

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: January 10, 2011
Judgment Pronounced on: January 11, 2011

+ **CS(OS) No. 1588/2008**

SHRI NARENDER GUPTA

.....Plaintiff

- versus -

**M/S. RELIANCE POLYCRETE LTD.
& ORS.**

.....Defendants

Advocates who appeared in this case:

For the Plaintiff:	Mr. Rajeev Kumar
For the Defendants:	Mr. M.M.Ansari, Adv. for D-1 to D-4.
	None for D-5.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J

CS(OS) No. 1588/2008 & IAs 515/2010, 516/2010, 517/2010 & 3106/2010

1. This is a suit for recovery of Rs.46,82,000/-. It is alleged in the plaint that defendant No.1 - Reliance Polycrete Ltd. is an associate of defendant No.5 -Punjab Agro

Foodgrains Corpn. Ltd. in terms of an agreement dated 30.6.2005 between them for rendering services for export/domestic sale of Indian Wheat. Defendants 2 to 4 are directors of defendant No.1. It is alleged in the plaint that defendants 1 to 4 induced the plaintiff to part with a sum of Rs.2.40 crores for supply of wheat and pursuant thereto the aforesaid amount was deposited by the plaintiff with defendant No.5 in the account of defendant No.1. Defendant No.5 issued two orders; one for release of 2500 MT of wheat and the other for release of 1250 MT of wheat, to the plaintiff, in the account of defendant No.1. Vide letter dated 23.8.2005, defendant No.5 informed the plaintiff about refund of his money and sought an affidavit from him for release of an amount of Rs.20,218,000/- in favour of defendant No.1, to the effect that he shall not claim any financial compensation or wheat stock from defendant No.5. The plaintiff submitted the affidavit accordingly and a cheque of Rs.2,02,18,000/- was issued by defendant No.5 in favour of defendant No.1 which released that amount to the plaintiff leaving an outstanding balance of Rs.37,82,000/-. After due discussion amongst the defendants, defendant No.1 issued a cheque of

Rs.46,82,000/- to the plaintiff comprising principal amount of Rs.37,82,000/- and interest on that amount amounting to Rs.9 lakhs. When presented to the bank, the cheque was dishonoured for want of sufficient funds. Another cheque of Rs.2 lakhs was thereafter issued by defendant No.1 to the plaintiff which also was dishonoured for want of funds. The plaintiff has, therefore, filed this suit under Order XXXVII of CPC for recovery of Rs.46,82,000/-.

2. IA 3106/2010 has been filed by defendants 1 to 4 seeking leave to contest the suit. In their application for leave to contest, these defendants have claimed that there was no contract between defendant No.1 and the plaintiff for supply of any food item. It is further alleged that the cheque for Rs.46,82,000/- as also the cheque for Rs.2 lakhs were issued by defendant No.1 to defendant No.5 after filling the cheque amount, but without filling the name of the payee of the cheques. It is further alleged that the plaintiff in collusion with defendant No.5, prepared these cheques in his favour and on coming to note of it, defendant No.1 asked defendant No.5 to return those cheques to it. On the failure of defendant No.5 to return the cheques, defendant No.1 stopped the payments of the cheque. It is further alleged

that the covering letter was also not issued by defendant No.1 or defendant No.2 and was prepared by the plaintiff in collusion with defendant No.5, as defendant No.1 used to send blank letter heads with the signatures of defendant No.2 to defendant No.5 for business purposes. It is, however, admitted that the signatures of defendant No.2 on the covering letters appear to be genuine.

3. IA 516/2010 has been filed by defendant No.5 seeking leave to contest the suit. Vide IA 515/2010, defendant No.5 has sought condonation of delay in filing memo of appearance whereas condonation of delay in filing leave to appeal has been sought by defendant No.5 vide IA 517/2010. In its application for leave to contest, defendant No.5 has alleged that it had no role whatsoever in the contract/deal between the plaintiff and defendant No.1. It is further alleged that the associate agreement dated 30.5.2005 was executed between defendant No.1 and defendant No.5, but, since defendant No.1 could not arrange the required amount, the agreement was terminated on its request and the lease orders issued to it were cancelled. It is further alleged that an amount of Rs.13.2 crores which defendant No.1 had deposited with defendant

No.5 was duly refunded to it. It has been pointed out that release orders for wheat were issued by defendant No.5 in favour of defendant No.1 and not in favour of the plaintiffs. It is also alleged that defendant No.1 has not only acknowledged the receipt of payment, it also indemnified defendant No.5 vide indemnity bond vide 24.8.2005.

