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

%　*Judgment Reserved on: July 07, 2015*
Judgment Delivered on: July 13, 2015

\+　**RFA(OS) 64/2015**

M/S. MANU ENTERPRISES & ANR. ..... Appellants
Represented by: Mr.Manu K.Giri, Advocate with Mr.R.K.Seewal, Advocate

versus

RAM PRATAP GOEL ..... Respondent
Represented by: Mr.A.K.Jain, Advocate with Ms.Santosh Jain and Ms.Anubha Jain, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The admitted case of the litigating parties is that the respondent Ram Pratap Goel (the plaintiff) was carrying on business as the sole proprietor of the firm M/s.Rajit Textiles and was selling fabric. Manoj Kumar @ Manu who died on October 11, 2007 was carrying on business as the sole proprietor of the firm M/s.Manu Brothers and was purchasing fabric on credit from Ram Pratap Goel and had issued blank cheques duly signed by him, to be filled up by Ram Pratap Goel and presented for encashment on supply of fabric. It is the case of Ram Pratap Goel as pleaded in the plaint that after Manoj Kumar died (being murdered) the business was continued but with the changed name M/s.Manu Enterprises to defraud the creditors. Pleading further that when Manoj Kumar died he owed ₹20,22,492/-

(Rupees Twenty Lacs Twenty Two Thousand Four Hundred and Ninety Two only) to him which liability was admitted by Kiran Khorwal and Jitender Kumar, the wife and brother of the deceased respectively, he pleaded in paragraph 5 of the plaint that Jitender Kumar (defendant No.2), Jamna Lal (defendant No.3) and Bhupesh and Ms.Bhavya were the brother, father, son and daughter of the deceased. Without explaining as to how the father and the brother of the deceased inherited the liability of the deceased; and in the teeth of the averment that with a dishonest intention the name of the firm was changed; admitting having received ₹2,00,000/- (Rupees Two Lacs only) after the death of the deceased, he prayed that a decree in sum of ₹18,22,492/- (Rupees Eighteen Lacs Twenty Two Thousand Four Hundred and Ninety Two only) was liable to be passed against the defendants. Claiming pre-suit interest @ 24% per annum and quantifying the same in sum of ₹5,27,970.17 (Rupees Five Lacs Twenty Seven Thousand Nine Hundred Seventy and Paisa Seventeen only), decree prayed for was in sum of ₹23,50,462.17 (Rupees Twenty Three Lacs Fifty Thousand Four Hundred Sixty Two and Paisa Seventeen only) together with pendente lite and future interest @ 24% per annum.

2. Though Bhupesh and Bhavya were stated to be minor and in the memo of parties were sued through their mother, no application was required to be filed under Order XXXII Rule 3 of the Code of Civil Procedure praying to the Court that the two minor defendants may be represented by their mother as their guardian. But, except noting said fact, we need not note the effect thereof because the impugned decree is only against Manu Enterprises represented through Kiran Khorwal, the wife of the deceased and Jitender Kumar, the brother of the deceased.

3. When the appeal came up for hearing learned counsel for the respondent conceded that no decree can be passed against defendant No.2, who is appellant No.2 in the appeal. Thus, on the basis of the said statement the impugned decree is set aside against appellant No.2 and the suit is dismissed qua him.

4. In the suit Manu Enterprises is sued through its proprietor Smt.Kiran Khorwal. Learned counsel for the respondent conceded that the plaint is drafted most inartistically and in the absence of any specific pleading as to who specifically took over the business of Manu Brothers, since in the memorandum of parties Manu Enterprises through Smt.Kiran Khorwal, stated to be the sole proprietor of said firm was impleaded as defendant No.1, and in view of the averment in the plaint that the business of Manu Brothers was carried on under the name and style Manu Enterprises, to give meaning to the loose and laconic pleadings in the plaint it has to be treated that the assets and liabilities of the firm were taken over by the wife. Even otherwise, in law, the legal heirs of a deceased debtor are liable for repayment of the debt to the creditor, but limited to the estate inherited by them. It not being in dispute that the deceased did not execute any will during his lifetime, the estate of the deceased would devolve in equal share on his wife and two minor children. Thus, we take on record the statement made during arguments by learned counsel for the respondent that since there is no decree against the two minor children of the deceased, the wife of the deceased would be liable to pay the debt and for which only 1/3rd interest of the deceased inherited by her concerning the immovable properties of the deceased can be attached in execution proceedings. Of course, the assets of the sole proprietary firm Manu Brothers would be liable to be attached. But

