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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA (OS) 100/2015, CM APPL.23733/2015

M/S SHAILJA PAPERS LTD & ORS

..... Appellants

Through: Mr. Sanjay Poodar, Sr. Advocate with
Mr. Abinash K. Mishra and Mr. Govind Kumar,
Advocates.

versus

M/S U D K PAPERS PVT LTD

..... Respondent

Through: Mr. K. Venkatraman with Mr. Dinesh K.
Chawla and Mr. Koshik Gole, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

18.04.2016

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This is the defendants' appeal against the order of the learned Single Judge rejecting two applications: one made under Section 8 of the Arbitration and Conciliation Act and the second under Order 37 Rule 3 (4) of the Civil Procedure Code ("CPC").

The plaintiff sued the appellant/defendant for ₹31,29,522/- together with *pendente lite* and future interest. The claim was in respect of three consignments of paper (covered by Bill nos.T-049, T-050 and T-051 on 22.10.2008, 23.10.2008 & 24.10.2008. The defendants had not paid the amount. The plaintiff contended that the bills/invoices constituted written agreements and, therefore, instituted



a summary suit. Upon receipt of summons, the defendants entered appearance and subsequently moved the Court seeking leave to appeal. Their contentions broadly were that the goods received were not of the agreed quality and that in terms of the invoices, i.e., especially clause-3, the plaintiff was notified about the rejection/non-acceptance of the goods. The defendants also relied upon correspondence and delivery notes said to have been issued and received by the plaintiff. The plaintiff has, of course, disputed this.

The learned Single Judge took note of the fact that in respect of the subsequent consignments, i.e., T-077 and T-078, dispatched on 18.02.2009, the defendant did not dispute the quality and had paid the amounts in full. In view of these considerations and the fact that the goods were actually delivered much later, the learned Single Judge felt that the defendants' plea was unacceptable and without any basis or foundation. He, therefore, refused the leave which has resulted in the decree as sought for by the plaintiff.

We have heard the counsel for the parties.

In the course of hearing, the defendant had relied upon the documents produced before the learned Single Judge which suggest that the notice of rejection was sent to the plaintiff and that like the delivery of the goods (through the agreed intermediary) notice too was received by it. He also relies upon the delivery note in support of submission and highlighted that in the absence of a specific contract defining the mode of return of goods or obliging the purchaser of the goods to actual delivery to them, a notice is deemed sufficient. Learned senior counsel has relied upon Section 43 of the Sale of



Goods Act in this regard.

Counsel for the plaintiff, on the other hand, urged that this Court should not disturb the impugned order as it is based upon a broad appreciation of the circumstances and the course of conduct in the ordinary course of business which such parties are expected to have *inter se*.

On an overall consideration of the facts, this Court is of the opinion that the impugned order cannot be sustained. It is by now far too well established that unless a defence is palpably false or utterly untenable - as characterised by the Supreme Court as "moonshine" in *M/s Mechelec Engineers & Manufacturers v. M/s Basic Equipment Corporation*, AIR 1977 SC 577, leave to contest the suit ordinarily has to be granted. Of course by granting it, the Court can make a discretionary order with respect to the conditions to be complied with by the defendants as a pre-requisite to contest the suit. The facts of this case, in the present circumstances, do not suggest that the defence set out by the appellant can be legitimately called "moonshine". The Court notices that the learned Single Judge completely overlooked this material aspect which has to be involved in the decision of every Court while considering whether or not to grant leave to every defendant it seeks under Order-XXXVII, CPC.

This appeal has to succeed. At the same time, this Court is of the opinion that to secure the interest of the parties particularly the plaintiff, the defendants should not be granted unconditional leave. Subject to the defendants' depositing 50% of the principal amount claimed in the suit (i.e., without the interest as sought) within four

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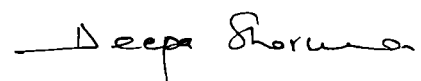
weeks from today; leave is hereby granted to the defendants/appellants. Within the same time, the appellants are granted liberty to file their written statement along with all the necessary documents they seek to rely upon.

In view of the above findings, learned senior counsel for the appellant does not wish to press the appeal so far as it concerns the rejection of the application under Section-8 of the Arbitration and Conciliation Act.

The impugned judgment is accordingly set aside and the appeal is allowed in the above terms. The suit is restored. The parties are directed to appear before the Registrar on 25th May, 2016. The defendants shall deposit the concerned amount in the first instance before this Court; the amount shall be thereafter remitted to the concerned Court competent to hear and try the suit in view of the revised jurisdictional norms. It is also directed that the Court which is going to ultimately hear the suit shall ensure that the said amount is kept in an interest bearing deposit till the final disposal of the proceedings.

Nothing in this order shall be construed as an expression of opinion on the merits of the case.


S. RAVINDRA BHAT, J


DEEPA SHARMA, J

APRIL 18, 2016
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