4. In **M/s Mechalec Engineers and Manufactures v. M/s Basic Equipment Corporation** (1977) 1 SCR 1060, the Supreme Court set out the following principles:-

"(a) If the defendant satisfies the Court that he has a good defense to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) if the defendant raises a friable issue indicating that he has a fair or bona fide or reasonable defense although not a positively good defense the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he had a defense, yet, shows such a state of facts as leads to the inference that at the trial

of the action he may be able to establish a defense to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the Court may in its discretion impose conditions as to the time or mode of trial but not as to payment into Court or furnishing security.

(d) If the defendant has no defense or the defense set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defense or the defense is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the Court may protect the plaintiff by only allowing the defense to proceed if the amount claimed is paid into Court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defense."

5. Coming to the application of defendant No.1 for leave to contest, it is an admitted case of the parties that two cheques one of Rs.46,82,000/- and the other of Rs.2 lakhs were issued by defendant No.1. The plea taken by defendant No.1 is that though the amount of the cheques

was filled by it, the name of the payee was left blank and the cheques were delivered to defendant No.5. However, the application/affidavit filed by defendants 2 to 4 does not disclose as to why these two cheques were delivered by defendant No.1 to defendant No.5. This is not their case in the application/affidavit filed by them that they owed the amount of these cheques to defendant No.5. This is also not their case that these two cheques were issued by defendant No.1 to defendant No.5 towards some advance payment or towards some other contractual obligation towards defendant No.5. Defendant No.5 does not support the case of defendant No.1 that the aforesaid two cheques were delivered to it by defendant No.1. In these circumstances, it appears highly improbable that these cheques were issued by defendant No.1 to defendant No.5 and not to the plaintiff.

6. Defendant No. 1 is a Limited Company and defendant No. 5, which is a subsidiary of Punjab Agro Industries Corporation, as is evident from the documents placed on record, appears to be a Government company. No reason has been given by defendant No. 1 for leaving the name of the payee blank in the cheques issued by it. Ordinarily, a company is not likely to issue cheques leaving

the name of the payee blank on them and nor is a Government company like defendant No.5 likely to accept cheques in which the name of the payee is left blank. It is, therefore, difficult to accept that the name of the payee was left blank when these cheques were issued by defendant No.

7. The plaintiff issued a legal notice dated 21st March, 2006 to the defendants before filing this suit. In para 7 of the notice, it was specifically stated that defendants issued a cheque of Rs 46,82,000/- to the plaintiff comprising Rs 37,82,000/- towards principal sum of Rs 9,00,000/- towards interest. It was further stated in para 8 of the notice that defendant No. 2 had also issued a letter confirming that the cheque was in respect of refund of the balance due amount and interest therein and had also given an undertaking that the cheque was good for payment and would be clear on presentation. The plaintiff has also placed on record copies of postal receipts and certificates of posting, whereby this notice was sent to the defendants as also the A.D. cards, whereby receipts of the notice was acknowledged by defendant No. 2 Shri S.K. Jain, Managing Director of defendant No.1. The receipt of this notice had not been denied in the application/affidavit of defendant

No.1. No reply was sent by defendant No. 1, disputing issue of cheque of Rs 46,82,000/- by it to the plaintiff or issue of letter by defendant No. 2 to the plaintiff undertaking that the cheque, when presented to the bank, would be encashed.

In these circumstances, it appears to me that defendant No. 1 has no worthwhile defence with respect to the cheques issued by it to the plaintiff.