we note that as of today there are no assets of the firm. Thus we lodge the caveat. In execution of the impugned decree, should the appeal fail, the Executing Court would determine what assets of the deceased have been inherited by Smt.Kiran Khorwal.

5. We now proceed to adjudicate the appeal on merits qua the decree against Smt.Kiran Khorwal, the sole proprietor of Manu Enterprises.

6. On the pleadings of the parties the following issues were settled:-

i) Whether the plaintiff was entitled to recover ₹18,22,492/- (Rupees Eighteen Lacs Twenty Two Thousand Four Hundred and Ninety Two only) from the defendants as claimed?

ii) If the issue above is in affirmative is the plaintiff entitled to interest and to what amount?

7. Entering into the witness box as his witness, the respondent examined himself as PW-1 and tendered by way of examination-in-chief the affidavit Ex.PW-1/A. He proved 67 documents as Ex.PW-1/1 to Ex.PW-1/67.

8. Relevant for the purposes of the present decision would be that he proved a statement of account with a carry forwarded debit balance of ₹20,22,492/- (Rupees Twenty Lacs Twenty Two Thousand Four Hundred and Ninety Two only) and receipt of various payments to the credit of his firm in sum of ₹2,00,000/- (Rupees Two Lacs only) during the period October 19, 2007 to November 08, 2007, and hence a debit balance of ₹18,22,492/- (Rupees Eighteen Lacs Twenty Two Thousand Four Hundred and Ninety Two only). But he proved office copies of the bills raised by him on various dates on Manu Brothers for fabric supplied, as Ex.PW-1/3 to Ex.PW-1/31, all of which bear the signatures of the deceased, as also the bills Ex.PW-1/32 to Ex.PW-1/35 which are raised in the name of M/s.Manu

Enterprises and bear the signatures of somebody which have not been identified at the trial.

9. Though during admission/denial of documents, Ex.PW-1/3 to Ex.PW-1/31 were denied and so were Ex.PW-1/32 to Ex.PW-1/35, we find from the record that in his affidavit by way of evidence the bills have been exhibited as Ex.PW-1/3 to Ex.PW-1/35. There is hardly any cross-examination of the respondent concerning said bills.

10. During admission/denial of documents, cheques No.184716, 184717, 196762, 196763, 196764, 207681 and 207682 drawn on Keshav Sahkari Bank Ltd., which are blank but duly signed by the deceased with the stamp of the firm Manu Brothers were admitted by the defendants as Ex.P-1 (collectively), Ex.P-2 (collectively) and Ex.P-3 (three cheques as Ex.P-1 collectively, three cheques as Ex.P-2 collectively and one cheque as Ex.P-3. The said cheques are vital evidence of the original signatures of the deceased and we have visually compared the same. The signatures on the seven cheques are identical with the signatures on the bills Ex.PW-1/3 to Ex.PW-1/31.

11. We therefore have proof of supply of the fabric to the deceased as recorded in the bills as also the price of the fabric.

12. The respondent proved receipt of ₹2,00,000/- (Rupees Two Lacs only) in cash on various dates by him to the account of Manu Brothers as Ex.PW-1/36 to Ex.PW-1/42. These receipts are on the letterhead on the respondent's sole proprietary firm Rajit Textiles.

