

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

+ **RFA No. 366/2007**

% **22nd February, 2019**

PHOENIX INTERNATIONAL LTD. Appellant

Through: Mr. Bimlesh K. Singh and Mr.
Ashutosh Bhardwaj, Advocates
(9873388834)

versus

DHAMPUR POLYMERS PVT. LTD. Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant in the suit impugning the Judgment of the trial court dated 28.02.2007 by which the trial court has decreed the suit filed by the respondent/plaintiff for an amount of Rs. 15,23,093/- (suit amount) along with interest at 10% per annum.

2. The facts of the case are that the respondent/plaintiff filed the subject suit pleading that it supplied polythene bags and packing material to the appellant/defendant. It was pleaded by the respondent/plaintiff that as on 14.08.2001, there was a debit balance of Rs. 10,37,389/- due against the appellant/defendant. It was pleaded that the appellant/defendant had issued necessary C-Forms of the Central Sales Tax with respect to the respective invoices/bills under which supplies were made. The subject suit was filed claiming the balance as per the statement of account of Rs. 10,37,389/-, and to which interest was added, to claim the suit amount of Rs. 15,23,093/-.

3. The appellant/defendant contested the suit by filing written statement. Receipt of the material was not denied. Two main defences were raised by the appellant/defendant. Firstly, that three payments of Rs. 50,000/- each were made by the appellant/defendant to the respondent /plaintiff in terms of the cheque nos. 056236, 057728 and 057729 have not been accounted by the respondent/plaintiff. These cheques according to the appellant/defendant were credited in the bank account of the respondent/plaintiff on 13.11.2000, 05.12.2000 and 12.12.2000. Consequently, the

amount claimed which was of Rs. 10,37,389/-, was denied. Secondly, it was pleaded by the appellant/defendant that on account of the supply of defective goods, the appellant/defendant had raised debit notes, and therefore, the respondent/plaintiff is not entitled to the suit amount.

4. The following issues were framed in the suit:

- (i) Whether the suit of the plaintiff is barred by Limitation? (OPD)
- (ii) Whether the suit of the plaintiff is without any cause of action? (OPD)
- (iii) Whether the plaintiff has suppressed material facts qua the payment received and defective goods etc.? (OPD)
- (iv) Whether the plaintiff is entitled for the decree for the recovery of Rs.15,23,093? (OPP)
- (v) Whether the plaintiff is entitled for the interest on suit amount on future and pendente lite interest. If so, at what rate? (OPP)
- (vi) Relief.”

5. On behalf of the respondent/plaintiff evidence was led through deposition of Sh. Satish Chandra, Director of the respondent/plaintiff. Sh. Satish Chandra deposed and proved the various invoices as Ex. PW 1/8 to Ex.PW1/53. The CST forms were proved as Ex.PW1/54 and Ex.PW1/55. The Legal Notice served upon

the appellant/defendant was proved as Ex.PW1/56 and AD Card Ex.PW1/57. The appellant/defendant in its evidence sought to file and prove the debit notes as Ex.DW1/3 to Ex.DW1/7. These debit notes are dated 31.10.2001 and 30.11.2001. In support of these debit notes, the appellant/defendant filed and proved the statement of account of the respondent/plaintiff maintaining its books of account from 01.04.2001 to 31.3.2002. This statement of account was exhibited as Ex.DW1/2 and which contained three entries. The first entry is the amount due from the appellant/defendant towards the respondent/plaintiff being a sum of Rs. 8,68,656/- and thereafter there are two debit entries of Rs. 5,32,630/- and Rs. 3,26,163/-, and which are with respect to the amounts as stated in the debit notes Ex.DW1/3 to DW1/7. However, in the cross-examination of the witness of the appellant/defendant, Sh. G.K. Mishra, it was admitted by Sh. G.K. Mishra on 27.11.2006 that there were no signatures of the respondent/plaintiff which appear either on the statement of account (of the respondent/plaintiff in the books of account of the appellant/defendant) Ex.DW1/1 and Ex.DW1/2 or on the debit notes Ex.DW1/3 to DW1/7.

6. The payments of Rs. 50,000/- each by means of three cheques were sought to be proved by the appellant/defendant in terms of the statement of account Ex.DW1/8 to DW1/10, but these statements of accounts were rejected by the trial court by observing that these statements of account are not proved as per the Bankers' Books Evidence Act, 1891 and are merely photocopies.

7. In my opinion, though the trial court was justified in decreeing the suit for recovery of moneys, the suit however could not have been decreed for the sum prayed of Rs. 15,23,093/- i.e. Rs. 10,37,389/- plus interest totaling to Rs. 15,23,093. This is because the respondent/plaintiff did not file and prove its ledger account or a proper statement of account by filing a copy of that statement of account and by proving the same by bringing the original ledger of the statement of account in Court. It is noted that the amount claimed by the respondent/plaintiff of Rs. 10,37,389/- is on the basis of typed entries as found in the plaint itself, and no statement of account was proved and exhibited. The entries are also found as stated by the respondent/plaintiff in the plaint only up to 14.06.2000, and the amounts which are said to have been credited in the bank account of