8. As regards the letter written by defendant No. 2, CMD of defendant No. 1, to the plaintiff, the case of defendant No. 1 is that blank letterhead with signature of defendant No. 2 on them used to be kept by them with defendant No. 5 and has been misused by defendant No. 5 by forging this letter using a blank letterhead with signature of defendant No. 2 on it. The genuineness of the signature of defendant No. 2 on the letter has, however, not been disputed by defendant No. 1. It is difficult to accept that defendant No. 1, which is a company, used to keep blank letterheads with signature of its CMD on them with defendant No. 5. No particular reason has been given by defendant No.1 for keeping blank letterheads with signature of its CMD on them with defendant No. 5. Even otherwise,

it is unacceptable that defendant No. 5 would be keeping blank letterheads of defendant No. 1 with signature of its Managing Director on them with it and would then part with such signed letterheads to the plaintiff. It would be worthwhile to note here that there is no dispute that the plaintiff had deposited a sum of Rs 2.40 crores with defendant No. 5 in the account of defendant No. 1 and out of that only a sum of Rs 20,21,8000/- was paid by defendant No. 5 to defendant No. 1 and that too after obtaining an affidavit from the plaintiff to the effect that the aforesaid cheque in the name of defendant No. 1 had been received by him on account of refund which he had deposited with defendant No. 5 through defendant No. 1 on account of purchase of wheat from defendant No. 5 and he would not claim any financial compensation from defendant No. 5 nor would he file any legal/criminal case against it. In these circumstances, the inevitable conclusion is that the amount of Rs 46,82,000/- was agreed to be paid by defendant No. 1 to the plaintiff and it was towards payment of that amount that the cheque in question was issued by it to the plaintiff.

9. The case of the defendant N. 1 is that on coming to

know that the cheques which it had kept with defendant No. 5 had been handed over by it to the plaintiff, the payment of cheques was stopped by it. However, the Bank Memo dated 16th January, 2006, pertaining to cheque of Rs 46,82,000/-, shows that the cheque was dishonoured for want of sufficient funds. It was only when presented for the second time that the cheque was returned on 14th March, 2006 with the endorsement "payment stopped by drawer". Similarly, cheque of Rs 2 lakh was also returned for want of sufficient funds vide cheque return Memo dated 23rd February, 2006. This is yet another circumstance which corroborates the case set up by the plaintiff and falsifies the plea taken by defendant No. 1.

10. In these circumstances, I am satisfied that no triable issue has been raised by defendant No.1, it has no plausible defence to the case of the plaintiff and the defence set up by it is absolutely highly improbable and is practically sham and bogus. The plea taken in the application filed by defendant No. 1 does not make out a *bona fide* defence to the case of the plaintiff. The averments made in the application/affidavit of defendant No. 1 do not indicate any reasonable likelihood of the defendant being

able to defeat the claim of the plaintiff in case leave to defend is granted to it.

Hence, following the guidelines laid down by Supreme Court in **M/s Mechalec Engineers and Manufactures**, I am of the view that defendant No. 1 is not entitled to leave to contest the suit.

IA No. 3106/2010, to the extent it pertains to defendant No.1 M/s Reliance Polycrrete Ltd., is dismissed.

As far as defendant Nos. 2 to 4 are concerned since they are only Directors of defendant No. 1 and, therefore, are not personally liable to pay amount of cheque to the plaintiff, the plaintiff is not entitled to any decree against them.

As far as defendant No. 5 is concerned, admittedly, it is a separate company and there is no privity of contract between the plaintiff and defendant No. 5. This is plaintiff's own case that amount of Rs 2.40 crores was deposited by it with defendant No. 5 in the account of defendant No. 1. Admittedly, cheque of Rs 20,21,8000/- was issued by defendant No. 5 in the name of defendant No. 1 and not in the name of the plaintiff. The cheques, on which the suit is based, were issued by defendant No. 1 and not by defendant

No. 5. Thus, there is no privity of contract between the plaintiff and defendant No. 5. Moreover, vide his affidavit submitted to defendant No. 5, the plaintiff undertook not to file any legal/criminal case against defendant No. 5 and subsequently agreed that he will claim no financial compensation from it. Therefore, the plaintiff is not entitled to any decree against defendant No.5.

For the reasons given in the preceding paragraphs, a decree for recovery of Rs 46,82,000/- with costs and pendente lite and future interest at the rate of 12% is hereby passed in favour of the plaintiff and only against defendant No.1. The suit against other defendants is dismissed, without any order as to costs. The suits as well as the applications stand disposed of accordingly.

(V.K. JAIN)
JUDGE

JANUARY 11, 2010
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