13. Ex.PW-1/51 onwards are notices sent on September 10, 2008 to the defendants in the suit demanding payment of ₹18,22,492/- (Rupees Eighteen Lacs Twenty Two Thousand Four Hundred and Ninety Two only). The

notices have been sent by Regd. A.D.Post as also courier and under certificate of posting. The original postal receipt and that of the courier company have been exhibited. Acknowledgment card showing receipt of the notices sent by Regd. A.D.Post have been proved.

14. Influenced by the loose and laconic pleadings concerning defendant No.2, the brother of Late Manoj, in view of the evidence led by the respondent and finding that Kiran Khorwal who examined herself as DW-2 and Jamna Lal (the father of deceased) DW-1 had led no credible evidence to show that the amounts covered by the bills proved by the respondent was paid by the deceased to the respondent and disbelieving a purported personal diary of the deceased showing certain cash payments made to the respondent, vide impugned judgment and decree dated January 14, 2014 the suit has been decreed in sum of ₹18,22,492/- (Rupees Eighteen Lacs Twenty Two Thousand Four Hundred and Ninety Two only) together with interest @ 9% per annum from the filing of the suit till realization. It is apparent from the decree that pre-suit interest claimed by the respondent in sum of ₹5,27,970.17 (Rupees Five Lacs Twenty Seven Thousand Nine Hundred Seventy and Paisa Seventeen only) has been disallowed. No reasons have been given for the same, but since the respondent has neither filed a cross appeal nor cross objections, the said issue rests.

15. Two contentions were advanced in the appeal. The first was that the statement of account Ex.PW-1/2 was on a loose sheet of paper and in the absence of the ledger account maintained during course of business not being proved, the amount reflected as payable by Manu Brothers in Ex.PW-1/2 could not be decreed for the reason Ex.PW-1/2 had no evidentiary value. The second contention advanced was that the receipts Ex.PW-1/36 to

Ex.PW-1/42 were self-serving documents executed by the respondent on the letterhead of his firm.

16. Concerning the first contention advanced, as we have highlighted hereinabove the respondent has proved the bills Ex.PW-1/3 to Ex.PW-1/31 which bear the signatures of the deceased and in respect of which signatures we have already noted the evidence hereinabove, being the signatures of the deceased on the blank cheques, 7 in number, Ex.P-1 collectively, Ex.P-2 collectively and Ex.P-3. It is trite that entries in an account book are secondary evidence and the primary evidence pertaining to the sale of goods are the bills. The bills being proved, the logical inference would be that between the dates of the bills which are between the dates April 11, 2007 till October 10, 2007 (the deceased died on October 11, 2007), goods were supplied by the respondent to the deceased at the price mentioned in the bills.

17. Concerning the receipts Ex.PW-1/36 to Ex.PW-1/42, one could have appreciated the argument that the same were self-serving documents if an issue arose of part payments being made for purposes of reckoning limitation. If the defence was that these payments claimed to have been made to the respondent were not made by the appellants or on their behalf and further it was pleaded that removing said payments towards repayment of the debt, the suit was barred by limitation, one could have understood and appreciated the logic of the argument.

18. The receipts are diminishing the liability of Manu Brothers and to said extent are beneficial to the appellants. Notwithstanding a plea of limitation not being set out, as we have noted hereinabove the bills Ex.PW-1/3 to Ex.PW-1/31 are between the dates April 11, 2007 till October 10, 2007. The

suit was instituted on December 17, 2008. The issue of limitation does not arise.

19. In view of the evidence led at the trial which we have re-discussed in the appeal we find no infirmity in the impugned decision decreeing the suit, but only against the first appellant and we treat the decree to be against Kiran Khorwal the wife of the deceased because learned counsel for the respondent conceded to the fact that the estate of the deceased was inherited by his wife and two minor children. By way of abundant caution, so that the confusion is not created when the decree would be sought to be executed, recovery from Kiran Khorwal would be restricted to the $1/3^{rd}$ share of the deceased inherited by her for the reason no decree has been passed against the minor children of the deceased.

20. The impugned decree is set aside and the suit is dismissed against appellant No.2.

21. Parties shall bear their own costs in the appeal.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 13, 2015
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