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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: March 18, 2016

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FAO(OS) 581/2015

JAGDISH BHALLA

..... Appellant

Represented by: Mr.Naveen Pushkarna, Advocate

versus

NATIONAL SMALL INDUSTRIES

CORPN LTD & ORS

..... Respondents

Represented by: Mr.Sanat Kumar, Advocate for R-1
Mr.Animesh Sinha, Advocate for R-2
and R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (ORAL)

CM No.24076/2015

Allowed subject to just exceptions.

FAO (OS) No.581/2015

1. Though service report qua R-1 is awaited, Mr.Sanat Kumar, Advocate appears for R-1. Respondents R-2 to R-5 are served but counsel appears as above only for R-2 and R-3. The contest is between the appellant and R-1. We have heard learned counsel for the parties and also perused record of CS(OS) No.1647/1995.

2. Appellants challenge is to the order dated August 12, 2015 dismissing OA No.257/2014 which challenged the order dated August 23, 2014 dismissing IA No.7713/2012 filed by the appellant (impleaded as defendant

No.4 in the suit), seeking leave to disown a joint written statement filed on behalf of all the defendants in the suit pleading that the said written statement was never signed by him and that he was never served with the summons in the suit.

3. We have seen the record of the suit and it shows that the appellant was not served with the summons in the suit but a written statement signed by defendants No.2 to 5 was filed, purportedly bearing his signatures as well.

4. Respondent No.1 : National Small Industries Corporation Limited is the plaintiff. M/s.Sheena Enterprises is defendant No.1. Anil Wadhwa, Neelam Bhalla, appellant – Jagdish Bhalla and Rakesh Bhalla have been impleaded as defendants No.2 to 5, with pleading that they are the partners of defendant No.1. Case pleaded is that the defendants approached the plaintiff to extend them a benefit under its hire purchase scheme and on December 07, 1987 an agreement was signed as per which defendant No.1 took credit requiring ₹24,43,702/- (Rupees Twenty Four Lacs Forty Three Thousand Seven Hundred Two only) to be returned in 13 instalments. The machinery to be purchased was directly financed by the plaintiff and delivered to the defendant No.1. Informing that ₹8,00,943/- (Rupees Eight Lacs Nine Hundred Forty Three only) was repaid, the suit was filed for the remainder.

5. Defendant No.4 filed IA No.7713/2012 pleading that he was not aware of the suit against him. He pleaded that he learnt of the suit when he received a letter dated February 29, 2012 written by the plaintiff alleging that he was a partner of defendant No.1. He denied that he was a partner in the firm and prayed to be granted an opportunity to plead said fact and prove

the same.

6. Taking cognizance of the application, on May 02, 2013 learned Joint Registrar directed defendant No.4 i.e. the appellant to place on record official documents showing his signatures in the year 1988 till the year 1995. Defendant No.1 was directed to produce documents concerning defendant No.1 being registered as a partnership firm with names of partners.

7. In proceedings akin to an inquisitorial proceedings, the learned Joint Registrar summoned various documents and even issued notice to Indian Overseas Bank, with which bank at its New Rajinder Nagar branch the partnership firm had an account. The Manager of the bank filed documents which showed that to the bank it was never disclosed that the appellant was a partner when the account was opened.

8. Various documents filed by the plaintiff which have been perused by us reveal that at no point of time appellant signed any letter as partner or even otherwise on behalf of the partnership firm. The plaintiff has filed some documents on July 17, 2014, one of which is a Deed of Reconstitution dated March 16, 1988 which purportedly bears signatures of the appellant. As per the same Neelam Wadhwa and one Janak Wadhwa intended to retire from the partnership firm and Rakesh Bhalla and Jagdish Bhalla intended to join as partners. The said document shows that prior to the Deed of Reconstitution, Anil Wadhwa, Neelam Wadhwa, Janak Wadhwa and Neelam Bhalla were the partners. With Neelam Wadhwa and Janak Wadhwa retiring, Rakesh Bhalla and Jagdish Bhalla would become the partners.

9. It strikes glaringly that as per the plaint the disbursement of the

money took place when the hire purchase agreement was executed on December 07, 1987 and this would mean that prima facie Jagdish Bhalla i.e. the appellant would not be liable for the liability incurred by the partnership firm as on December 07, 1987, unless he took over the liability thereafter.

10. As per the plaint, as of December 07, 1987 the four partners of defendant No.1 were Anil Wadhwa, Neelam Bhalla, Jagdish Bhalla and Rakesh Bhalla. This is belied by the document filed by the plaintiff itself, i.e. the Deed of Reconstitution.

11. We do not conclusively opine with respect to the documents for the reason what we need to highlight at this stage is that the learned Joint Registrar proceeded to take cognizance of IA No.7713/2012 and started recording evidence. Commencing from May 02, 2013, orders passed on August 14, 2013, November 21, 2013 and May 21, 2014 shows that the learned Joint Registrar proceeded to gather material concerning the plea urged in the application, meaning thereby took the suit in the direction that the issue raised warranted evidence to be recorded. The plaintiff did not object to the course adopted.

12. It is in the backdrop of said facts that order dated August 14, 2013 needs to be decided, by which order the learned Joint Registrar, without discussing the material placed has dismissed the application, against which Chamber Appeal filed has been dismissed by the learned Single Judge vide order dated August 12, 2015, and once again we find that the learned Single Judge has not made a reference to the documentary material placed.

13. Now, if a defendant alleges fraud by other defendants, an opportunity to prove the said plea needs to be given properly. If the plea is that the appellant was not served with the summons in the suit and inspite thereof a

joint written statement came to be filed on which signatures are denied, an opportunity needs to be given to the appellant to prove said assertion more so if the record shows, and indeed it does in the instant case that the appellant was not served with summons in the suit.

14. The learned Joint Registrar has proceeded by following a procedure which technically is not correct, but since the parties acquiesced therein, and since the course chartered by the learned Joint Registrar, though irregular, but is not illegal, the destination had to be reached and the journey not short-circuited in the manner so done.

15. At this stage, learned counsel for NSIC states that the appeal may be disposed of setting aside the impugned order dated August 12, 2015 as also the order dated August 23, 2014 with a direction that the appellant should lead proper evidence to prove his plea of not being a partner of defendant No.1, with a clarification that the appellant would not be permitted to lead evidence qua dues payable by defendant No.1 to the plaintiff. Learned counsel for the appellants agrees to this.

16. Thus, the appeal is disposed of setting aside the impugned order dated August 12, 2015 as also the order dated August 23, 2014 with a direction that the appellant would be entitled to lead evidence to prove his plea of not being a partner of defendant No.1. It is made clear that the appellant would not be permitted to lead any evidence qua liability of defendant No.1. The plaintiff would be entitled to lead evidence in rebuttal qua the plea of the appellant of not being a partner of defendant No.1. As agreed an additional issue is settled as under:-

Whether defendant No.4 was not a partner of defendant No.1 when the credit was availed of by defendant No.1 from the

plaintiff and whether defendant No.4 at no point of time became a partner of defendant No.1.

17. No costs.

CM No.24075/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MARCH 18, 2016

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