

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

+ **RSA No.114/2012**

% **25th February, 2014**

DEWAN AUTOMOBILES AND ANR. Appellants
Through: Mr. Suresh Sharma, Advocate.

VERSUS

M/S. BIRLA YAMAHA LTD. Respondent
Through: Mr. Amarjit Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure, 1908 (CPC) is filed against the judgment of the first appellate court dated 29.2.2012 by which the appellate court set aside the judgment of the trial court dated 8.3.2010. Trial court had dismissed the suit for recovery of Rs.1,07,373.50/- and the appellate court allowing the appeal has passed a money decree of the suit amount in favour of the respondent/plaintiff.

2. The relevant observations of the first appellate court are contained in para 12 of the impugned judgment and which reads as under:-

“12. After hearing the arguments and going through the record, I find that in the present case, the admitted facts are that defendant no.1 was appointed as a dealer by plaintiff, Generator sets were supplied by the plaintiff to the defendant. The defendant was making payment by drafts or cheques. It is also admitted that the plaintiff was maintaining the account of the defendant in its account books. The disputed facts are that the plaintiff supplied 40 generator sets which were not saleable. The same were returned but were not credited. The spare parts were also returned but were not credited. The plaintiff supplied certain generator sets to DTDC. The bills of the same were directly raised with DTDC by the plaintiff but the amount is claimed from the defendant. It is important to note here that there is one document Ex.DW1/D proved by the defendant himself and according to this document, there was an outstanding against the defendant as on 31.1.1996 of Rs.2,09,948 and credit balance of Rs.3,219.50 and the balance comes to Rs.2,06,728.50. Thereafter, there are certain issues raised by the defendant regarding amount of 40 generator sets which were returned. The payment of Rs.64,499/- was made when generator sets were sent for replacement to M/s. Rajiv Kumar and 10% discount was to be given. 10% additional commission of 11 generator sets supplied to DTDC i.e. Rs.21,124/- and then advertisement claim of Rs.13,285/- and the commission. This document itself mentions at point C that no further claim pending besides the above. From this statement, it is clear that the defendant agrees that the balance as on 31.1.1996 was Rs.2,09,948/- i.e. 7th entry from the bottom on 4th page of Ex.PW1/B, meaning thereby that the defendant has not disputed the amount till that date. Therefore, in my opinion, the observation by the learned Trial Court that Ex.PW1/B is shrouded with suspicion or that it cannot be relied upon, cannot be upheld, particularly, when the defendant is admitting the same in Ex.DW1/D. It is important to note that the defendant is claiming the adjustment of payment of 40 generator sets returned and this statement of account Ex.PW1/B on page 2 shows that the plaintiff has credited the amount of Rs.6,4,499/- in the account of the defendant. The advertisement claim of Rs.13,285/- has also been credited in the account of the defendant on 22.9.1995. So far as the other claims are

concerned, those are disputed claims and there was no written agreement between the parties for adjusting the same. Even otherwise, according to Ex.DW1/D, claims at serial nos.1,2,4,5 and 6 were to be decided later on upto 15.3.1996, which were never reconciled thereafter. So far as the return of other guarantors sets is concerned, document Ex.DW1/A itself shows that the defendant has received the replacement for those generator sets and the other 40 generator sets had already been credited in the account of the plaintiff. Under the circumstances, in my opinion, the Trial Court should have relied upon statement of account instead of asking for the invoices. The onus was upon the defendant to establish its claim regarding the generators and the commission which has not been produced and no benefit of the same can be given to the defendant. In this regard, I fully agree with the learned Counsel for the appellant that the statement of account once admitted and without claiming that there was fraud played by the plaintiff/appellant in regard, the same cannot be disbelieved or reopened. From the account statement Ex.DW1/D placed on record, it is evident that the plaintiff was entitled to recover Rs.2,06,728.50. The statement of account Ex.PW1/B clearly shows that the amounts against various heads which were disputed by the respondent had duly been credited. So far as the raising of bill regarding supply of generator sets to DTDC is concerned, the same was raised by respondent himself in Ex.DW1/D. If the statement of account Ex.PW1/B is seen along with Ex.DW1/D, then it is clear that the statement of account Ex.PW1/B has been properly maintained and is also admitted. Therefore, the appellant had only adjusted the security amount deposited with it and also the interest which accrued on it. In view of this position, in my opinion, learned Trial Court failed to consider the mater evidence available on record. The order of Trial Court is, therefore, set aside. Suit of the appellant is decreed for a sum of Rs.1,03,373.50/- along with cost against respondents. So far as interest is concerned, no document has been placed on record that the appellant was entitled to 20% interest on the amount. Hence, an interest of 9% per annum is allowed on the decretal amount from the date of institution of suit till its realization. Decree sheet be prepared accordingly. Copy of this order along with Trial Court record be sent back. Appeal file be consigned to Record Room.”
(underlining added)

3. A reference to the aforesaid para shows that the first appellate court has relied upon the document admitted and filed by the appellant/defendant itself and which showed a particular amount admitted to be due by the appellant/defendant. This document is Ex.DW1/D. Appellate court also notes that with respect to the return of generator sets as claimed by appellant/defendant the appellant/defendant had got the credit and the appellant/defendant had also got credit for advertisement expenses incurred by him. Therefore, the amount which was due after giving all required adjustments to the appellant/defendant, has been decreed in favour of the respondent/plaintiff.

4. Learned counsel for the appellant argues before me two aspects. First is that the witness who appeared for the respondent/plaintiff, PW1 Sh. Naresh Mongia admitted that he was not employed by the respondent/plaintiff at the relevant point of time and consequently it is argued on behalf of the appellant before me that his entire evidence is useless and consequently the suit should have been dismissed. Second aspect which is urged is that since the respondent/plaintiff failed to prove the invoices, the suit should have been dismissed.

5. Both the aspects argued before me are without any substance inasmuch as sale of goods is not only proved through the invoices or the

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statement of a witness, but the same can equally be proved by other documents such as the document of the appellant/defendant itself Ex.DW1/D. It is well settled law that nothing can be better than an admission to prove a case and which has so happened in this case. Appellate court has rightly relied upon the admitted document Ex.DW1/D as also the statement of account filed by the respondent showing that necessary adjustments as claimed by the appellants/defendants have been given to them and for the balance due a decree has been passed.

6. In view of the above, no substantial question of law arises and the appeal is therefore dismissed, leaving the parties to bear their costs.

FEBRUARY 25, 2014
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VALMIKI J. MEHTA, J.