

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 65/2007

ANITA AGGARWAL Appellant

Through: Mr. Shanmuga Patro, Advocate.

versus

EXPONENTIAL FINANCIAL SERVICES Respondent

Through: None.

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI (ORAL)**

**ORDER
30.08.2017**

P.S.TEJI, J.

1. The present appeal has been filed by the appellant under Section 96 read with Section 151 CPC against the judgment and decree dated 27.09.2006 passed by the Court below vide which a decree for a sum of Rs.10,84,437.57 with costs and interest @ 9% per annum from the date of judgment till its realization was passed in favour of the plaintiff/respondent and against the appellant/defendant.

2. The facts in brief are that a suit under Order 37 of the CPC for recovery of Rs.16,94,967.57 was filed by the plaintiff/respondent against the appellant/defendant. It was contended in the suit that the plaintiff/respondent was a registered member of National Stock Exchange. In July 1996, the appellant/defendant approached the plaintiff and desired to do trade in securities. She had signed the

application form, signed the member agreement dated 27.07.1996. The appellant/defendant purchased and transacted the shares through the plaintiff/respondent and a sum of Rs.10,84,439.57 was lying due against the appellant/defendant. In order to clear her liabilities, the defendant had issued three cheques and the same became dishonoured when presented for encashment.

3. The appellant/defendant was granted leave to defend. Case of the appellant/defendant was that she had entered into a member and constituent agreement dated 27.07.1999. As per agreement, she was given account no.CD 114. After some transactions, five cheques bearing nos.229522 to 229556 were illegally obtained by the plaintiff/respondent as a security. Since there was recession in the market, three cheques were misused by the plaintiff. A fictitious account no.CD 0180 was created by forging the application form. It was contended that the defendant had never authorized the plaintiff for any transaction and had unauthorizedly filled the cheques in question.

4. On the basis of pleadings of the parties, following issues were framed:

1.Whether the plaint had been signed, verified and instituted by a competent person?

2.Whether the defendant had authorized the plaintiff by transactions which resulted in balance of Rs.10,84,437.57/-, as on 24.02.1997?

3.Whether the signatures of the defendant were obtained on blank cheques as alleged in the written statement?

4. Whether the plaintiff is entitled to interest and if so, at what rate and for what amount?

5. Relief.

5. Issue no.1, 2 and 4 were decided in favour of the plaintiff and against the defendant, whereas issue no.3 was decided against the defendant and in favour of the plaintiff and ultimately the suit was decreed in favour of the plaintiff for recovery of sum of Rs.10,84,437.57/- with costs and interest @ 9% per annum from the defendant from the date of judgment. Feeling aggrieved of the passing of the judgment and decree, present appeal has been preferred by the appellant/defendant.

6. Argument advanced by the counsel for the appellant/defendant is that five cheques were initially obtained by the plaintiff/respondent with the assurance that the same were kept as security and would not be used. It is further submitted that out of those five cheques, three cheques were misused by the plaintiff/respondent for which the suit for recovery of money was filed. It is further submitted that the cheques were given to the plaintiff/respondent as a security and not as a liability towards any debt. Further argument advanced is that there was no account no.180 as alleged by the plaintiff and all the transactions were done through account no.CD 114. It was further submitted that a fictitious account no.CD 180 was created by the plaintiff/respondent himself just to show liability towards the appellant/defendant and the said account was a bogus one. Last part of the argument advanced by the counsel for the appellant is that the

Court below while passing the judgment has ignored certain documents.

7. I have heard the arguments advanced by the counsel for the appellant and have gone through the evidence and material available on record.

8. It is apparent from the record that the case of the plaintiff/respondent is based upon the documentary evidence. It is an admitted fact by the appellant/defendant herself that she had executed an application form Ex.PW1/3 authorizing the plaintiff/respondent to deal in shares. It is also admitted case of the appellant that she became member and had signed the member and constituent agreement Ex.PW1/7. Statement of account of both the accounts i.e. CD 114 and CD 180 were produced on record by the plaintiff/respondent. As per statement of account Ex.PW1/8 of account no.CD 114, cheques issued by the appellant/defendant bearing nos.229547 and 229548 of Rs.30,000/- each find mentioned. It is an admitted fact on record that the appellant/defendant used to give instructions to the plaintiff on telephone for purchase or selling of shares and all the transactions on her behalf used to be done by the plaintiff/respondent.

9. Documents Ex.PW1/D1 to Ex.PW1/D3 are the statements of account of account no.CD 180. In these statements, there are entries with regard to sale and purchase of shares on behalf of the appellant/defendant. It is further apparent that a sum of Rs.56,963.37 was credited in the account of the appellant/defendant. It is apparent

from the statement of account of account no.CD 180 that it was operational and transactions done on behalf of the appellant/defendant were reflected in the same.

10. It has been submitted by the counsel for the plaintiff/appellant that the Court below has ignored the document Ex.PW1/3 which the agreement for opening the account no.CD-114.

11. In the present case, the civil suit was filed by the plaintiff/respondent for recovery of money in respect of account no.CD-180. It has been mentioned in the plaint that apart from account no.CD-180, the appellant/defendant was also having another account no.CD-114 and on the request of the appellant/defendant another account no.Cd-180 was also opened. The document referred to by the counsel for the appellant/defendant with regard to opening of account no.CD-180 which is an admitted fact by both the parties that account no.CD-114 was already in operation. The second document referred deals with account no.CD-114 which is not in dispute. Admittedly, the parties are relying upon the documents showing relationship between the plaintiff and the defendant.

12. It is apparent from the record that the cheques were issued by the appellant/defendant in favour of the plaintiff/respondent and the appellant has failed to show anything on record that the same were obtained fraudulently from her. It is also apparent that the cheques were dishonoured by the bank. There is only an oral plea of the appellant/defendant that the cheques were not meant for account

no.CD-180 and the said account was not operated by the appellant/defendant. No document or other material has been produced by the appellant/defendant contrary to the statements of account of account of the running accounts. It is a settled law that denial simpliciter amounts to admission. The Hon'ble Supreme Court in ***M. Venkataraman Hebbar (D) By L.RS. v. M. Rajgopal Hebbar and Ors. 2007 (5) SCALE 598***, observed; *"Thus, if a plea which was relevant for the purpose of maintaining a suit had not been specifically traversed, the Court was entitled to draw an inference that the same had been admitted. A fact admitted in terms of Section 58 of the Evidence Act need not be proved."*

13. In view of the above discussion, this Court does not find it a fit case to interfere in the judgment and decree delivered by the Court below. There is no merit in the present appeal. The same is accordingly dismissed.

14. No order as to costs.

AUGUST 30, 2017

dd

(P.S.TEJI)
JUDGE