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

+ RFA 501/2014

Decided on 15th October, 2014

SHRI HARI OM GUPTA

..... Appellant

Through : Mr. Manish Miglani, Adv.

Versus

IFB INDUSTRIES LTD

..... Respondent

Through :

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J.(ORAL)

CM Appl. No. 17053/2014 (exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

RFA 501/2014 and CM No. 17054/2014 (stay)

Appellant has filed this appeal against the judgment and decree dated 17th May, 2014 passed by the Trial Court whereby leave to defend application of appellant has been dismissed, consequently, suit under Order 37 of the Code of Civil Procedure, 1908 (CPC) of the respondent for ₹18,89,024/- along with costs, pendente lite and future interest @ 12% per annum has been decreed. Respondent claimed in the plaint that he supplied

various electronic goods to appellant from time to time vide following invoices:

- i. Invoice No.DEL/TAX SALES/2264/07-08 dated 31.10.2007 for ₹1,94,000/-
- ii. Invoice No.DEL/TAX SALES/2266/07-08 dated 31.10.2007 for ₹37,500/-
- iii. Invoice No.DEL/TAX SALES/2267/07-08 dated 31.10.2007 for ₹25,500/-
- iv. Invoice No.DEL/TAX SALES/2268/07-08 dated 31.10.2007 for ₹1,05,000/-
- v. Invoice No.DEL/TAX SALES/2306/07-08 dated 03.11.2007 for ₹2,28,000/-
- vi. Invoice No.DEL/TAX SALES/2307/07-08 dated 03.11.2007 for ₹82,500/-
- vii. Invoice No.DEL/TAX SALES/2308/07-08 dated 03.11.2007 for ₹76,800/-
- viii. Invoice No.DEL/TAX SALES/2309/07-08 dated 03.11.2007 for ₹20,848/-
- ix. Invoice No.DEL/TAX SALES/2325/07-08 dated 03.11.2007 for ₹1,14,000/-
- x. Invoice No.DEL/TAX SALES/2330/07-08 dated 03.11.2007 for ₹84,000/-
- xi. Invoice No.DEL/TAX SALES/2334/07-08 dated 04.11.2007 for ₹84,000/-
- xii. Invoice No.DEL/TAX SALES/2344/07-08 dated 05.11.2007 for ₹1,66,900/-

xiii. Invoice No.DEL/TAX SALES/2391/07-08 dated
07.11.2007 for ₹1,06,300/-”

2. Respondent was maintaining an account of the goods supplied and payments received in its books of account. As on 20th September, 2008 a sum of ₹12,73,123/- was due and outstanding against the appellant. On the said date, appellant paid ₹12,30,580/- through following cheques:-

- “i Cheque No.282851 for ₹25,000/-
- ii Cheque No.282852 for ₹25,000/-
- iii Cheque No.282853 for ₹25,000/-
- iv Cheque No.282854 for ₹25,000/-
- v Cheque No.575051 for ₹77,280/-
- vi Cheque No.575052 for ₹74,000/-
- vii Cheque No.575053 for ₹2,00,000/-
- viii Cheque No.575054 for ₹75,000/-
- ix Cheque No.575056 for ₹20,000/-
- x Cheque No.575057 for ₹1,00,000/-
- xi Cheque No.574775 for ₹1,78,480/-
- xii Cheque No.574776 for ₹2,53,850/-
- xiii Cheque No.574777 for ₹94,500/-
- xiv Cheque No.574778 for ₹23,970/-

On presentation, all the cheques were returned dishonoured by the bank with the remarks “funds insufficient” and ‘refer to drawer’. Respondent sent a legal notice dated 20th October, 2008, to appellant but same was refused. Respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (“the Act”, for short) which was pending. Respondent alleged that since amounts involved in the cheques were not paid, hence, the suit for recovery of amounts involved in the cheques together with interest @ 18% per annum.

Appellant filed leave to defend application stating therein that the invoices were forged, fabricated and manipulated documents. It was further alleged that blank cheques were issued by the appellant as ‘security’ against the goods supplied. Cheques were, subsequently, filled and presented by the respondent despite the fact that no amount was due and payable. It was further alleged that suit was barred by time. Appellant claimed that aforesaid defence raised by him disclosed triable issue, thus, leave to defend be granted.

Trial court has held that defence raised by the appellant was frivolous, baseless and moonshine, inasmuch as did not disclose any triable issue. Defence taken by the appellant that blank cheques were issued, did not raise any triable issue. Reliance was placed on **2002 (2) Civil Court C.R. 600 (Madras) and 2002 (1) Civil C.R. 310 (Andhra Pradesh)**, wherein it was held that inchoate instruments are legal instruments and a person handing over inchoate instruments to another person gives the authority to the holder to complete the said instruments before its presentation and the borrower is liable to pay to the holder. Trial court has held that in view of Section 20 of the Act the plea of handing over blank cheques cannot be entertained. Section 20 of the Act envisages that if a person gives an incomplete negotiable instrument to other, the other person has the authority to fill the same. Trial court has further observed that appellant had not denied that he was having business transaction with the respondent and was purchasing goods. He even did not deny that cheques were issued by him. Appellant failed to disclose anything to show that invoices were forged or manipulated or did not bear the signatures or stamp of appellant.

I have heard learned counsel for the appellant and have perused the material placed on record and do not find any illegality or perversity in the

impugned order. It is trite law that in case appellant discloses triable issues, leave to defend has to be granted. At the same time, if Court is of the view that defence raised by the appellant is frivolous, baseless and moonshine, leave to defend is liable to be declined, resulting in signing of judgment. In *Mechalec Engineers and Manufacturers vs. Basis Equipment Corporation*, AIR 1977 SC 577, Supreme Court has held that if the defendant has no defence or the defence set up is illusory or sham or practically moonshine, then the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend. In this case, respondent has made a categorical assertion that the goods were supplied from time to time, inasmuch as details of invoices have been given in the affidavit. It was stated that ₹12,73,123/- was due and outstanding as on 20th September, 2008. In order to clear his liability, appellant had issued various cheques, details whereof have been given in the plaint. The total amount, involved in the cheques comes to ₹12,30,580/- which is more or less equivalent to the amount which was due and outstanding as on 20th September, 2008. Except the bald plea any other deficiency could not be pointed out in the invoices, inasmuch as the present suit is not based only on invoices and is practically based on the cheques issued by the appellant. Appellant has not stated that

cheques were not issued by him. Signatures on the cheques have not been disputed.

As regards plea of handing over the blank signed cheques is concerned, same does not raise any triable issue. In M/s. Pradyuman Overseas Ltd. vs. Sanjeev Jindal this court held thus: “Merely pleading that the cheques were signed in blank and handed over is not sufficient to be entitled to an opportunity to lead evidence, else Order XXXVII of CPC shall become a dead letter. The same presumption rule applies to the pleas of having signed and delivered papers in blank”.

Trial Court has rightly held that plea of signing of blank document does not raise any triable issue. As regards plea of limitation is concerned, during the course of hearing counsel for the appellant has admitted that the suit was filed in time. No other argument has been advanced nor any other point pressed.

Appeal is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

OCTOBER 15, 2014/rb