

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

+ **RFA No.617/2018**

% **1st August, 2018**

SMT. USHA KESHARWANI Appellant
Through: Mr. V.K. Mishra, Advocate
with Ms. Monika Jain,
Advocate.

versus

M/S PILOT INDUSTRIES LTD. & ORS. Respondents
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.30658/2018(exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

C.M. No.30657/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 128
days in re-filing the appeal is condoned.
C.M. stands disposed of.

RFA No.617/2018

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 7.11.2017 by which trial court has dismissed the suit for recovery of Rs.19,22,600.35/- along with interest.

4. The case of the appellant/plaintiff is that she was appointed as a Super Stockist of batteries by the respondent/defendant company in terms of the Agreement dated 10.3.2010/Ex.PW1/A. The appellant/plaintiff pleaded that the batteries which were sold by the respondent/defendant to the appellant/plaintiff were defective and were not replaced by the respondent/defendant company. The appellant/plaintiff also pleaded that it had unsold stock of batteries which the respondent/defendant was bound to take back, but which was not taken back by the respondent/defendant. Though in the plaint the appellant/plaintiff pleads loss of its reputation and goodwill in the market, no such claim of monetary amount is made and which claim of loss in any case is legally impermissible in contractual matters. As per the plaint the appellant/plaintiff has claimed amounts under four

heads of non-replacement of defective batteries, not taking back of unsold batteries by the respondent/defendant, loss due to payment of interest on bank loan taken by the appellant/plaintiff and office and godown expenditure. Details in this regard are given in para 15 of the plaint and this para 15 reads as under:-

“15. That the plaintiff mentioned in the legal notice total loss of Rs.50,00,000/- (Rupees fifty lakh) under different heads while due to change of circumstances and waiver of some unascertainable loss the plaintiff claims its actual loss as on date under following head for which plaintiff is entitled to legally recover from the defendant and defendant is legally bound to pay the same:-

a. Claimed battery :	Rs.13,52,427.00
b. Unsold batteries:	Rs.3,13,554.65
c. Loss due to interest of bank loan:	Rs.1,16,618.70
d. Office & Godown Expenditure:	Rs.1,40,000/-

Thus the actual total loss sustained by the plaintiff is Rs.19,22,600.35 (Rupees Nineteen Lacs Twenty Two Thousand Six Hundred & Paise Thirty Five only) which is legally recoverable from the defendant. Details table of loss under different heads is annexed herewith as **Annexure “E” (Colly).**

5. The respondent/defendant contested the suit and in its written statement the respondent/defendant denied that any Agreement dated 10.3.2010/Ex.PW1/A was signed between the parties. It was pleaded in the written statement that the issue of replacement of

batteries has to be within the warranty period and not beyond. It was also pleaded that the appellant/plaintiff on losing further interest in business with the respondent/defendant stooped down to malpractice of making false claims against its old trade waste accumulations so as to extort moneys from the respondent/defendant. It was pleaded that there is no provision for extension of the warranty period as claimed by the appellant/plaintiff. It was also pleaded that the appellant/plaintiff neither returned any unsold batteries nor offered the defective batteries for inspection to the surveyor of the respondent/defendant in spite of repeated visits to the premises of the appellant/plaintiff.

6. After pleadings were complete, trial court framed the issues and parties led evidence, and which aspects are recorded in paras 6 to 8 of the impugned judgment, and which paras read as under:-

“6. From the pleadings of the parties, following issues were framed on 06.11.2013:

ISSUES:

1. Whether the suit filed by the plaintiff is not maintainable? OPD

2. Whether there is no privity of contract between the parties? OPD

3. Whether the plaintiff is entitled to decree of recovery of Rs.19,22,600.35 alongwith interest, as prayed for? OPP

4. Relief.

7. The plaintiff examined her attorney Shri Om Prakash Kesharwani as PW1 who deposed the entire set of facts as contained in the plaint by way of his affidavit Ex.PW1/1 and also relied upon the documents Ex.PW1/A and PW1/E. She further examined Shri Sachin Srivastava-Area Sales Manager as PW2 and also examined Shri Vindhyvasini Prasad, a Photo Shop owner, as PW3.

