

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

% RFA 309 OF 2004

+ Date of Decision: 7th February, 2011

MANPREET SINGH ...Appellant
! Through: Mr. Vageesh Sharma and Mr. Sudhir
K. Saneja, Advocates.

Versus

\$ NATIONAL PANASONIC INDIA LTD. ...Respondent
^ Through: Mr. Anil K. Kher, Sr. Advocate with
Mr. Rishi Manchanda and Mr.S.S.
Pandit, Advocates.

AND

RFA 14 OF 2005

\$ NATIONAL PANASONIC INDIA LTD. ...Appellant
^ Through: Mr. Anil K. Kher, Sr. Advocate with
Mr. Rishi Manchanda and Mr.S.S.
Pandit, Advocates.

Versus

MANPREET SINGH ...Respondent
! Through: Mr. Vageesh Sharma and Mr. Sudhir
K. Saneja, Advocates.

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J:

These appeals have been filed against the judgment and decree dated 9th march 2004 passed by the learned Additional District Judge in

suit no. 482/01 filed by the appellant in RFA No. 309/2006 (hereinafter referred as the plaintiff) for decrees of declaration ,mandatory injunction, rendition of accounts and recovery of Rs. 2,20,000/- against the appellant in RFA No. 14/2005 (which shall hereinafter be referred to as ‘the defendant’). The learned trial Court had decided the suit partly in favour of the plaintiff and partly in favour of the defendant. The plaintiff filed his appeal against the trial Court’s judgment challenging the rejection of all his claims except one while the defendant filed its separate appeal against the grant of some relief to the plaintiff. Both the appeals were, however, heard analogously and are now being disposed of by this common judgment.

2. The brief facts relevant for the decision of these two appeals may be noticed first. The plaintiff’s sole proprietorship firm Sheeba Electronics was appointed as distributor for washing machines under the brand name of ‘National’ for the areas of West and South Delhi w.e.f. June 1st 2000 by the defendant. That distributorship of the plaintiff’s firm came to be terminated on 2nd September 2000 and that led to the filling of the present suit by the plaintiff. As per the plaintiff’s case, the defendant had launched a scheme in the month of June and July, 2000 whereby every customer of National washing machine was provided with a scratch coupon. The customer was to scratch the coupon and was entitled to get the gift as found on the said coupon after scratching. Under that scheme the plaintiff placed an order with the defendant for 400 washing machines and it was represented by the defendant that the delivery of machines

would be in two lots each of 200 machines. The defendant however delivered 120 machines only in the first lot even though it had received payment of 200 machines amounting to Rs. 15 lacs and had also retained three cheques of Rs.5 lacs each towards the cost of remaining 200 machines. So, one of the prayers made in the plaint was for a direction to the defendant to supply to the plaintiff 80 washing machines of the first lot. This is in fact the main relief which the plaintiff was seeking from the trial Court but the same was rejected and now in his appeal also his main thrust was to get the relief in respect of 80 unsupplied washing machines for which he claims to have paid the full price in advance.

5. The plaintiff had also claimed in the plaint that under the coupon scratch scheme the plaintiff was to give gifts to his customers which were found to be given to them after scratching but the defendant Company had failed to deliver the gifts along with the washing machines supplied to the plaintiff and so he had to purchase the gifts from the market to be given to his customers. The plaintiff claimed that he had spent a sum of Rs. 20,000/- for the purchase of gifts and that amount the defendant was liable to pay to him but the same had not been paid. Therefore, a decree for Rs. 20,000/- was also prayed for in the plaint. The plaintiff had also prayed for a decree for rendition of account in respect of the washing machines sold by the defendant Company directly w.e.f. 01-06-2000 since as per the agreement between the parties he was to get commission not only on the washing machines to be sold by him but also on the sales of washing machines sold by the defendant also in the areas of West and South Delhi.

However, this relief of rendition of accounts was come up before the trial Court, as is recorded in the impugned judgment. The plaintiff had also prayed for a decree for a sum of rupees two lacs on account of non-supply of the washing machines for which he had delivered the cheques to the defendant. Thus, a money decree for a total sum of Rs. 2,20,000/- was prayed for.

6. The suit was contested by the defendant and in its written statement by way of preliminary objection it was pleaded that the plaintiff had not followed the plaint properly for the purposes of Court Fees and jurisdiction. On merits, it had while admitting that the plaintiff firm has been appointed as its distributor for sale of washing machines by the brand name of National denied that it had failed to supply the gifts as was being claimed in the plaint and, in fact, it was claimed that the plaintiff had been given 35 gifts in excess which were being retained by him wrongfully. The defendant refuted the averment that plaintiff had purchased gifts from the market costing Rs. 20,000/- and had delivered the same to his customers. The defendant also denied that it had failed to supply 80 washing machines to the plaintiff as was being claimed by him. It was also pleaded that, in fact, the plaintiff owed a sum of Rs. 1,72,340.28 to the defendant Company which fact he had suppressed.

