded from the appellant company to send the details regarding the scheme. Respondent has also admitted in his evidence that the appellant company had not achieved town target and therefore, he had received 50% of the bonus amount. The learned trial court has clearly erred in ignoring the above-referred admissions made by the respondent in his cross examination. Even the appellant in the evidence has stated that the contents of Special Bonus Scheme exbt.PW-1/26 were sent to the respondent.

This part of the evidence of the appellant remains unchallenged in

the cross examination. The existence of Special Bonus Scheme exbt.PW-1/26 in question and of its receiving by the respondent is not disputed by the respondent in his evidence and therefore, the findings of the learned trial court to the effect that the appellant had failed to prove that the respondent/defendant was informed about particular town target is erroneous and is liable to be set aside. Respondent/defendant may not be having any specific role in achieving the town target but it was the part of the Special Bonus Scheme exbt.PW-1/26 that 100% bonus would be paid to the dealer if town target is achieved. As already observed above, respondent had participated in the Special Bonus Scheme exbt.PW-1/26 voluntarily, therefore, respondent/defendant cannot be heard to say that he had no role in achieving the town target. The Special Bonus exbt. PW-1/26 has to be read as a whole and the respondent/defendant is not entitled to claim 100% bonus simply because, he had achieved his individual target. It is not the case of the respondent/defendant that the town target of sale of more than 45000 Hawkins Pressure Cookers per annum was achieved by the appellant company.”

6. This Court is a second appeal Court. Its hands are tied; it cannot interfere with concurrent findings of fact given by the two courts below unless the findings are perverse. The impugned judgment had appreciated the contents of Ex.PW-1/26 along with the oral evidenced adduced by the respective parties. DW-1 has admitted that he had participated in the Special Bonus Scheme; his clear admission is that the company had not achieved the town target and that is why he had received 50% of the bonus amount only. This admission of the defendant has answered queries which are now been re-urged and re-agitated before this Court. The defendant himself having admitted in his evidence led before the Court below that the company had not achieved the town target, plaintiff had rightly awarded 50% of the bonus amount only.

7. Ex.PW-1/9 was the letter dated 30.3.1987 sent by the plaintiff to the defendant wherein it was informed to him that as per the Special Bonus Scheme applicable between the parties, in case of

non achievement of town target qualified dealer would be entitled to 50% bonus only. Since the town target for Delhi had not been achieved by the defendant for the aforementioned period he was eligible only for the 50% bonus which has already been paid to him. This fact finding cannot be gone into again. The impugned judgment had rightly and correctly appreciated the oral and the documentary evidence led before it to draw a conclusion that the defendants were not entitled to the set-off which has been granted to him by the trial judge. He was entitled to 50% only as he had not achieved the town target. No substantial question of law having arisen in this appeal, the appeal is dismissed.

INDERMEET KAUR, J.

JANUARY 24, 2011
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