

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

+ **RFA 444/2010**

% **16th December, 2011**

BIC LOGISTICS LTD Appellant

Through : Mr. Karan Chauhan, Advocate.

versus

MUDITA MARKETING Respondent

Through : Mr. Vivek Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 6.9.2007 dismissing the leave to defend application filed by the appellant/defendant in a suit for recovery of Rs.3,17,425/- filed under Order 37 CPC.

2. The brief facts of the case are that the respondent/plaintiff undertook transportation of cargo on behalf of the appellant/defendant. The services were availed of by the appellant/defendant till April, 2006 and for which services it rendered bills from time to time which were issued to the

appellant/defendant. The appellant/defendant is stated not to have made payments of ten bills, which are stated in para 5 of the plaint and thereafter the subject suit for recovery of Rs.3,17,425/-, being the value of those invoices was filed.

3. The appellant/defendant on service of summons for judgment filed the leave to defend application and contested that the bills were forged and fabricated, inasmuch as all the payments which were due to the respondent/plaintiff were made either by cheques or by cash. It was pleaded that the final payment of Rs.50,000/- was made on 20.5.2006 whereafter no amount was payable to the respondent/plaintiff.

4. The trial Court has dismissed the leave to defend application by observing that since the appellant/defendant claimed that the total dues stood paid, it was upon the appellant/defendant to file details of the requisite cheques or receipts showing cash payment with respect to the bills, however, the same were admittedly not filed. To this, I may add that the appellant/defendant could also have filed its statement of accounts, but the counsel for the appellant/defendant admits that no such statement maintained by the appellant/defendant of the respondent/plaintiff was filed in the trial Court. If the books of accounts of the appellant/defendant were filed it would have shown what were the bills for which the services were availed of by appellant/defendant from the respondent/plaintiff and what were the

payments which were made.

5. The trial Court while dismissing the leave to defend application has made the following relevant observations:-

“4. I have heard Ld. Counsels for parties and perused the record. The perusal of application with affidavit of defendant, it is revealed that there is no dispute that the defendant availed services of plaintiff as alleged in the plaint. No deficiency of any kind in service of plaintiff has been alleged. The case of defendant is that defendants has been making payment to plaintiff in advance by cash or cheques. The amount was fully and finally was settled by defendant making payment of Rs.50,000/-. The bills/invoices are alleged forged and fabricated and the service of legal notice has been denied.

5. The plaintiff has given details of invoices, in para no.5 of plaint along with dates, gross bill amount, discount, net payable amount, raised from Delhi Office and Hyderabad Office separately. In arriving to total dues, the amount of Rs.50,000/- received on 20.5.2006 from defendant has been taken into consideration. But defendant has not given such details of payments made by defendant to plaintiff in advance by cash or cheques. Defendant has also not placed any receipt of making payment from time to time or any statement of account to shal that only an amount of Rs. 50,000/- was due which has paid in full and final settlement. No proof of full and final payment is placed on record.

6. The registered A/D legal notice dated 25.11.2006 was sent on the address of defendant by post vide postal receipt original on record. The legal notice was duly delivered at the proper address of defendant vide original AD card on record. There is no allegation that address of defendant on notice was wrong. Thus legal notice was duly served upon the defendant as per signed AD card. The notice was bearing all details of invoices as given in plaint. The original invoices have been filed by the plaintiff on the judicial record along with plaint. It is not

alleged as to how and in what manner these bills / invoices are forged and fabricated. Defendant neither filed reply to notice nor challenged the bill / invoices by filing any suit nor filed any complaint before any public authority. Therefore, adverse inference is drawn and bills / invoices are deemed genuine. The bills are carrying terms and conditions as under:

1. Difference if any may be notified within 3 days of receipt.
2. Interest @ 24% per annum will be charged if the bill is not paid within stipulated period.
3. Subject to Delhi Jurisdiction only.

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11. Hon'ble High Court of Delhi in Bharat Forge Ltd. Vs Anil Gulati reported as 121 (2005) DLT 357-2005(83) DRJ 140 in para no. 13 pleased to hold as under.

In the instant case, as we have noticed the invoices clearly contain the terms of supply and other requisite terms, price for effecting the sale of goods is given. The invoices have been acted upon, accepted and partly paid. In these circumstances, the preliminary objection raised as to the non-maintainability of the suit under order 37 is devoid of merit".

This authority is also applicable to present case in similar facts and circumstances.

12. In the light of the above legal position, defence taken by defendant being illusory, sham, bogus and moonshine is not found entitled to leave to defend. No genuine triable issue has been raised. Therefore, this application is hereby dismissed. The suit of plaintiff is decreed for Rs.3,17,425/- with cost and interest on the above amount at the agreed rate of simple interest 24% per annum w.e.f. date of last bill i.e. 30.4.2006. The date of filing of the suit subject to payment of the court fees on additional amount and from the date of filing suit till realization. Decree sheet be drawn accordingly. File be consigned to record room."

(underlining added)

6. I completely agree with the reasons given by the trial Court that the defence was clearly a moonshine in this case. If really the appellant/defendant had made payments, then the appellant/defendant would have surely filed the details of the cheques and the cash receipts which would have shown payment, besides filing the statement of accounts maintained in the books of accounts, and all of which documents were not filed. Even the legal notice sent by respondent/plaintiff was not replied to. The trial Court therefore rightly dismissed the leave to defend application.

7. However, there is one aspect with respect to which the impugned judgment needs to be interfered with, though, this aspect has not been argued on behalf of the appellant. This aspect is high rate of interest which has been granted by the trial Court, pendente lite and future @ 24% per annum. Considering the present interest regime and the recent chain of Supreme Court judgments which have held that in view of the changed economic scenario and consistent fall in the rates of interest, the Courts must reduce the rate of interest, I therefore direct that the appellant/defendant will be liable to pay interest @ 12% per annum simple on the principal amount of Rs.3,17,425/- from the date of last bill i.e. 30.4.2006, and thereafter pendente lite and future till the date of the payment of the amount by the appellant in this regard.

8. The appellant/defendant had deposited the decretal amount in this

Court pursuant to the order of the learned Single Judge of this Court dated 6.12.2010. Since the appeal is dismissed, the respondent will be entitled to withdraw the amount as per today's judgment, though not the complete amount, inasmuch as the respondent/plaintiff has only been allowed interest @12% per annum simple instead of 24% per annum simple as was granted by the trial Court. Let the Registry pay the amount due to the respondent/plaintiff in terms of today's judgment and the balance amount thereafter available be released to the appellant/defendant.

9. Parties are left to bear their own costs. The present appeal is dismissed, except to the extent of allowing reduction of rate of interest. Decree sheet be prepared. Trial Court be sent back.

VALMIKI J. MEHTA, J.

DECEMBER 16, 2011

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