7. On the pleadings of the parties learned trial Court had framed the following issues:

“1. Whether the plaintiff is entitled to the relief of declaration,

injunction and rendition of accounts and damages as claimed?
OPP

2. Whether the suit property valued for the purposes of court fee and jurisdiction? OPD

3. Relief.”

8. From the side of the plaintiff his father had entered the witness box as his attorney to give evidence and from the side of the defendant Company its Company Secretary Shri Vineet Aggarwal was examined.

9. The learned trial Court after considering the evidence of the afore-said two witnesses came to the conclusion that the plaintiff had failed to establish that there was any written agreement of distributorship between the parties provided for the period of distributorship for 13 years, as was being claimed by the plaintiff and, therefore, he could not be given the relief of declaration regarding termination of his distributorship by the defendant vide its letter dated 2nd September, 2000. Regarding the plaintiff's claim that the defendant had not supplied to him 80 washing machines even after having taken the payment the learned trial Judge came to the conclusion that the plaintiff had failed to establish that the payment of Rs. 15 lacs, which he claimed to have made to the defendant Company, was on account of the price of washing machines and, therefore, the defendant could adjust the payment towards the outstanding amount due from the plaintiff to the defendant Company as the defendant's witness had stated to have been done and, therefore, the defendant could not be directed to supply 80 washing machines to the plaintiff. In respect of the plaintiff's claim of Rs. 20,000/- for the non-supply of gifts to him the learned trial Court accepting the plaintiff's evidence that he had not been

supplied the gifts in respect of 200 gift coupons which were collectively exhibited as Ex. PW-1/3 passed a decree in his favour directing the defendant to supply him the gifts as mentioned in those coupons which had been admitted on behalf of the defendant at the stage of admission – denial of documents.

10. As noticed already, the plaintiff felt aggrieved by the grant of only one out of many reliefs claimed by in the plaint and, therefore, he had approached this Court by filing an appeal and the defendant Company also felt aggrieved by the passing of decree by the trial Court directing it to supply gifts to the plaintiff as per the 200 gift coupons and, therefore, it also filed an appeal.

11. During the course of hearing of these appeals learned counsel for the plaintiff had submitted that now the plaintiff in his appeal was only pressing for the grant of decree in respect of non-supply of 80 washing machines and no other relief was being pressed. So, this Court now is required to consider the plaintiff's case that the defendant had not supplied 80 out of 200 washing machines even after having received full payment and whether the plaintiff is entitled to any relief in respect of his claim in that regard. The averments in the plaint in respect of this claim are to be found in paras no. 14 and 15 of the plaint which are being re-produced below:-

“14. That the plaintiff was offered to avail a scheme launched by the defendant, for boosting the sale of the washing machines. As per the said scheme the plaintiff was to purchase 400 Machines, 300 Machines of Model W600 & 100 machines of model W 610.

The scheme was offered as under:

300 Machines Model W600 @ Rs. 8833	= Rs. 26, 49,900
100 Machines Model W610 @ Rs. 8190	= Rs. 8,19,000
Total	= Rs. 34,68,900
Distributor Margin @ 4%	= Rs. 1,22,105
Cash Discount	= Rs. 1,04,067
Scheme on Model W600 @ Rs. 250/-	= Rs. 75,000
Scheme on Model W610 @ Rs. 175/-	= Rs. 17,500
Tour @ Rs. 676/- x 200 Units	= Rs. 1,35,000
Total	= Rs. 4,53,672
Net cost was to be paid by	
Distributor for above 400 machines	= Rs. 30,15,228

The said scheme was availed by the plaintiff and the plaintiff issued/delivered the cheques for the said amount to the defendant. It was represented by the representative of the defendant that since the defendant shall dispatch 200 machines in first lot hence the tour scheme is given against 200 machines first, and the same shall be given for balance 200 also.

15. That the defendant has delivered 120 machines against the said scheme and got encashed the cheques for Rs. 15,00,000/- i.e. cost of 200 machines. Three cheques for Rs.5,00,000/- each totaling for Rs. 15,00,000/- are also lying with defendant. The defendant has failed to supply the balance machines i.e. 80 Machines. It caused damages/losses of profits, which was to be earned on the said machines.”

