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

+ RFA 528/2014 and CM No.17687/2014

PRITPAL SINGH GULATI & ORS Appellants
Through: Mr. Anshul Garg, Advocate

versus

M/S JAI GAJANAN ENTERPRISES PVT. LTD
& ANR Respondents
Through: Mr. Sanjeet Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER
02.09.2015

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1. This is an appeal preferred against the judgment and decree dated 22.07.2014, passed by the trial court.

2. By virtue of the impugned judgment and decree, the summary suit filed by respondent no.1 / plaintiff no.1 under Order 37 of the CPC was decreed. Respondent no.1 / plaintiff no.1 had approached the trial court with a plea that upon the appellants / defendants approaching it, for purchase of goods (i.e. fabric), the same were supplied.

2.1 It was further averred by respondent no.1 / plaintiff no.1 that in respect of the supplies of the goods (i.e. fabric) made, bills were generated, which were not liquidated by the appellants / defendants. The details of the bills, which were generated and which, remained unpaid, is set out in paragraph 6 of the plaint. Against the said bills, according to the respondent no.1 / plaintiff no.1, a sum of Rs.11,37,477/- was payable by the appellants / defendants.

2.2 Furthermore, the respondent no.1 / plaintiff no.1 had pleaded before the trial court that since, the aforementioned amount was not paid, a legal notice dated 25.02.2012, was served upon the appellants / defendants which, however, was not responded to.

3. Based on these broad averments, as indicated above, a summary suit for recovery was filed.

4. In the trial court, the appellants / defendants, in their leave to defend application, essentially, took the following pleas :-

(i). That apart from appellant no.6 / defendant no. 7, other appellants / defendants could not have been impleaded as parties to the suit as the transactions, in substance, was even, according to the respondent no.1 / plaintiff no.1 carried only with appellant no.6/defendant no.7.

(ii). The goods (i.e. fabric), which were purportedly, the subject matter of the bills, referred to, in the plaint, were not received.

(iii). That the goods (i.e. fabric) received, were of, inferior quality.

(iv). That the trial court had no jurisdiction to entertain and try the suit.

5. The trial court, however, vide the impugned judgment rejected the leave to defend application filed by the appellants / defendants. It was the view of the trial court that the defence taken by the appellants / defendants was both a bogus and a sham defence.

5.1 Pointedly, the trial court adverted to the fact that while the appellants / defendants had pleaded that the goods (i.e. fabric) had not been received, simultaneously, they had also taken the plea that the goods were of an inferior quality. It was also noted by the trial court that in so far as the plea of non-receipt of goods (i.e. fabric) was concerned, that was

based on drawing a distinction between the bills, which were stamped and those, which were not stamped. The trial court went on to observe that, in effect, even the bills, which were not stamped, bore the signature, the date of delivery as well as the time when delivery had been made; none of which had been denied, and therefore, the defence was unbelievable.

6. It may only be noted that with respect to mis-joinder of parties i.e., impleadment of the individual Directors / appellants, and the plea taken with regard to the lack of jurisdiction of the trial court to entertain and try the suit, there is no discussion in the impugned judgment.

7. It is, in these circumstances, that the appellants have approached this court by way of an appeal.

8. I have heard the learned counsel for the parties.

9. On the first date when notice was issued in the appeal i.e. 07.11.2014, my predecessor had granted stay of the impugned judgment and decree subject to the appellants / defendants depositing the entire decretal amount inclusive of interest and costs. Since, the said condition imposed by this court was not complied with, on 16.01.2015, the interim protection granted to the appellants / defendants was withdrawn. In effect, the interim application, being: CM No.17687/2014 (stay) was dismissed.

10. The learned counsel for the appellant submitted before me that even if the appellants / defendants were not able to deposit the amount, they would, in any event, be entitled to argue the appeal on merits.

10.1 In support of his plea on merits, the counsel for the appellants /defendants submitted that the trial court, apart from anything else, had not considered two aspects of the matter. First, that there was a mis-joinder of

parties. Second, that the appellants / defendants had raised the issue of lack of territorial jurisdiction.

10.2 This apart, the learned counsel for the appellants/ defendants also submitted that whether or not goods (i.e. fabric) had been delivered; at least, in so far as the unstamped bills were concerned, it was an issue qua which onus lay on the respondent / plaintiff.

