

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

+ **RFA No.427/2004**

% **10th May, 2012**

SANDEEP RANA Appellant

Through: Mr. Prasoon Kumar, Advocate

VERSUS

SURENDER GUPTA Respondent

Through: None.

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 under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 24.4.2004 decreeing the suit for recovery of money filed by the respondent/plaintiff for ₹4,25,499.25/- alongwith interest at the rate of 9% per annum simple.

2. The facts of the case are that the respondent/plaintiff filed the subject suit for recovery of monies against the appellant/defendant on the ground that the appellant/defendant after receiving goods had issued a cheque for payment of the

amount of ₹ 4,25,499.25/-, but the same was dishonoured when presented. Accordingly, the respondent/plaintiff got issued a legal notice through his counsel, which having failed to yield desired results, the subject suit came to be filed.

3. The suit of the plaintiff was originally filed under Order 37 CPC and in which after grant of leave to defend the appellant/defendant filed his written statement and contested the suit. The main defence of the appellant/defendant was that the statement of account filed by the respondent/plaintiff did not correctly reflect the transactions between the parties. It was also pleaded that the subject cheque which was dishonoured was given only as a security to cover another cheque.

4. After the pleadings were complete the trial court framed only one issue as to the entitlement of the respondent/plaintiff to recover the suit amount. This issue no.1 has been dealt with by the trial Court in favour of the respondent /plaintiff by making the following observations:-

“7. It is submitted by Ld. Counsel for the defendant that plaintiff never supplied any goods to the defendant. It is further submitted by him that the details of the bill were not mentioned in the plaint or in the notice dated 12.7.1999 served on the defendant. It is submitted that these details were not furnished because the goods were never supplied. Defendant has filed his affidavit towards examination in chief. In his affidavit defendant has stated that he is not liable to make any payment to the plaintiff. Plaintiff never supplied him any goods at any point of time on credit basis including

the present transaction. In fact defendant intended to say that he had no business dealings with the plaintiff. However, in his cross examination, he admitted that he know the plaintiff and he has business terms with him. He also admitted that whenever he had taken goods even prior to matter in dispute, he had issued the cheques and those cheques were encashed. He has also submitted that he has issued the impugned cheque, however, he stated that he cheque was issued blank and only it bears his signature.

8. It is settled law that plaint has to be brief and concise. Only the facts are to be pleaded and not the evidence. In the plaint it is specifically stated that plaintiff had supplied the goods to the defendant from time to time and this fact is not disputed by the defendant in his cross examination, rather he had admitted that he had business dealings with the plaintiff. Alongwith plaint, plaintiff has filed copies of all the bills and invoices copies of which was supplied. Plaintiff was not required to give details of these bills and invoices either in the notice or in the plaint.

9. Defendant has disputed his signatures on these bills and invoices. Both the parties engaged handwriting experts, to prove their respective case. As usual, the expert has given the opinion in favour of the party who has engaged them. Time and again the report of handwriting expert have come under criticism. It is never seen that the expert has given the report against the party who has engaged him. It is useful to refer to case of Savitari Vs. Fashion Linkers & others 2003-III-AD(Delhi) 980. In that case it was held that it is well known that science of comparing handwriting is not a perfect science. Invariably two experts differ from each other. The experts generally make their report available to a party in advance. They are only examined if they make a favourable report. Keeping in view this important fact the report of handwriting expert in this regard is not worth of it and it should be rejected. Reference is placed on 1999-II-AD(SC)-437 where it was held that comparison of signatures by handwriting expert not always necessarily-least in case where the circumstantial evidence is patent coupled with factum of comparison by the Judge himself. I have perused the bills and invoices. The bill Ex.PW1/6-A, PW1/6-B, PW1/6-C, PW1/6-D, PW1/6-F, PW1/6-G, Ex.PW1/6-H and Ex.PW1/6-J clearly bears the

stamp of proprietorship of the defendant. The same stamp appears on cheque Ex.PW1/1. Defendant has admitted his signatures on the cheque, he has put his signatures which is totally different from his admitted signatures on the cheque. This is so stated because the same person can sign differently at different point of time. The other bills are signed hurriedly but they also bears his signatures. Only one bill is not signed by the defendant. But all these bills were raised and accepted and these bills were mentioned in the statement of account Ex.PW1/2. The statement of account is an extract from the ledger book maintained by the plaintiff in due course of business. The original ledger book was produced. The statement of account Ex.PW1/2 gives details of all these bills and statement of account shows that as on 31.3.99 a sum of ₹ 4,25,499.25 ps was due against the defendant. The defendant has given the cheque of this very amount. Not only this plaintiff has proved the list of sundry debtors which shows that as on 31.3.98 a sum of ₹ 303699.25 ps was due to the defendant. This amount is also shown in the statement of account Ex.PW1/2 and as on 31.3.99, a sum of ₹ 4,25,499.25ps was due as is reflected in the statement of account Ex.PW1/2. Ld. Counsel for the defendant submitted that in the list sundry creditors (Ex.PW1/10-E) his name is mentioned as Petro Cell whereas in fact it is Petro Shell. This is just a typographical mistake. This amount is proved from the ledger book itself. It is again submitted by him that in the list of sundry creditors (Ex.PW1/11-E) his name is shown as Petro Sale. Again this is a typographical mistake because this is amount shown in the ledger books.

