

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

% *Date of judgment: 29.4.2011*

+ **R.S.A.No.86/2007 & CM No.4166/2007**

M/S TIN BOX
Through: Appellant
Mr.Rajat Aneja and Ms.Vidhi
Jain, Advocates.

Versus

M/S GOM INDUSTRIES LTD.
Through: Respondent
Mr.Alok Mahjan and Mr.Rajesh
Arya, 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 had impugned the judgment and decree dated 17.1.2007 which endorsed the finding of the trial judge dated 25.8.2004 whereby the suit filed by the plaintiff (under Order XXXVII of the Code of Civil Procedure) seeking recovery of Rs.1,69,238/- had been decreed; the application filed by the defendant seeking leave to defend had been dismissed.

2. Plaintiff had filed the aforementioned suit under the provisions of XXXVII of the Code of Civil Procedure (hereinafter referred to as 'the Code'). He was supplying goods to the defendant against invoices. A running account was maintained; defendant failed to make the payments despite reminders and even after having confirmed the balance as on 31.03.1996. The statement of account from the ledger of the plaintiff maintaining the account of the defendant company had been filed along with the plaint. On 31.7.1998 the suit had been decreed as the defendant had failed to appear in spite of service. On his application under Order 9 Rule 13 of the Code the ex parte decree was set aside. Leave to defend was filed by the defendant. The letter dated 08.2.1996 sent by the defendant to the defendant had confirmed the balance of Rs.1,28,350/- as on 31.03.1996. This was in conformity with the statement of account filed by the plaintiff. The three following defences were raised by the defendant in his application seeking leave to defend:

- i. entry of Rs.25,086/- against invoice no.0061 dated 23.3.1996
- ii. Rs.10,910/-
- iii. Rs.60,000/-

3. It was stated that these payments were not payable by the defendant. Trial judge was of the view that the payment of

Rs.25,086/- has been confirmed by the defendant in para 3C of his application for leave to defend; he has admitted signatures on the said invoice; the goods had been supplied. Qua the second entry of Rs.10,910/-; the same was confirmed vide annexure P-IV which had been filed by the plaintiff along with his reply to the application for leave to defend. The account of outstanding dues of Rs.1,28,350/- was also confirmed as on 31.3.1996. The third amount of Rs.60,000/-, as per the plaintiff was paid to Devender Mohand Bhatnagar, Manager of the plaintiff company, in cash; court was of the view that this was the only payment which had been paid in cash; in the entire transactions between the parties from 1993 to 1996 all payments were made by cheques; it was difficult to believe that each transaction of Rs.60,000/-; there was no explanation as to why the defendant did not obtain a receipt for the said payment. All amounts claimed by the plaintiff stood adequately explained; goods had been supplied by the plaintiff to the defendant for which he was to receive payments and which had not been paid. The defence raised by the defendant was moonshine; his application had been dismissed.

4. This was affirmed in first appeal.

5. This is a second appeal. It has been admitted and on 17.4.2007 the following substantial questions of law were

formulated:

1. Whether a sum of Rs.60,000/- was misappropriated by Mr.Devender Mohan Bhatnagar, as per report lodged by the respondent with the police on 8.7.1996 wherein specific allegation was made that Rs.60,000/- was received from Tin Box Company?

2. Does it stand proved by filing invoice dated 23.3.1996 that goods were delivered to the respondent without production of delivery challans?

6. On behalf of the appellant, it is pointed out that the impugned judgment suffers from an infirmity for the reason that the defendant had all along stated that Rs.60,000/- had been paid by him to the Devender Mohan Bhatnagar who was the manager of the plaintiff company; this has also been admitted by the plaintiff in his complaint which he had lodged on 08.7.1996; which was a complaint against Devender Mohan Bhatnagar. In this complaint it has been mentioned that certain misappropriation of funds had been done by Devender Mohan Bhatnagar which also included a sum of Rs.60,000/- received from Tin Box Company. To counter this submission, learned counsel for the respondent has submitted that this complaint was filed in July 1996 pursuant to the information received by the plaintiff company from its various customers that they had paid the amounts to Devender Mohan Bhatnagar but he had misappropriated them.

7. Trial judge while dismissing the application for leave to defend had dealt with this contention in the following manner:

“So far as dispute of ₹60,000/- is concerned, the plaintiff avers that the same was paid to one Shri D.M.Bhatnagar, Manager of the plaintiff company, in cash. There is no receipt of the same. It is pertinent to mention that entire payment since the beginning of transactions in 1993 upto 1996 was made through cheques. In these circumstances there does not appear any reason of payment in cash even if it is assumed that it was so tendered it does not appeal to logic that the same will be paid by the defendant firm without any receipt and if it is so paid, the defendant is making such payments at its own peril. Moreover, terms and conditions at para 4 of Annexure P-II invoice specifically mentions that payment are to be made through Bank draft or cheque.”

8. This finding had clearly noted that all the transactions between the parties had been effected through cheque payments; this was between the year 1993 to 1996; it is difficult to believe that the defendant would have paid a sum of Rs.60,000/- to the manager of the plaintiff company without obtaining a receipt; more so when all other transactions were by cheques and this was the solitary transaction by cash. This was a moonshine defence; which was rejected. This finding calls for no interference.

9. The second submission made by the learned counsel for the appellant relates to the payment of Rs.25,086/- which the plaintiff has claimed in view of the goods supplied on 23.3.1996. In para 7

of the plaint the payments claimed by the plaintiff have been detailed. As per the plaint, on 23.3.1996 supplies were made of goods worth Rs.25,086/- under invoice No.0061; due date was 23.5.1996. The defence of the defendant in his application for leave to defend was that goods were in fact not supplied and this amount is not due. However, in para 3C of his application (leave to defend) the defendant had admitted that on 23.3.1996 Devender Mohan Bhatnagar had visited the office of the defendant and obtained the signatures of Mr.Mehra on the invoice and had assured that the delivery of goods would be made immediately thereafter; goods were, however, not delivered. Trial judge had noted that the defendant had admitted his signatures on the invoice for Rs.25,086/-; it would be difficult to imagine that in a business dealing a person would sign an invoice without taking the physical delivery of the goods and agreeing to take the delivery on a later date; this defence was also found to be moonshine. This finding returned while disposing of the application for leave to defend on this score reads as follows:-

“So far entry pertaining to ₹25,86,00/- is concerned the same stands duly confirmed as the defendant in leave to defend application in para 3 C has admitted signature on the said invoice but has contended that goods were never supplied for the same.”

10. The admission of the defendant had correctly weighed in the mind of the trial judge. Moreover it is also not in dispute that the defendant had confirmed the balance of Rs.1,28,350/- vide balance confirmation dated 08.4.1996. The application for leave to defend had been dismissed taking into account all these factors.

11. This court has to answer only the two substantial questions of law which have been formulated as aforementioned. They relate to payment of Rs.60,000/- and the delivery of goods vide invoice dated 23.3.1996 which relate to the payment of Rs.25,086/-. These fact findings as returned by the two fact finding courts below do not in any manner call for any interference. There is no perversity in this finding. Substantial questions of law are accordingly answered in favour of the respondent and against the appellant. The impugned judgment calls for no interference. Appeal as also pending application is dismissed.

INDERMEET KAUR, J.

APRIL 29, 2011

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