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

\+ **<u>RSA No.187/2014 & C.M. No.12017/2014</u>**

Decided on : <u>22nd January, 2015</u>

M/S SHARMA ENTERPRISES &ANR ..... Appellants
Through Mr.Kuldeep Kumar, Adv.

versus

SH. SURINDER ARORA ..... Respondent
Through

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI
<u>V.K. SHALI, J. (*ORAL*)</u>

<u>R.S.A. No.187/2014</u>

1. I have heard learned counsel for the appellants. It has been contended by learned counsel for the appellants that the Trial Court as well as the First Appellate Court suffers from perversity inasmuch as the First Appellate Court and the Trial Court have not taken note of the two credit notes by virtue of which the goods were returned. The learned counsel has taken the court through the evidence as well as through the orders passed by the First Appellate Court.

2. I do not agree with the contention of the learned counsel for the appellants that there is any perversity in the finding of fact recorded

by the concurrent finding of facts. This would be evident from perusal of the appellate court's order itself. In this regard, instead of repeating the order of the First Appellate Court, it may be pertinent here to reproduce the findings recorded by the First Appellate Court with regard to issue nos.1 & 2. The said order reads as under:-

> **"ISSUE No.1 and 2**
> **Whether the plaintiff is entitled for decree of Rs.63,297/- along with interest @ 18% per annum as prayed in the suit? OPP**
>
> **Relief.**
>
> 11. The suit of the plaintiff is based on the following bills/invoices:-
>
> (i) Invoice No.2978 dated 24.11.2006 for Rs.13,600/- as Ex.PW-1/3.
> (ii) Invoice No.3015 dated 29.11.2006 for Rs.10,780/- as Ex.PW-1/4.
> (iii) Invoice No.3078 dated 6.12.2006 for Rs.29,090/- as Ex.PW-1/5.
>
> 12. There is no dispute raised by defendant No.1 regarding supply of goods by the plaintiff by means of these three invoices.
> 13. In respect of bill No.2978 dated 24.11.2006 for Rs.13,600/- (Ex.PW-1/3), the defendant No.1 took a specific stand that he has made payment of Rs.12,100/- against this bill through cheque bearing No.029171 date 31.1.2006 drawn on Punjab National Bank, PW-2 who is the Account of the plaintiff firm in his cross examination has admitted copy of the tax invoice Ex.PW-2/X-5. This copy of tax invoice Ex.PW-2/X-5 is the copy of bill

No.2978 (Ex.PW-1/3). There is a noting in hand on this document Ex.PW-2/X-5 which mentions cheque No.029171 for Rs.12,100/-. The plaintiff however denied having receiving payment of Rs.12,100/- against the said cheque. The defendant no.1 claimed that payment against

the said cheque was made to the plaintiff. However in the event of the plaintiff having denied having received payment against the said cheque, it was incumbent upon the defendant No.1 to have produced evidence from his bank regarding encashment of the said cheque. The best evidence which would be available to the defendant No.1 regarding the said cheque would be to produce the relevant record from his banker and to prove encashment of the said cheque. However, the defendant No.1 did not do so. The defendant No.1 withheld such evidence which was available with him in this regard. I therefore have no hesitation in upholding the findings of the learned Trial Court that no payment was made by defendant No.1 to the plaintiff against the invoice No.2978(Ex.PW-1/3).

14. Ex.PW-1/4 Invoice No.3015 dated 29.11.2006 for Rs.10,780/- is for two Semi Auto washing machines bearing model No.GDW 661 for Rs.4,791/11 each. The defendant No.1 has contended that the goods under this invoice were returned vide credit note No.216 dated 31.1.2007 Ex.PW-1/X2 but the same is not reflected in the statement of account. The said Credit note pertains to one GDM 26 B Godrej Frost Free refrigerator for Rs.10,568/89. The goods which are subject matter of Ex.PW-1/4 do not match with the description of goods which are subject matter of Ex.PW-1/X2.

15. Ex.PW-1/5 is the invoice No.3078 dated 5.12.2006 for Rs.29,090/-. Ex.PW-1/5 pertains to three refrigerators bearing Model No.DGR 26B Godrej Frost Free refrigerator for Rs.10,568/89, GDM 225 ZOP Godrej Direct Cool refrigerator for Rs.7,688/89 and GDP 195 ZOP Gold Direct Cool Refrigerator for Rs.7,600/-. The defendant No.1 has

contended that the goods under this invoice were returned vide Credit Note No.179 dated 5.12.2006 for Rs.24,380/- Ex.PW-1/X1. The credit note pertains to two Godrej Direct Cool Refrigerator Model No.GDM 180P ZOP for Rs.4,7911/11 each. Credit note Ex.PW-1/X1 does not pertain to invoice Ex.PW-1/5.

16. Ex.PW-1/2 is the statement of account of the defendant No.1 maintained by the plaintiff. A perusal of the statement of account reveals that the plaintiff has duly reflected the credit notes for Rs.24,380/- and for Rs.11,890/- in the same. Even after adjustment of the said credit notes, principal amount of Rs.50,137/- is found as balance outstanding against the defendants. Thus contention of the defendant No.1 that credit notes were not at all reflected in the statement of account of the plaintiff has no merit."

3. The learned First Appellate Court has rightly observed that in a suit, the civil court has to decide the issues on the basis of preponderance of probability and not by the question of beyond reasonable doubt. In the instant case, both the learned Trial Court as well as the First Appellate Court have upheld the claim of the respondent for recovery of Rs.63,297/- along with interest at the rate of 18% per annum only on the basis of preponderance of probability.

4. Having regard to the aforesaid facts and circumstances, I do not feel that this is a case which involves any substantial question of law.

5. Accordingly, the appeal is dismissed.

C.M. No.12017/2014

1. In view of the dismissal of the appeal, no further directions are called for on this application.

2. Dismissed.

V.K. SHALI, J

JANUARY 22, 2015/aa