10. In fact in the written statement there is only a vague denial of every thing. Plaintiff has proved his case on the basis of documents. In the written statement it is stated that defendant has already explained its position in the reply Ex.DW1/8. It is appropriate to state para-1 of this reply:

“That in reply to the contents of para no.1 of your notice dated 12.7.1999 it is submitted that my clients did have business dealings with your clients but this is incorrect that your clients had been supplying various goods on credit basis. This is totally baseless and hence vehemently denied that ₹ 4,25,499.25 p were due against

my clients on 11.3.1999. So, there was no question of issuing a cheque bearing no.993580 dated 28.6.1999 for the said amount of ₹ 4,25,499.25p by my clients to your clients drawn on State Bank of India G.T. Karnal Road, Industrial Complex, New Delhi 110053 with any assurance whatsoever. Rest of the contents of your notice are also incorrect and hence denied.

In fact, my clients issued a cheque bearing no. 993579 dated 6.10.1998 for ₹25,000/- (Rupees twenty five thousand only) in favour of your clients against the goods taken by my clients. In addition to that simultaneously, at the same time and place and on the same day i.e. 6.10.1998, in good faith, my clients gave another completely blank cheque bearing no. 993580 in question to your clients after signing the same on the insistence of your clients to make the above payment of ₹25,000/- sure in support of the previous cheque bearing no. 993579 dated 6.10.1998 in any eventuality of the same being not encashed. However, your clients promised to return the blank cheque bearing no. 993580 given to your clients after the payment of the previous cheque no. 993579 dated 6.10.1998 but your clients did not return the same despite asking by my clients severally, feigning that the same has been misplaced and would return as and when located and traced. My clients, however, did not suspect anything foul because of cordial and amicable business relations between the two. These two cheques bearing nos. 993579 and 993580, given simultaneously, were filled with the same pen and ink. Significantly, the next cheque bearing no.993581 was issued on 7.10.1998 in favour of a cellular company in the tune of ₹13,419 and in the same way further cheques were also issued in the normal course of his business.”

11. In this reply the defendant has admitted that he has business dealings with the plaintiff. He has also admitted that the cheque Ex.PW1/1 was duly signed by him. However, he has stated that he has given the blank cheque in order to insure and confirm the

payment of ₹25,000/- which was given to the plaintiff vide cheque bearing no. 993579 dated 6.10.1998 for a sum of ₹25,000/-. No body gives a blank cheque. There is no system of giving additional cheque for insuring the payment which was given by way of cheque. If the cheque Ex.PW1/1 was given to cover up the payment of cheque no. 993579, nothing prevented him to fill up the amount of ₹25,000/-. Defendant has not written letter to plaintiff stating that he has issued cheque Ex.PW1/1 to cover up payment of cheque no. 993579. He has not written any letter for the return of the cheque Ex.PW1/1. It is the case of the defendant that this cheque was filled up by the plaintiff. If that was so nothing prevented him to ask the plaintiff to give his specimen signatures. I have no hesitation in coming to conclusion that this cheque was given by the defendant in discharge of his liability.” (underlining added)

5. A reference to the aforesaid paras shows that the respondent/plaintiff proved the bills and invoices. These were proved and exhibited as Ex.PW1/6A to Ex.PW1/6T. On most of the bills there appear the signatures of the appellant/defendant, as also the stamp of his proprietorship concern. The trial court has noted that the dishonesty of the appellant becomes clear from the fact that at the time of admission/denial of the documents at the stage of framing of issues, though the disputed cheque, Ex.PW1/1 contained particular signatures of the appellant/defendant was admitted, however, for the purpose of admission/denial, different signatures were made by the appellant/defendant. Trial court has also noted that the statement of account was proved by the respondent/plaintiff as Ex.PW1/2 by producing the original ledger book. The

balance due as per the statement of account was ₹4,25,499.25 and for which amount the dishonoured cheque was issued by the appellant/defendant in favour of the respondent/plaintiff. With regard to the reply issued by the appellant/defendant exhibited as Ex.DW1/8 to the legal notice issued by the respondent/plaintiff, trial Court notes that in this reply a totally incredible case was taken up by the appellant that the disputed cheque was issued just to make sure that another cheque of ₹25,000/- was cleared. Obviously, to clear one cheque there does not arise any issue of issuing another cheque.

6. A civil case is decided on balance of probabilities. The very fact that the appellant/defendant issued the cheque which was dishonoured shows that the cheque was issued for consideration, i.e. the balance which was due as per the statement of account and for which amount, the cheque was issued. The story of issuing a cheque in blank for another cheque is totally absurd and has rightly been disbelieved by the trial Court. An Appellate Court is not entitled to interfere with the findings and the conclusions of the trial court unless such findings/conclusions are illegal or perverse. Merely because two views are possible, this Court will not interfere. I do not find any illegality or perversity which calls for interference in the appeal.

7. In view of the above, the appeal being without any merit is accordingly dismissed leaving the parties to bear their own costs. Trial Court record be sent back.

8. The surety bond given by the respondent/plaintiff for withdrawing the amount from this Court shall stand discharged.

May 10, 2012
ib

VALMIKI J. MEHTA, J.