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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on : July 30, 2012
Judgment Pronounced on: August 03, 2012

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RFA(OS) 69/2012

M/S. SHORI LAL CHEMICALS & ANR. Appellant
Represented by: Mr. T.K. Ganju, Senior Advocate
instructed by Mr. Rono Mohanty,
Mr. Aditya Ganju and Mr. Sunil
Nayar, Advocates.

versus

SUNITA GUPTA Respondent
Represented by: Mr. Vinay Navare, Mr. Akhil Mittal
and Mr. Keshav Ranjan, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J.

1. Vide impugned order dated April 26, 2012, the learned Single Judge has dismissed IA No.9160/2011 by which application the appellants sought leave to defend, and as a consequence, suit filed by the respondent under Order XXXVII of the Code of Civil Procedure has been decreed in sum of ₹56,57,200/- together with interest @18% per annum from the date of decree till realization. Costs have also been awarded against the appellant. Needless to state, decree is in favour of the respondent.

2. Case pleaded by the respondent was that she was carrying on business as the sole proprietor of M/s.Sandeep Chemicals Corporation, and was trading in dyes and chemicals. As per her, Vijay Aggarwal (appellant No.2) was carrying on business under the name 'M/s.Shori Lal Chemicals' (appellant No.1), as the sole proprietor thereof. She pleaded having sold chemicals and dyes to the firm in sum of ₹49,19,200/- and for which she claimed to have raised two invoices in sum of ₹23,40,000/- and ₹25,79,200/-, but in respect of which invoices, she admittedly has no proof of acknowledgment. She claims that she sent the goods vide lorry receipt No.12926 dated January 16, 2009 and lorry receipt No.13329 dated January 18, 2009 through a transporter Shiv Transport Company, but in respect of which lorry receipts she has no proof of the consignment being delivered to the consignee i.e. M/s.Shori Lal Chemicals. As per her claim, she sold the goods on a 60 days credit. The payment was not received within 60 days. She claims that Vijay Aggarwal, using the letter head of a sister concern 'M/s.Suraj Mal Shori Lal' requested that outstanding balance as per account maintained by her be sent to him. She sent a statement of account for the period ending March 31, 2009, which amount was acknowledged by Vijay Aggarwal as payable, evidenced by his having signed the statement of account sent by her. She also claims that Vijay Aggarwal gave her five cheques, drawn on Oriental Bank of Commerce, each in sum of ₹3 lakhs, and each cheque dated March 25, 2009 in satisfaction of part payment. She pleads that she received another cheque in sum of ₹3 lakhs but claimed this to be on account of part payment towards a friendly loan advanced by her in sum of ₹5,00,000/- on

December 29, 2008. Sunita Gupta pleads that the five cheques when presented for encashment, which were tendered towards part satisfaction of the outstanding amount for the goods sent under the two invoices, were dishonoured. She claims that on some complaint being made by Vijay Aggarwal to the police at Amritsar, one ASI Shiv Nath told her to be present at PS Vijay Nagar, Amritsar. Her husband M.P.Gupta and her sons Robin Gupta and Saurabh Gupta went to Amritsar. She alleges that the police officer, under threat, made her husband and son sign some documents. She alleges that in those documents certain settlements pertaining to the firms M/s.Sino Chem Impex and M/s.Tarun Vanijya were got signed. Sunita Gupta referred to her having paid sales tax on the goods which she claims to have sold to Vijay Aggarwal.

3. Suffice would it be to state that the suit was based on the invoices being written documents as also the statement of account which bears the signatures of Vijay Aggarwal.

4. Seeking leave to defend, Vijay Aggarwal pleaded, and for which he relied upon an affidavit obtained by him from the owner of the lorry in which the goods, pertaining to the two invoices, were allegedly sent by the plaintiff through Shiv Transport Company; to the effect that the goods were never entrusted to the lorry driver. He pleaded lack of his signatures on the lorry receipts as also the invoices as prima facie proof of there being no such transaction. As per Vijay Aggarwal he denied any police pressure being brought about by him on Sunita Gupta or her husband and sons. He pleaded that on July 10, 2009, a settlement agreement was recorded between him i.e. Vijay Aggarwal, as the proprietor of M/s.Shorey Lal Chemicals, Gautam Mehra and Pradeep Sehgal, the partners of