10.3 In other words, it is the submission of the counsel for the appellants / defendants that these were triable issues which required the court to set down the matter for trial.

11. On the other hand, the learned counsel for respondent no.1/ plaintiff no.1 submitted that the defence raised was both unbelievable and a sham defence. It was the submission of the learned counsel that the appellants / defendants were only trying to delay the recovery of dues, which were legitimately payable to the respondent no.1 / plaintiff no.1.

11.1 The learned counsel, however, conceded that the issue with regard to the territorial jurisdiction had not been touched upon by the trial court. The explanation, put forth, by the learned counsel for the respondent no.1 / plaintiff no.1, though, was that, this issue was not argued before the trial court.

11.2 In so far as the mis-joinder of parties was concerned, it was the submission of the learned counsel that the individual Directors were proper and necessary parties to the instant action.

12. In so far as the submission made by the counsel for the appellants / defendants as regards impleadment of individual Directors as parties to the suit is concerned, I tend to agree with his submission. The appellant

no.6/defendant no.7, is the entity, with which, admittedly, respondent no./ plaintiff no.1 entered into the transactions in issue. The bills were raised by respondent no.1 / plaintiff no.1 on the appellant no.6 / defendant no.7, and therefore, the liability in law, if at all, would be that of appellant no.6/defendant no.7.

12.1 This conclusion one is persuaded to reach, based on appreciation of fundamental principle of corporate jurisprudence that appellant no.6/defendant no.7 is a separate juridical entity, which stands apart from its directors, employees and shareholders. Apart from appellant no.6/defendant no.7, all other parties arrayed in the suit are individuals, and therefore, in law, no liability can get fasten on to them unless a case is set up in the plaint tearing the corporate veil. No such plea has been taken in the plaint. Therefore, in my view, this aspect was completely overlooked by the trial court.

13. In so far as the other plea with regard to the territorial jurisdiction is concerned, as already indicated above, the trial court has not discussed that aspect of the matter at all.

13.1 The record shows that in paragraph 8 of the leave to defend application, a specific plea has been raised by the appellants / defendants with regard to the territorial jurisdiction. As is the case often, an issue framed with regard to the territorial jurisdiction is an issue of fact and law, and therefore, on this sole ground the matter had to proceed to trial. This aspect, however, was not noticed by the trial court.

14. This brings me to the last aspect of the matter, which is, with regard to the appellants / defendants plea that the goods (i.e. fabric) in issue were

not delivered. In support of this plea, it is stated that the bills in issue were forged and fabricated. An alternate plea has also been made, which is that, goods (i.e. fabric) supplied were of inferior quality.

15. In my view, as correctly noticed by the trial court, this plea is reflective of the hollowness of the appellants / defendants defence. While on the one hand, the appellants / defendants say that the goods (i.e. fabric) were not received, on the other hand, it is stated by the appellants / defendants that the goods were of inferior quality. These two pleas are completely inconsistent.

15.1 The fact that the pleas are inconsistent would not, however, by itself, lead a situation that there is no triable issue arising between the parties to the suit. The issue therefore, boils down to only aspect (having regard to the pleas raised), as to whether or not the appellants / defendants should be given conditional leave to defend.

16. Having regard to the fact that the appellants / defendants have raised a plea on merits, which, in my view, substantially, lacks in bonafides, I am inclined to grant leave to defend to the appellants / defendants only on the condition that they deposit the principal amount claimed by the respondent no.1 / plaintiff no.1, which is, a sum of Rs.11,37,477/-.

16.1 Accordingly, the trial court judgment is set aside. The appellants / defendants are given leave to defend, as indicted above, on deposit of a sum of Rs.11,37,477/-. The said sum will be deposited within four (4) weeks from today, with the trial court. The parties and their counsel shall appear before the trial court for further directions on 22.09.2015. If the

said sum is deposited, the trial court will direct investment of the said sum in an interest bearing fixed deposit pending the disposal of the suit.

17. Furthermore, in view of the discussion above, defendant no.1 to 6, who are individual-directors, shall stand deleted from the array of parties.

18. With the aforesaid observations in place, the captioned petition and the pending application are disposed of.

RAJIV SHAKDHER, J

SEPTEMBER 02, 2015

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