8. The defendant examined Shri Pankaj Kumar who was engaged in its managing activities as DW1 who tendered his evidence by way of affidavit Ex.DW1/A and relied upon documents Ex.DW1/1 to DW1/4. All the above witnesses were duly cross-examined by the opposite counsels.”

7. Trial court has dismissed the suit by observing that the appellant/plaintiff has failed to prove that there were defective batteries inasmuch as the correspondences proved by the appellant/plaintiff being Ex.PW1/C1 to Ex.PW1/C20 only referred to certain extension being sought of the warranty periods and these correspondences of the appellant/plaintiff do not talk about alleged defective batteries. Trial court has then held that there is no clause in the Agreement/Ex.PW1/A of entitlement to extension of warranty

period. Though the Warranty Card is a card between the seller of the batteries and the customer, even this Warranty Card Ex.PW3/B only talks of warranty period of three months and therefore there did not exist any liability of the respondent/defendant to extend the warranty period. Trial court has further held that the appellant/plaintiff failed to place on record any documentary evidence that the defective batteries were returned to her by her customers being the dealers. Even the deposition of PW-3, who was the alleged customer of the appellant/plaintiff, was as per oral statement only without proof as to how and when the alleged batteries were returned by him/PW3 to the appellant/plaintiff, with the fact that no proof was filed that such batteries numbering about 15 were purchased by PW-3 from the appellant/plaintiff. In fact, PW-3 in his deposition deposed that he had purchased the batteries from M/s Prince Auto Electricals and it is noted that the respondent/defendant is not M/s Prince Auto Electricals. Trial court also held that the Agreement Ex.PW1/A has not been proved by the appellant/plaintiff on account of various inconsistencies in the same including of the Agreement stating the appellant/plaintiff as a partnership firm in this agreement whereas in the plaint the

appellant/plaintiff pleaded herself to be the sole proprietor of M/s Utkarsh Trading Company, and also further that the Agreement Ex.PW1/A is not signed by the appellant/plaintiff but an alleged Manager Mr. Om Prakash and there is no proof whatsoever that the appellant/plaintiff had appointed Mr. Om Prakash as her Manager or that Mr. Om Prakash acted as the Manager, by receiving salary etc from the appellant/plaintiff.

8. Some of the relevant observations of the trial court in this regard are contained in paras 16 to 19 of the impugned judgment and these paras read as under:

“ISSUE No. 3 :

16. The claim laid by the plaintiff is that the defendant after initially replacing the defective batteries, started defaulting and subsequently refused to replace the same, as a result of which the plaintiff not only suffered financial losses but also loss of reputation in the market. In this context the plaintiff relied upon the various communications made by her to the defendant for replacing the defective batteries vide Ex.PW1/C-1 to Ex. PW1/C-20. However, in the cross examination, PW1 admitted that in most of these communications, he had requested only for extension of the warranty period of the batteries. The plaintiff has also relied upon the warranty card used to be issued by the defendant with the batteries Ex. PW3/B. The defendant has also relied upon its batteries service policy Ex. DW1/2 which was not challenged during the cross examination. In the said policy, in the clause - terms and conditions of warranty, clause 10 reads as :-

“Warranty will not be extended after expiry of warranty period. This will commence only from the date of original Sale.”

17. Similarly, in clause 2 of the terms and conditions of the warranty card Ex. PW3/B , it is mentioned :-

“Free of cost warranty expiry allow maximum three months storage period at dealer/retailer point from company's invoice date or stipulated period from the date of sale to the consumer, whichever is earlier.”

