

\$~

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

% *Judgment Pronounced on : 27.11.2017*

+ **RFA 130/2014**

M/S DEWAN CHAND & ORS Appellants/Defendants
Through: Mr. T.P.S. Kang, Advocate.

versus

UNIQUE COLLECTIONS PVT LTD. Respondent/Plaintiff
Through: Mr. Shalabh Gupta and Mr.
Madhur Arora, Advocates.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The appellant has challenged the judgment dated 01.10.2013 in Suit No. 489/13 adjudicated ex-parte against them passed by the court of learned ADJ-01, South District, Saket Courts, New Delhi. The Trial Court had decreed suit of the Respondent for recovery of the amount of Rs.7,99,912.85 along with pendente lite and future interest @10% per annum.
2. The respondent had filed the suit for recovery in the Trial Court alleging that on the request of appellant, they had supplied them wood of different kinds as they were engaged in the business of construction and the appellants promised to pay the consideration amount through cheques on the delivery of goods.

3. Pursuant to the orders placed by the appellant, the respondent supplied goods and raised various invoices against the said orders. The respondent placed on record several invoices for the period from 23.04.2010 to 04.06.2011. Details of some of the cheques issued by the appellant in part payment of outstanding amount drawn on Canara Bank in favour of the respondent which were dishonoured are reproduced below:-

S.NO	CHEQUE NO.	AMOUNT	DATE
1	047559	60,009	22.12.2010
2	047557	1,01,381	03.01.2011
3	047554	76,070	07.01.2011
4	047582	54,592	15.01.2011
5	050357	5,845	16.01.2011
6	050362	91,318	20.01.2011
7	050355	81,467	25.01.2011
8.	050354	86,480	26.01.2011
9.	115559	71,723	30.05.2011
10.	122511	67,333	20.06.2011
11.	136812	97,383	15.12.2011

4. The respondent requested the appellant to pay the amount due to them after these cheques were dishonoured, but the when the appellant failed to pay the amount due, the respondent preferred a suit under Order 37 of the Code of Civil Procedure, 1908.

However, on the submission of the respondent's counsel, the suit was treated as an ordinary one and summons were accordingly issued to the appellants/defendant. The appellants appeared on the date fixed and sought time to file a Written Statement but subsequently appellants stopped appearing without even filing written statement on record. The appellants were proceeded against ex-parte vide order dated 20.03.2013 by the Trial Court.

5. In his evidence, Power of Attorney holder of the respondent company Sh. Mohan Sharma testified as PW-1 and relied on the following documents to prove his case:

- i. Copy of the certificate of incorporation of respondent (Ex.PW-1/1).
- ii. Copy of the power of attorney (Ex.PW-1/2).
- iii. Tax invoices (Ex.PW-1/3) (Collectively).
- iv. Ledger accounts of the respondent (Ex.PW-1/4) (Collectively).
- v. Original Cheques which were dishonoured (Ex.PW-1/5) (Collectively).
- vi. Original cheque returning memos (Ex.PW-1/6) (Collectively).

6. The Trial Court came to the conclusion that the testimony of PW-1 was duly corroborated by the documents on record and since his testimony went unrebutted, the suit was decreed in favour of the respondent.

7. Mr. T.P.S. Kang, learned counsel for the appellant had contended that the impugned judgement is not based on the settled position of law and therefore deserves to be set aside.
8. He argued that in the present case, Article I of the Limitation Act, 1963 would not be applicable as the account kept by the respondent was not a mutual, open and current and instead of Article 14 would apply. He argued that the respondent had claimed the bills for the period 01.04.2011 till 31.03.2012 but the respondent has not been able to prove the delivery of these goods. He relied upon **a judgment of this court in RFA 69/2003 decided on 10.07.2012** in the case of **BIPS Systems Vs. TATA Infotech Ltd.** He contended that the respondent's ledger account and Tax Invoices would be of no value if no proof of delivery of goods is brought on record. He also argued that certain goods supplied were returned to the respondent but same are not accounted for.
9. Per contra, Mr. Shalabh Gupta, learned counsel for the respondent had argued that the impugned judgment is based on the settled position of law and a correct appreciation of the evidence on record and therefore does not warrant any interference.
10. He argued that the Tax Invoices and ledger account placed on record duly proved that the appellants had indeed placed order for goods with the respondent.

