

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

% *Date of Judgment: 06.04.2011*

+ **RSA No. 316/2006**

BRAHM PRAKASH

.....Appellant

Through: Mr. Rajat Aneja, Advocate with Ms. Shweta Singh and Ms. Vidhi Jain, Advocates.

Versus

M/S WRAPS HYGIENE INDIA LTD.

.....Respondent.

Through: None.

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)

CM 13417/2006 (for exemption)

Exemption allowed subject to just exceptions.

RSA No. 316/2006

1. This appeal has impugned the judgment and decree dated 22.08.2006 which had endorsed the finding of the trial judge dated 20.05.2005 whereby the suit filed by the plaintiff M/s. Brahm Prakash & Co. seeking recovery of Rs. 71,230/- which comprised of the principal amount of Rs. 63,950/- plus interest was dismissed.

2. The case of the plaintiff was that he had done work of paint and polish in the office of the defendant. He had raised a bill in the sum of Rs. 63,950/-; an advance payment of Rs. 15,000/- had been

paid by the defendant; thereafter a further sum of Rs. 20,000/- had been paid by way of four cheques. The last cheque is dated 28.12.2000; the bill in the sum of Rs. 63,950/- was raised upon the defendant but he had failed to pay the amount. In spite of legal notice, defendant had paid no heed. Suit was filed.

3. The defence of the defendant was that the plaintiff was a petty contractor; he had approached the defendant through M/s. Bhagwati Marbles. After completion of the work, defendant had made full and final payment to the plaintiff.

4. On the pleadings of the parties, six issues were framed which read as follows:-

*1. Whether the suit is barred by limitation?
OPD*

*2. Whether the plaintiff has no locus standi
to file the present suit? OPD*

*3. Whether the plaintiff has not come
before court with clean hands? OPD*

*4. Whether the plaintiff is entitled to the
amount claimed? OPP*

*5. Whether plaintiff is entitled to interest.
If so, at what rate? OPP*

6. Relief.

5. Oral and documentary evidence was led. The preponderance of probabilities and the evidence led by the respective parties, both-oral and documentary, was weighed. Preponderance of probabilities was in favour of the defendant. Court was of the view that the plaintiff has failed to prove his case. Suit of the plaintiff was dismissed.

6. This finding was endorsed in the impugned judgment.

"14. In the present case, a suit for recovery was filed by the appellant against the respondent. The respondent contested the said suit and after trial the said suit was dismissed vide impugned judgment /decree dt. 20.5.2005 passed by the Id.Trial Court.

15. It has been submitted on behalf of the appellant that the Id. Trial court has failed to appreciate that the respondent had issued various cheques in favour of the plaintiff from time to time and that Id.Trial court has also failed to appreciate that in case the work was got done by the appellant through M/S Bhagwati Marbles, there was no sense for the respondent to issue the cheques in the name of the appellant, however the aforesaid contentions put forward on behalf of the appellant are devoid of any merits as perusal of the record and the perusal of the impugned judgment shows that the Id.Trial Court has correctly appreciated the issuance of cheques in favour of the appellant from time to time by the respondent. Id. Trial Court has dealt at length with the issuance of the aforesaid cheques and also with the submissions made on behalf of the respondent that the work was got done through M/S Bhagwati Marbles and after discussing the aforesaid issues at length, Id. Trial Court has properly appreciated the said issues and have come to the correct conclusions in the impugned judgment dt. 20.5.2005.

16. The important fact is that the entire suit of the plaintiff was based upon the bill (Mark-A), however, the plaintiff has failed to prove the said bill or the amount for which the bill was raised on record in accordance with law. The perusal of the record shows that only the photocopy of the said bill (Mark-A) has been placed on record by the plaintiff and he has failed to produce the original bill on record . It was contended by the appellant before the Id.Trial Court that the said original bill was handedover to the respondent by him but said submissions made on behalf of the appellant are not of any help to him as the appellant has not issued any notice to the respondent to produce original bill . Admittedly the said bill was not signed by the respondent and the appellant has also not produced any evidence on record to show that the said bill was given to the respondent. In these circumstances, the appellant/plaintiff has failed to prove on record the aforesaid bill in accordance with law and the appellant has also failed to prove the amount of bill or that any amount was outstanding against the respondent. In the present case the respondent has specifically denied that he had agreed to the amount of Rs. 78,950/- as alleged by the appellant and in these circumstances the onus was upon the appellant to prove the aforesaid bill on record and also to prove that the amount in question was due and payable by the respondent and in my considered opinion the appellant has failed to discharge his onus in this regard. It has been rightly held by the Id.Trial Court in the impugned judgment that once the plaintiff (appellant herein) has failed to prove the bill or the amount for which the bill was raised or that is due against the defendant (respondent herein) clearly the plaintiff (appellant herein) can not be held entitled to recover any amount from the defendant (respondent herein) .

17. It has been further submitted on behalf of the appellant that the ld. Trial Court has not properly appreciated the oral and documentary evidence adduced by the parties, however, the perusal of the record and the perusal of the impugned judgment shows that the aforesaid contention put forward on behalf of the appellant does not hold water as ld. Trial Court has properly appreciated the evidence adduced on behalf of both the parties and after proper appreciation of the evidence, ld. Trial Court has come to just and reasonable conclusions and in my considered opinion, the findings returned by the ld. Trial Court are apt and accurate."

7. There is no perversity in this finding. These are two concurrent findings of fact. Both the courts below had noted that the plaintiff had failed to prove the bill raised by him; only the photocopy of the same, marked as Mark-A, has been placed on record. The contention of the plaintiff that he had handed over the original to the defendant was disbelieved; no notice had been given by the plaintiff to the defendant to produce the original of the said document; it was also not the case of the plaintiff that the defendant had signed this bill; there was no evidence with the plaintiff to show that this bill had, in fact, been given to the defendant. Ex. DW 1/P1 was the statement of account produced by the defendant showing that the cheque of Rs. 5000/- had been encashed. This was a part payment which had been made by the defendant for the services rendered by him.

8. There is no doubt that certain discrepancies were noted in the testimony of DW-1, case of the defendant was that contract was for Rs. 25,000/- yet Rs. 35,000/- had been paid by him to the plaintiff. The court had, however, noted that the plaintiff had failed to prove the bill upon which his entire case was based.

9. This is a second appeal. It has been admitted and on 03.10.2006, the following substantial question of law had been formulated:-

“If by making the part payment by the respondent and refuting the contract simultaneously, could the suit of the plaintiff/appellant still be dismissed?”

10. In view of the aforementioned discussion, it is clear that there is no scope for interference in the impugned judgment. Although certain discrepancies were noted in the testimony of DW-1, his case being that the contract awarded to the plaintiff was Rs. 25,000/- yet he had admittedly paid Rs. 35,000/-; however, such weaknesses in the defence of the defendant do not enure for the benefit of the plaintiff. The plaintiff who comes to the court must stand on its own legs. Plaintiff had failed to prove the bill raised by him upon the defendant; this was the whole edifice of the case of the plaintiff; suit of the plaintiff was rightly dismissed. Substantial question of law is answered accordingly. There is no merit in the appeal. Dismissed.

INDERMEET KAUR, J.

APRIL 06, 2011
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