12. The corresponding paras of the defendant’s written statement now need to be noticed and the same are also being re-produced below:-

“14. That the contents of para 14 of the Plaint, as stated, are wrong and are denied. It is specifically denied that the distributor margin given to the distributors by the answering defendant company was 4% as alleged by the plaintiff. It is specifically submitted that the distributor margin given by the answering defendant given to its distributors is 3% on the basic price of the washing machines. It is pertinent to mention here that a credit of Rs. 1,21,500/- was given to the plaintiff against 180 machines @ Rs. 675/- per machine. It is most specifically submitted that the plaintiff in the said paragraph is wrongfully claiming a credit for 200 units @ Rs. 675/- per unit. It is most respectfully submitted that the benefits of all the schemes launched by the answering defendant company have been provided to each and every distributor of the defendant company including the plaintiff herein. It is specifically denied that the plaintiff is entitled to the alleged amounts being claimed by it in the said paragraph.

15. That the contents of paragraph 15 of the plaint, as stated, are wrong and are denied. It is specifically denied that the defendant has failed to supply 80 machines as alleged by the plaintiff. It is further denied that the plaintiff has suffered damages/loss of profits which were to be on the said machines as alleged. Though it is admitted to the extent that the plaintiff had issued three cheques amounting to Rs. 15 lakhs (in total) to the answering defendant from time to time, however, it is specifically submitted that the plaintiff had requested the answering defendant company from time to time not to present the said cheques till the plaintiff gave the instructions. It is most respectfully submitted that the plaintiff is still liable to pay to the answering defendant company a sum of Rs. 1,72,340.28, which fact has been suppressed by the plaintiff before this Hon'ble Court."

13. From the aforesaid pleadings of the parties it becomes clear that the defendant had not denied the plaintiff's claim that the defendant had agreed to sell to his firm 400 washing machines of two different models mentioned in para no. 14 of the plaint and further that those machines were to be supplied in two lots of 200 each. The defendant had also not denied that the total price of those 400 machines was Rs. 34,68,900/-, bifurcation of which figure was given in para no. 14 of the plaint, and also that it had received six cheques of Rs. 5 lacs each from the plaintiff towards the price of 400 machines out of which three cheques had been encashed also by it.. Still, the learned trial court has not given any relief to the plaintiff. So, it becomes necessary to examine the reasons given by the trial Court in the impugned judgment for rejecting the plaintiff's claim in this regard. The discussion of the learned trial Judge and his conclusions are to be found in para nos. 18 and 19 of the impugned judgment which are also being reproduced below:-

“18. Now by way of mandatory injunction the plaintiff wants a direction from this court to direct the defendant to supply 80 machines which he is bound to supply and for which he has already received the payment and four machines which were defective. In para 14 of his plaint the plaintiff has stated that as per new scheme launched which is detailed in para 14, it was agreed between the parties that the defendant will supply 400 machines to the plaintiff and initially only 200 machines will be supplied and the entire amount in respect of these 200 machines was given to the defendant by way of three cheques of Rs. five lacs each. Despite of accepting the payment, the defendant has only supplied 120 machines.

19. Now the question is did the plaintiff prove anything on the record to show that these cheques were meant for supply of 200 machines. Admittedly, the plaintiff has not proved any document on the record to show that these cheques were in respect of 200 machines. It is an admitted case of the parties that prior to 1.6.2000 the plaintiff was dealer of the defendant and from 1.6.2000 he became the distributor and his distributorship was determined vide letter dated 2.9.2000. DW-1 in his cross-examination admitted that the three cheques which were given by the plaintiff were encashed, however, he denied the suggestion that in respect of these cheques the defendant was to supply 200 washing machines. He denied the suggestion that defendant company has to supply 80 plus 4 machines in lieu of 4 defective machines. In fact what happened in this case is that the amount was adjusted towards the money owned by the plaintiff in respect of his dealership account and defendant herein has filed the suit for recovery of the balance amount which approximately is Rs. 1,72,000/-. It is admitted by Id. Counsel for the plaintiff that the suit has been filed and the same is pending in the court of Ld. Civil Judge. DW-1 in his cross-examination stated that it is wrong to suggest that a sum of Rs. 15,00,000/- which was given in distribution account was deliberately adjusted towards the dealership account. In his cross-examination he further stated that it is correct that before 1.6.2000 the plaintiff was authorized dealer and thereafter he came authorized distributor, hence, two accounts of the plaintiff company were maintained by the defendant and he again said that the account is one but transactions are shown separately. Once, the plaintiff has failed to prove any agreement to show that this sum of Rs. 15,00,000/- was in respect of supplying of 200 machines, as per the scheme, which is detailed in para 14 of the plaint, then defendant was within his right to adjust the amount in respect of the amount which the plaintiff owes in respect of the dealership account. The suggestion put to this witness by the Ld. Counsel for the plaintiff itself shows that this amount has been adjusted in the dealership account. There is no bar in adjusting this amount. Once the amount has been adjusted, there was no question of giving a direction by way of mandatory injunction to supply 80 washing machines. Regarding 4 defective machines, DW-1 testified that credit entry has already been made in respect of that amount. Moreover, such a direction can not be given by way of mandatory injunction when other efficacious remedy was available. the plaintiff should have filed the suit for recovery of the amount which he deliberately did not file because he knew that the amount has been adjusted. Hence, the plaintiff is not entitled to the relief of mandatory injunction.”