18. It is also to be observed that in reply to one such communication made on behalf of the plaintiff through email dated 11.7.2011, the defendant company had clearly mentioned that they have no provision of extension of battery warranty period. Even the alleged agreement Ex. PW1/A relied upon by the plaintiff, though not proved, also does not provide for extension of warranty period of the battery. It only provides for recharging or replacement of unsold stock on first come first serve basis. The plaintiff utterly failed to prove that she had applied for recharging or replacement of the unsold stock on that basis.

19. The plaintiff has sought damages through the present suit claiming that it had received several complaints from the customers regarding defective batteries. However, she has failed to place on record any documentary evidence, which she has received regarding the said allegation and has failed to mention any defect, as pointed out by the alleged customer. The plaintiff examined PW3, an alleged customer, who deposed that he had purchased seven batteries on 13.10.2010 and eight batteries on 27.11.2010 of the make Leader, manufactured by the defendant, however, they were found defective during the warranty period and when he contacted the service centre at Varanasi, it was found closed. However, he has nowhere deposed that he had purchased the said batteries from the plaintiff but had deposed that he had purchased the same from M/s Prince Auto Electricals and filed the invoices of the same firm. He also deposed that on

the advice of the said firm, he had approached the Super Stockist but again without naming the said stockist. He alleged that the batteries purchased by him started malfunctioning due to manufacturing defect but failed to mention any such defect. In my opinion, this witness is of no help to the plaintiff. Firstly, he failed to mention the nature of defect which could be termed as manufacturing defect; and secondly, there is no report of any expert supporting the said defect. Apart from that, no cogent evidence, either documentary or oral, was led by the plaintiff to prove the fact that she suffered financial and business reputation losses because of the failure of the defendant to replace defective batteries or that the batteries sold by her were having manufacturing defects and she had received complaints in that respect.”

(underlining added)

9. I completely agree with the findings and conclusions of the trial court because para 15 of the plaint has already been reproduced above and the main claim of the appellant/plaintiff out of the suit amount of Rs.19,22,600/- was towards defective batteries value of Rs.13,52,427/-. Appellant/plaintiff however miserably failed to prove that the value of Rs. 13,52,427/- translates to how many number of batteries, what is the proof that these number of batteries were returned by the buyer of/from the appellant/plaintiff back to the appellant/plaintiff, and more importantly that there are no communications that the appellant/plaintiff informed the respondent/defendant that the batteries of this value of Rs.13,52,427/-

were defective. Trial court has in this regard referred to the documents Ex.PW1/C1 to Ex.PW1/C20 filed by the appellant/plaintiff that these documents do not talk of any defective batteries but that by these correspondences, the appellant/plaintiff only claimed extension of warranty period. I have also examined these documents which are filed by the appellant/plaintiff from page 309 of the appeal paper book and these documents are essentially only towards the claim of the appellant/plaintiff for seeking extension of the warranty period and by such correspondences it cannot be held that batteries of the value of Rs.13,52,427/- were defective as claimed by the appellant/plaintiff.

10. So far as the claim of appellant/plaintiff that the respondent/defendant had to extend the warranty period, trial court has in this regard rightly rejected the same by reference to the Agreement Ex.PW1/A as also the warranty card, and which discussion is given in paras 16 and 17 of the impugned judgment which have been reproduced above, and it could not be disputed on behalf of the appellant/plaintiff that neither in the Agreement Ex.PW1/A nor in the Warranty Card Ex.PW3/B there is any liability imposed upon the respondent/defendant for extension of the warranty period of batteries.

11. For the sake of completion of narration, I may note that in law there can be no valid claim with respect to the loss of interest on account of the appellant/plaintiff paying the bank loan or claim of office and godown expenditure because in contractual matters pertaining to alleged defects in batteries or not extending the warranty period, no buyer of batteries can claim any amount towards any interest payment which he has made to his own bank for loan taken or for any office or godown expenditure when not so provided in the Agreement between the parties, and which were in any case not proved to the satisfaction of the court.

12. There is no merit in the appeal. Dismissed.

AUGUST 01, 2018
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VALMIKI J. MEHTA, J