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

+ RFA 48/2015 and CM No.1388/2015 (stay)

M/S. PLANNERS INDIA INFRASTRUCTURE
PVT. LTD.

..... Appellant

Through: Mr. Sanjeev Anand, Mr. Arush Khanna
and Ms. Anubha Surana, Advocates

versus

M/S. BANSAL SALES CORPORATION

..... Respondent

Through: Mr. Girish Aggarwal and Mr. Vaibhav
Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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17.11.2015

1. This is an appeal directed against the judgment and decree dated 16.10.2014, passed by the trial court. The said judgement and decree has been passed by the trial court, in exercise of its powers, under Order 12 Rule 6 of the Code of Civil Procedure, 1908 (in short the CPC) in the backdrop of the following broad facts.

2. The respondent / plaintiff had filed a suit for recovery qua a sum of Rs.5,14,858/- alongwith interest. The trial court decreed the suit for the aforementioned amount i.e. Rs.5,14,858/- with interest at the rate of 12% p.a. from the date of institution of the suit till realization of the amount. In addition, cost were also awarded by the trial court.

3. The case set up by the respondent / plaintiff before the trial

court, briefly, is as follows:-

3.1 The respondent / plaintiff averred that it is a partnership concern engaged in the business of selling plywood, timber, etc. (in short, collectively referred to as the goods).

3.2 It was further averred by the respondent / plaintiff that the appellant/ defendant had been purchasing the goods from it for nearly 5 years. It was stated by the respondent / plaintiff that, as on 01.04.2008, an amount in the sum of Rs.2,65,683/- was payable to it.

3.3 The stand taken by the respondent / plaintiff was that except for a sum of Rs.3,000/- which was paid on 20.01.2009 by the appellant / defendant, the debt outstanding, as indicated above, was not liquidated.

3.4 It is in this background that the respondent/plaintiff, apparently, had issued a legal notice dated 05.07.2010, claiming a sum of Rs.2,65,683/-, with interest at the rate of 24% p.a., from the appellant / defendant.

3.5 The suit amount claimed by the respondent / plaintiff was a sum of Rs.2,52,175/-.

4. The appellant/ defendant, on the other hand, took various defences in the written statement including the defence that the sum of Rs.3,000/- shown to have been paid by it, on 20.01.2009, was never paid, and that, the said amount was shown in the ledger account of the respondent / plaintiff as having been paid by it, only with a view to bring the action within limitation.

4.1 The principal defence of the appellant / defendant was that on account of various factors, which included, poor quality of goods,

goods not being as per specification and short supply, there was a settlement arrived at with the respondent / plaintiff for a total sum of Rs.2 Lakhs. The said settlement, according to the appellant/ defendant, was arrived at on 24.01.2007.

5. Pertinently, it was also noticed by the trial court that to the legal notice dated 05.07.2010 of the respondent / plaintiff, a reply dated 24.07.2010 was issued by the appellant / defendant.

6. The contention of Mr. Anand before me, is that, the trial court has proceeded to decree the suit on the basis of an entry shown in the appellant's / defendant's statement of account in the sum of Rs.2,65,683/- without taking into account, in effect, the explanation given against the said entry.

6.1 It is also Mr. Anand's contention, that right at the outset, that is, at the time of issuance of reply to the legal notice, it had been indicated that the sum of Rs.3,000/- was never paid by the appellant / defendant to the respondent/ plaintiff.

6.2 In other words, Mr. Anand contends that there were triable issues, which arose for consideration of the trial court, and that, this was not a case, in which, the provisions of Order 12 Rule 6 of the CPC could have been triggered.

6.3 Mr. Anand says that there was in effect no admission by the appellant/ defendant which could have formed the basis of the impugned judgement and decree.

7. Mr. Aggarwal, on the other hand, refutes the submissions made by Mr. Anand. Mr. Aggarwal, in support of his arguments, relies upon the trial court judgement.

7.1 He has, in addition, also drawn my attention to that part of the statement of account of the appellant/ defendant wherein there is an entry showing that amount of Rs.2,65,683/- is payable to the respondent/ plaintiff. It is thus, Mr. Aggarwal's contention that if, a sum of Rs.3,000/- is adjusted against the aforementioned amount then, clearly the respondent's /plaintiff's claim for the balance sum of Rs.2,62,683/- alongwith interest would be tenable.

7.2 Mr. Aggarwal says that the interest awarded by the trial court, which is, at the rate of 12% p.a., is a reasonable rate of interest and, therefore, no interference is called for, qua the impugned judgement.