14. In my view, the very question posed by the learned trial Judge at the commencement of his discussion in para no.19 of the impugned judgement regarding this part of the plaintiff's case viz. whether the plaintiff had proved that he had made the payment of 15 lacs of rupees to the defendant towards the price of 200 machines clearly shows that the learned Judge was accepting the case of the plaintiff that the defendant was to supply 200 washing machines to the plaintiff in the first lot and the price of those machines was also that which was pleaded by the plaintiff in para no.14 of the plaint i.e. Rs. 8833/- per machine of Model W600. However, the question posed by the trial Judge for being answered by him really did not arise for consideration in view of the fact that the defendant itself had not claimed in its written statement that that payment was not towards the price of 200 washing machines. Therefore, the plaintiff was not supposed to adduce any documentary evidence to prove that fact. In any event, the defendant's attorney, who happened to be his father also, had categorically deposed as DW-1 that three cheques of Rs. 5 lacs each had been given to the defendant towards the price of 200 washing machines which were to be supplied in the first lot by the defendant. That claim was not challenged in his cross-examination also on behalf of the defendant. Thus, the defendant's failure to deny this claim of the plaintiff amounted to an admission of the same on its part and that admission by the defendant was the best evidence in favour of the plaintiff's claim. Learned senior counsel for the defendant though maintained that the plaintiff's claim had been rightly rejected could not refute submission of the learned

counsel for the plaintiff that there was admission by the defendant that the payment of Rs.15 lacs to the defendant was towards the price of 200 washing machines. Thus, the defendant had received from the plaintiff a sum of Rs. 17,66,600/- towards the price of 200 washing machines @ Rs. 8833/- per machine but it had supplied only 120 washing machines to the plaintiff.

15. The underlined portion of para no. 19 of the impugned judgment shows that the learned trial Court declined to give the relief to the plaintiff in respect of non-supply of 80 washing machines on the ground that the defendant had adjusted part of the money out of Rs. 15 lacs received from the plaintiff towards some dues which according to the defendant the plaintiff owed to it. However, this was not even the case set up by the defendant in its written statement and so the same could not be entertained at all, what to say of it being accepted, all that the defendant had pleaded in its written statement was that a sum of Rs. 1,72,340.28 was due from the plaintiff and not that the defendant had adjusted any amount paid by the plaintiff towards the alleged liability for the aforesaid sum towards the defendant. Even the plea of adjustment has to be specifically pleaded by a defendant in a suit for recovery of money like a counter claim or set off. It appears that during the course of arguments the counsel for plaintiff had admitted that the some suit of recovery of money filed by the defendant against the plaintiff was pending against him but that admission also could not take the place of a pleading of that fact in the written statement of the defendant and similarly the suggestion put to DW-1 on behalf of the

plaintiff that the amount paid to the defendant had been deliberately adjusted towards the dealership account was not sufficient to reject the plaintiff's claim on the ground that the defendant had a right to adjust the money paid to it by the plaintiff towards the outstanding dues in the dealership account, which amount as had been admitted by PW-1, was also being maintained by the defendant prior to the appointment of plaintiff's firm as a distributor for the defendant's products. I am, therefore, of the view that the decision of the learned trial Court not to grant any relief to the plaintiff on account of non-supply of 80 washing machines by the defendant cannot be sustained and the plaintiff deserves to be given appropriate relief in the present appeal.

16. Considering the fact that the plaintiff was claiming delivery of 80 washing machines which were to be supplied to him sometime in the year 2000 the defendant may not even be having machines of the old model now and so it may not be appropriate for this Court to direct the defendant to supply to the plaintiff 80 washing machines of some other model. In my view, the most appropriate and equitable relief flowing naturally from the averments made in the plaint would be to grant a decree to the plaintiff for refund of the price of 80 washing machines @ Rs. 8833/- per machine which the defendant had undisputedly received from the plaintiff. That relief, of course, would be subject to the plaintiff furnishing requisite court fee.

17. Resultantly, the appeal filed by the defendant stands allowed since plaintiff's counsel had given up the claim for supply of gifts to him during

the course of hearing of these appeals. The appeal filed by the plaintiff is allowed to the extent that there shall now be a decree in favour of the plaintiff and against the defendant for a sum of Rs. 7,06,640/- with proportionate costs but subject to the condition of deposit of the requisite Court fee on the said amount. The plaintiff is given 45 days time to furnish the requisite Court fee in the Registry of this Court. In case the plaintiff fails to furnish the requisite Court fee within the given time the decree passed in his favour in his appeal shall become inexecutable.

P.K. BHASIN,J

FEBRUARY 07, 2011/pg