11. He further argued that the appellant had admitted in his appeal that goods were delivered to him and the part payment for the goods supplied was made which completely demolishes the case of the appellant. He submitted that there is no proof on record of goods being returned to the respondent.
12. He further contended that some of the cheques issued by the appellant firm were dishonoured which are on the record.
13. I have heard the learned counsel for both the parties.
14. At the time of preliminary hearing of the present appeal on 04.11.2016, learned counsel for the appellant was permitted to file appropriate application to place certain record i.e. (1) proof of payment of bills raised by the respondent for goods supplied, (2) proof of return of defective goods by the appellant and (3) proof of arriving at a settlement with the respondent. The interim order dated 04.11.2016 passed by this court reads as under: -
 - “1. Learned counsel for the appellant states he may be permitted to file an appropriate application for permission to place on record, proof of payment of bills raised by the respondent (plaintiff) on the appellants (defendants) for the goods supplied, proof of return of defective goods by the appellant and proof of arriving at a settlement with the respondent.
 2. At the request of learned counsel for the appellant, renotify on 14.02.2017.”
15. However, vide CM No. 17071/2017, the appellant did not file copies of the bills raised or proof of return of defective goods or proof of arriving at a settlement with the respondent. The

appellant has filed incomplete photostat copies of bank statement for the period from 18.01.2010 to 16.02.2016 without mentioning the name of the bank. It also does not bear the requisite certificate under the Bankers Book Evidence Act. Interestingly it does not cover the entire period of transactions between the parties. The appellant has also filed a copy of the ledger account along with the application, which is also incomplete and without any certificate of its being a true copy. It does contain details of cheques bearing numbers 047554, 047559, 050357, 050362, 050355, 050356 and 122512, which are already dishonoured and original cheques have been filed on the record by the respondent before the trial court. The amounts of these cheques are debited to the account of the respondent and after dishonouring of the cheques, the amount has not been reversed by the appellant in their account books. At the last page, there is a debit entry of Rs.2,50,000/- of 02.02.2010 and prior to that there are several entries of the year 2011 which shows incorporation of a false and bogus entry. The copy of the bank statement and the ledger in any manner does not help the appellant.

16. The appellant has taken contradictory stand in his appeal. In paragraph 3.1 in the appellant's Appeal, they have mentioned that they had paid all the bills to the respondent. In paragraph 4.5 of the appeal, the appellant has stated that the ledger account and Tax Invoices would have no bearing unless there is proof of

delivery of goods. In paragraph 4.9 of the appeal, the appellant has stated that goods were never delivered to them and there is no proof of delivery. These contradictory stands clearly show that the appellant was not forthcoming with the truth and clean hands. On the one hand he has stated that goods were delivered but returned because they were defective and the payment for these goods was duly made. It has already been stated in the preceding paragraph that the appellant wanted to bring on record the proof of payment for this amount but failed to do so.

17. The controversy sought to be created by the appellant with regard to the applicability of Article 14 of the Limitation Act, 1963 instead of Article 1 is of no consequence over here as the appellant has already admitted that the respondent had delivered the goods for which the bills were raised and that they had falsely claimed having made the complete payment for all the bills pertaining to the period 01.04.2011 till 31.03.2012. Payment has not been established. Burden to establish payment of bills was on appellant but they did not contest the case. The issue of limitation does not arise here as even if the appellant's contention that Article 14 would apply instead of Article 1 is taken to be true, the limitation period prescribed under Article 14 is 3 years which would have started to run from each individual invoice from 23.04.2010 till 31.03.2012. The limitation period under Article 14 being 3 years would have

ended for the first invoice on 23.04.2013 while the suit itself was instituted well within limitation of 3 years on 10.05.2012.

18. PW-1 tendered his affidavit in evidence. He also tendered copy of letter of incorporation of respondent (Ex.PW-1/1), copy of power of attorney in his favour (Ex.PW-1/2), copies of tax invoices (Ex.PW-1/3 collectively), copies of ledger accounts of the appellant maintained by the respondent from 01.04.2011 to 31.03.2012 (Ex.PW-1/4), original cheques returned dishonoured (Ex.PW-1/5 collectively) and original cheque returning memos (Ex.PW-1/6 collectively). The appellants had appeared in the Trial Court but failed to file Written Statement and chose to be proceeded against ex-parte. They did not turn up to cross-examine PW-1 to rebut his evidence. The appellants by their own admission, act and conduct have failed to bring on record such evidence in this appeal also.
19. In these facts and circumstances, I find no infirmity in the impugned judgment and decree dated 01.10.2013. The evidence adduced by the respondent went unrebutted and unchallenged and in the absence of anything to the contrary, the learned trial court has rightly decreed the suit of the respondent for Rs.7,99,912.85 along with pendent lite and future interest @ 10 % per annum. Therefore, the appeal is dismissed with costs throughout.

20. It is directed that the respondent shall be entitled to recover the amount of Rs.7,99,912.85 along with pendent lite and future interest @ 10 % per annum till realization from the appellant.
21. The appeal is disposed of accordingly.

(VINOD GOEL)
JUDGE

NOVEMBER 27, 2017

"shailendra"//