M/s.Sino Chem Impex and Sunita Gupta's husband and two sons acting as Managers of M/s.Sandeep Chemical Corporation. It was pleaded that the settlement agreement was got arrived at by a well-wisher, Darshan Arora, who mediated between the parties. It was pleaded that inter-se accounts were reconciled between Shorey Lal Chemicals, M/s.Sino Chem Impex and M/s.Sandeep Chemicals Corporation. As per the settlement, M/s.Sandeep Chemical Corporation agreed not to claim any sum with respect to the five cheques in question and that M/s.Sandeep Chemical Corporation acknowledged a liability to pay ₹15,52,475.70 to M/s.Tarun Vanijya, whose letter of acknowledgment recording satisfaction of its dues from M/s.Sandeep Chemical Corporation by means of a banker cheque stands recorded. Being relevant, we reproduce the necessary averments made in the application seeking leave to defend. They read as under:-

“(e) That the plaintiff through her authorized signatories approached Mr.Darshan Mohan Lal Arora for arbitration in the matter and the said Mr.Darshan Lal Arora arbitrated the dispute between the parties being a common friend and arbitration award cum memorandum of out of court settlement and mutual compromise was arrived at between the defendant No.2, Gautam Mehra, Pardeep Sehgal and Mr.Gaurav Gupta in their individual capacity as well as in the capacity of authorized signatories of the plaintiff and the award cum compromise was reduced to writing on 10.07.2009 and was duly signed by all the parties referred above. The award cum compromise was also signed by Mr.Darshan Lal Arora not only as an arbitrator but also signed as guarantor to give complete effect to the award cum compromise. The attested Photocopy of award is enclosed is annexed as Annexure D-13.”

5. We highlight that the rubber stamp of Sandeep Chemical Corporation has been affixed where the husband and sons of Sunita Gupta have signed the settlement agreement.

6. With respect to the settlement in question, the case of Sunita Gupta, as pleaded by her in the reply to the application seeking leave to defend is that the alleged compromise document is a forged and a fabricated document. But, relevant would it be to state that she speaks not a word of denial with respect to DD No.006804 dated 07.07.2009 in sum of ₹15,52,475.70, recorded as having been paid by her sole proprietary firm M/s.Sandeep Chemicals Corporation to M/s.Tarun Vanijya. Being relevant, we reproduce her reply to the relevant paragraph of the application seeking leave to defend. It reads as under:-

“(e) In reply to sub-para (e) of the application same is wrong and denied. It is vehemently wrong and denied that the plaintiff through her authorized signatories approached Mr.Darshan Mohan Lal Arora for arbitration in the matter and the said Mr.Darshan Lal Arora arbitrated the dispute between the parties being a common friend and arbitration award cum memorandum of out of court settlement and mutual compromise was arrived at between the defendant No.2, Gautam Mehra, Pardeep Sehgal and Mr.Mahabir Gupta, Mr.Robin Gupta & Mr.Gaurav Gupta in their individual capacity as well as in the capacity of authorized signatories of the plaintiff and the award cum compromise was reduced to writing on 10.07.2009 and was duly signed by all the parties referred above. It is also wrong and denied that the award cum compromise was reduced to writing on 10.07.2009 and was duly signed by all the parties referred above. It is further wrong and denied that the award cum compromise was also signed by Mr.Darshal Lal Arora not only as

arbitrator but also signed as guarantor to give complete effect to the award cum compromise. The alleged photocopy of award is forged, fabricated hence wrong and denied. It is submitted that from the perusal of the alleged compromise deed cum award the rubber stamp affixed on the alleged document is forged and fabricated and never affixed by the plaintiff or her family members. It is further submitted that the defendants who is partner in M/s.Sino Chem pressurized the plaintiff family members through imminent threats of arrest by Amritsar Police by calling the said relatives at Amritsar on wireless messages made by the SSP, Amritsar City to make payment of M/s.Tarun Vanijya the trader in market being referred by Shri Mahabir Gupta. It is further submitted that as per version of the defendants in the application for leave to defend if the alleged settlement has arrived on 10.7.2009 then what make the defendants to forward a letter dated 24.7.2009 to S.P.City Amritsar Punjab after a period of 14 days that the investigation be stopped for some time and to keep the complaint for some time and on the other side the plaintiff husband was received the wireless messages from SSP Amritsar City, Punjab on 24.7.2009 for appearance in the matter of Defendant No.2/M/s.Sino Chem (Copy of wireless message is enclosed herewith as annexure P-25), which fact shows that the defendants have rule over the Amritsar Local Police and treated the plaintiff family members as puppet by harassing the plaintiff husband in hand to hand with local police.