the respondent/plaintiff by cheques of the appellant/defendant are of subsequent dates being 13.11.2000, 5.12.2000 and 12.12.2000. In my opinion, the first entry dated 13.11.2000 cannot be accepted because this entry is only clearing entry whereas the subsequent two entries as Ex.DW1/9 and Ex. DW1/10 should be accepted by this Court because these entries show payment by name to the respondent/plaintiff for a sum of Rs. 50,000/- each. I may note that at the time of exhibition of the statement of account as Ex.DW1/9 and Ex.DW1/10, there was no objection which was raised on behalf of the respondent/plaintiff that the statements of account are not duly proved as they are not certified under the Bankers' Books Evidence Act or are merely photocopies, and once no objection was raised by the respondent/plaintiff before commencement of cross-examination of the witness of the appellant/defendant Sh. G.K. Mishra, therefore, in view of the ratio of the judgment of the Hon'ble Supreme Court in the case of ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple and Another, (2003) 8 SCC 752***, the statements of account Ex.DW1/9 and Ex.DW1/10 are to be taken to have been duly proved. The effect of proving of Ex.DW1/9 and Ex.DW1/10 would mean that a sum of

Rs. 1,00,000/- would stand reduced from the principal sum of Rs. 10,37,389/- due and claimed by the respondent/plaintiff. It is noted that in the statement of account Ex.DW1/2 filed on behalf of the appellant/defendant, the appellant/defendant as on 01.04.2001 has shown the principal amount due to the respondent/plaintiff as a sum of Rs. 8,68,656/-, and since this is a document of the appellant/defendant itself, this Court takes the figure of dues as against the appellant/defendant and in favour of the respondent/plaintiff to be a sum of Rs. 8,68,656/- as on 01.04.2001 i.e. after giving on credit to the appellant/defendant including two credits of Rs. 50,000/- each as per Ex.DW1/9 and Ex.DW1/10.

8. The next issue is as to whether the appellant/defendant is entitled to the amount due from the debit notes, and the same are identified as the amounts of Rs. 5,32,630/- and Rs. 3,26,163/- in terms of two entries in the statement of account Ex.DW1/2. In my opinion, the trial court has rightly rejected the claims of the appellant/defendant for the debit notes amounts because simply by issuing debit notes, it cannot be proved that the goods supplied to the appellant/defendant by the respondent/plaintiff were defective. The debit notes do not have

credibility/weight because the witness of the appellant/defendant admitted that they did not bear the signatures of the respondent/plaintiff. Same is the position with respect to the statements of account/Ex.DW1/1 and Ex.DW1/2. Entries in the books of account, including towards the amounts of debit notes, have to be proved by corresponding documents which will show that actual goods supplied to appellant/defendant as alleged by it were defective, but not a single correspondence or any other documentary evidence has been filed and proved by the appellant/defendant to show that the goods supplied with respect to which debit notes were issued for sums of Rs. 5,32,630/- and 3,26,163/- were defective goods. Further, in my opinion, there is no credibility whatsoever in the debit notes because the debit notes are suddenly issued on two dates on 31.10.2001 and 30.11.2001, and the last transaction between the parties was of June 2000. Obviously, these debit notes were conveniently created by the appellant/defendant to falsely dispute and deny its liability towards the respondent/plaintiff.

9. The net result of the above discussion is that the suit of the respondent/plaintiff should have been decreed, but not for the

alleged principal amount of Rs. 10,37,389/- plus interest totaling to Rs. 15,23,093/- on the date of the suit, and the suit should have only been decreed and is decreed for an amount of Rs. 8,68,636/- along with simple interest at 9% per annum from 01.04.2001, the date of filing of the suit on 04.11.2003, and thereafter *pendente lite* and future at the same rate till deposit of certain amount in this Court by the appellant/defendant. After the date of deposit in this Court by the appellant/defendant, the respondent/plaintiff will only be entitled to interest at the rate which has accrued on the FDR, as the amount deposited by the appellant/defendant has been put in an FDR in this Court. Parties are however left to bear their own costs.

10. In view of the above discussion, this appeal is partially allowed, and the suit of the respondent/plaintiff will be decreed for a sum of Rs. 8,68,656/- along with interest at 9% per annum from 01.04.2001 till 04.11.2003, and on the consolidated amount due on 04.11.2003 *pendente lite* and future interest will be payable at 9% per annum simple till the deposit of amount in this Court by the appellant/defendant. Since the appellant/defendant has deposited 50% of the decretal amount in this Court, the Registry will now calculate

the amount due to the respondent/plaintiff in terms of the present judgment, and in case the amount deposited in this Court would be found to be more than the amount due to the respondent/plaintiff, only and only then, in such case, the appellant/defendant can be paid the excess amount deposited in this Court, but it is also further clarified that if no amount is due to the appellant/defendant and in fact further amount is due to the respondent/plaintiff from the appellant/defendant, the amount deposited in this Court along with accrued interest will be liable to be released only to the respondent/plaintiff in appropriate satisfaction of the present judgment and decree, and for any further balance due to the respondent/plaintiff under the present judgment and decree, the respondent/plaintiff can always initiate appropriate execution proceedings.

11. The appeal is accordingly partially allowed and disposed of, leaving the parties to bear their own costs. Decree sheet be prepared.

FEBRUARY 22, 2019 /ib

VALMIKI J. MEHTA, J