8. I have heard the learned counsel for the parties. The short issue, which this court is called upon to consider is: as to whether or not the trial court could have exercised its power under Order 12 Rule 6 of the CPC to decree the suit in favour of the respondent/ plaintiff. In this context, two aspects of the matter need to be noticed.

8.1 First, as to how the entry in the statement of account of the appellant / defendant for the period 01.04.2005 to 31.03.2011, appears.

8.2 Second, as to what is the stand of the appellant / defendant vis-a-vis the purported payment of the sum of Rs.3,000/- in cash. As, this aspect of the matter would clearly impact the determination qua the issue of limitation.

9. Therefore, let me begin by extracting, the entry in respect of which rival submissions have been advanced before me, by the counsel for the parties :-

25.01.2010	To	Other Income	Journal	135	2,65,683/-
		Being amount outstanding in ledger account, now written BA-CK since party has not issued the agreed credit notes for defective material and excess rates, pending since 24.01.2007			
					2,65,683/-

9.1 A plain reading of the entry would show that there is an explanation given by the appellant / defendant, and therefore, on the face of it, there is no admission by the appellant / defendant. On this score alone, to my mind, the matter had to go to trial.

9.2 In so far as the second aspect of the matter is concerned, which is, the entry pertaining to Rs.3,000/- made in the statement of account of the respondent / plaintiff against the date 20.01.2009, the defence of the appellant / defendant, as set out in the written statement, would have to be noticed. In paragraph 2 of its written statement, under the heading ‘preliminary objections’, following averments have been made by the appellant / defendant :-

“...The defendant has not made payment of Rs.3,000/- on 20th January, 2009 to the plaintiff as alleged by it. In fact the defendant has never ever made any payment to the plaintiff in cash. There was also no reason for the defendant to make any payment to the plaintiff in 2009 and that also in cash once the account between the parties was fully and finally settled as far back as on 24th January, 2007. It is clear that the plaintiff has cooked up its ledger account and other books and shown a false entry of receipt of payment of Rs.3,000/- in cash on 20th January, 2009 with a sole purpose of bringing the present frivolous suit within limitation. The entry of payment of amount of Rs.3,000/- by the plaintiff to

the defendant on 20th January, 2009 in their ledger account is an absolutely false and cooked up entry..”

(Emphasis is mine)

9.3 In so far as the purported settlement between the parties is concerned, to which, I have made a reference hereinabove, averments are made in paragraph 3 of the written statement under the heading ‘Parawise Reply’ as well. The said averments are set out hereinabove for the sake of convenience.

“..The contents of para 3 of the plaint are denied and disputed. It is denied that on 1st April, 2008 the defendant had a debit balance of Rs.2,65,683/- on account of having made any purchase from the plaintiff. It is denied that on 20th January, 2009 the defendant made a payment of Rs.3,000/- to the plaintiff. It is denied that the defendant gave any assurance to the plaintiff regarding payment of the amount claimed by the plaintiff. The account between the defendant and the plaintiff was fully and finally settled and closed on 24th January, 2007 on making of full and final payment of Rs.2 Lacs by the defendant to the plaintiff. Thereafter, there has not been any dealing between the plaintiff and the defendant and neither any material has been purchased nor any payment has been made by the defendant to the plaintiff, either in cash or in any other manner...”

(emphasis is mine)

9.4 As indicated above, even in the reply dated 24.07.2010 to the legal notice, the appellant / defendant has, inter alia, made the following assertions :-

“...The account between us and your client was fully and finally settled and closed on 24th January, 2007 on making of full and final payment of Rs.2,00,000/- by us to your client. Thereafter there has been no dealing between your client and us and no payment, what to say a sum of

Rs.3,000/- has been made by us to your client. Please note that your client has not informed you that there was overcharging and short supplies in the bills of your client and that lot of supplies made by them were of poor quality and specifications which were taken into account at the time of making full and final payment on 24th January, 2007 and closing the account...”

(emphasis is mine)

10. Having regard to the aforesaid assertions, it is quite clear that the appellant / defendant intended to contest the claim of the respondent / plaintiff.

10.1 Clearly, there was no occasion for the trial court to decree the suit under Order 12 Rule 6 of the CPC.

10.2 Accordingly, the impugned judgment and decree is set aside. The parties and their counsel shall, therefore, appear before the trial court on 11.12.2015. The trial court will commence proceedings in the suit from the stage, at which, it is presently positioned.

11. The appeal and the pending application are disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J

NOVEMBER 17, 2015

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