In reply to the above it is submitted that the copy of the alleged award enclosed herewith is forged, fabricated with a view to mislead this Hon'ble Court and same has been fabricated by the defendants in connivance with ASI Shiv Nath and the alleged Arbitrator Darshan Lal Arora in conspiracy to cheat the plaintiff. The contents fabricated by the defendants in alleged memorandum of settlement itself shows that the same has been forged and fabricated and

prepared in collusion with Darshan Lal, and other beneficiaries since the same is unclear, vague and not binding upon the plaintiff. It is submitted that the plaintiff has now realized after filling of the application for leave to defend by the defendants that the alleged compromise deed/arbitration award cum deed of settlement is forged and fabricated documents wherein the contents of the alleged documents are forged and fabricated on the same papers which were got signed by the ASI Shiv Nath from the plaintiff relatives on the pretext of investigation purpose which has been misuse and fabricate by the defendant No.2 with malafide intentions to dilute the entire claim of the plaintiff and to extort money by extended threats to implicate in some false cases. It is submitted that the perusal of the contents of alleged compromise deed attached with the written statement clearly doubts its veracity/authenticity. It is submitted that from perusal of the alleged award the defendant No.2 is partner of M/s.Sino Chem and alleged arbitrator Mr.Darshan Lal Arora is interested person to defendants herein. The plaintiff and her family members are in process of taking the criminal recourse available to them before the Ministry of Homes and Criminal Court of Law against defendant No.2, Darshan Lal & others involve in said illegal act in order to pressurize the plaintiff not to approach the court of law with a view to further extort money from the plaintiff and family members and in obtaining the original dishonoured cheques property of the plaintiff in order to destroy the said instruments.

The legal grounds raised in sub-para (e) for seeking unconditional leave to defend is sham and bogus with a view to defeat the very objective of summary proceedings under Order XXXVII of CPC.”

7. The learned Single Judge has denied leave to defend by holding that the defence pertaining to the lorry receipts i.e. the driver of the lorry deposing to an affidavit that

he never took any consignment was false because the appellant had, on July 03, 2009, made a reference to the vehicle number in a letter addressed to the Excise and Taxation Commissioner. The learned Single Judge has wondered as to how come the defendants could speak about vehicle numbers on July 03, 2009, when the defendants had not even received the goods, as claimed by them. The learned Single Judge has noted lack of acknowledgment by the defendants on the invoices and the lorry receipts, but has placed reliance upon Vijay Aggarwal's signatures on the statement of account sent by the plaintiff. The learned Single Judge has also been influenced by the fact that Sunita Gupta claims to have paid sales tax with respect to the sale in question.

8. Now, a person may sign a statement of account in acknowledgment of having received the same. Vijay Aggarwal has not written on the statement of account that he acknowledges correctness thereof. That Vijay Aggarwal wrote a letter on July 03, 2009 in which he referred to the two vehicle numbers in which the goods were allegedly dispatched, as per the lorry receipts, can well be explained as Vijay Aggarwal having knowledge that Sunita Gupta was claiming having sent goods in the said vehicles, and for which we may note that in the letter which is written by him to the Excise and Taxation Commissioner, Patiala, the grievance raised is that Sunita Gupta was falsifying documents.

9. The learned Single Judge has eschewed complete reference to the settlement award dated July 10, 2009 propounded by Vijay Aggarwal, which bears not only the signatures of the husband and sons of Sunita Gupta, but also

bears the rubber stamp of her sole proprietary firm affixed thereon. As per Sunita Gupta, her husband and son were coerced to sign certain documents at the police station and the rubber stamps affixed are fabricated. In a nutshell, she claims that the so-called settlement award is a fabrication. But, she consciously omits to speak anything about a fact recorded therein i.e. her sole proprietary firm having paid ₹15,52,475.70 by means of a demand draft to M/s.Tarun Vanijya. The document in question refers to a letter of M/s.Tarun Vanijya acknowledging a full and final settlement of the amount payable by Sunita Gupta's firm to M/s.Tarun Vanijya.

10. Certainly, a triable issue arises with respect to the settlement agreement dated July 10, 2009 i.e. : Whether it is a fabricated document, and in respect of which issue we find no explanation rendered by Sunita Gupta with respect to demand draft No.006804 dated July 27, 2009 drawn on Axis Bank i.e. a document purity whereof prima facie cannot be in doubt.

11. At the hearing, learned counsel for the appellant had made a statement that the appellant would not be averse if leave to appeal was granted upon the condition that the appellant would deposit ₹15 lakhs in this Court.

12. We dispose of the appeal setting aside the impugned judgment dated April 26, 2012. IA No.9160/2011 filed by the appellants stand disposed of granting appellants conditional leave to defend; the condition being that within six weeks from today the appellants shall deposit ₹15 lakhs in the name of Registrar General of this Court and within a week thereof would file the written statement. The sum deposited by the appellants would be invested in a fixed deposit for a

period of one year with a term of the deposit that the renewal would be automatic for same period, unless the fixed deposit receipt is got discharged.

13. Parties shall bear their own costs in the appeal.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

AUGUST 03, 2012
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