* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No. 668/2017**

% **1st August, 2017**

M/S MULTI DECOR PVT. LTD. & ANR. ..... Appellants
Through: Mr. S.R. Kamat, Advocate.

versus

GAUTAM @ VARUN MITTAL ..... Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.26907/2017 (exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

RFA No.668/2017 and C.M. No.26906/2017 (stay)

2. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is filed by the appellants/defendants impugning the judgment of the Trial Court dated 17.3.2017 by which the trial court has decreed the suit for recovery of Rs. 5,41,791/- along

with interest on account of furniture items supplied by the respondent/plaintiff to the appellants/defendants and which were not paid for.

3. The facts of the case are that the respondent/plaintiff as proprietor of M/s KLS International supplied goods being office chairs, tables, sofa, cabinets to the appellant no.1/defendant no.1/company. The orders were placed and goods were supplied from August 2010 till January 2012 and with respect to which seven invoices were drawn as stated in para 2 of the judgment of the trial court. It was further pleaded by the respondent/plaintiff that some payment was made by the appellant no.1/defendant no.1 but there remained a balance due of Rs 5,41,791/- which was not paid. It was also pleaded that the appellant no.1/defendant no.1 had not issued C-Form *qua* bill no. 373 dated 24.9.2011. The last payment was pleaded to have been made by the appellant no.1/defendant no.1 on 7.4.2012 of the amount of Rs. 50,0000/-. A legal notice was served upon the appellants/defendants and the appellants/defendants sent a false reply dated 22.2.2015. The subject suit was thereafter filed seeking the balance due on account of goods supplied.

4. The appellants/defendants contested the case and pleaded as per their joint written statement that they are not liable to pay any amount because the invoices are forged in the name of the appellant no.1/defendant no.1. It was pleaded that appellant no.2/defendant no.2 was only the Manager of the appellant no.1/defendant no.1. The appellants/defendants pleaded that they never transacted with the respondent/plaintiff and suit was prayed to be dismissed.

5. After pleadings were complete, the trial court framed the following issues:-

> "1. Whether plaintiff has no locus-standi to file the suit? OPD
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> 2. Whether the plaintiff has not come to the court with clean hands? OPD
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> 3. Whether the plaintiff is entitled to the relief of recovery as asked for in the plaint? OPP
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> 4. If issue no.3 is decided in affirmative, whether the plaintiff is entitled to the interest, if yes, at what rate? OPP
>
> 5. Relief."

6. The main issue was issue no.3 and which in some manner linked to issue nos.1 and 2, and all of which pertain to entitlement of the respondent/plaintiff to the suit amount. While dealing with this issue, the trial court notes that the appellant no.2 as DW-1 in his cross-examination conceded that he had been corresponding with the

respondent/plaintiff with e-mail ID of pradeep@multidecor.in (Ex.PW1/8). The appellant no.2/DW1 also admitted that he had made payment vide Ex.PW1/10. It is also stated by him in his cross-examination that emails Ex.PW/14 to Ex.PW1/16 were also sent by him to the respondent/plaintiff. The appellant no.2/DW-1 also admitted that it is he who started the company M/s Multi Décor India Pvt. Ltd. from the same premises where M/s Multi Décor was operating. It was also admitted by the appellant no.2/DW-1 that premises no.162, Block-E, Sector-11, Faridabad (Haryana) was his residential address. Trial court accordingly decreed the suit by making the following relevant observations:-

> "(14) I have considered rival contentions and at the very Outset, I may observe that defendant no.2 Sh. Pradeep Choudhary has admitted the correspondence from his e¬mail ID as well as those sent by his Accountant which are **Ex.PW1/8** to **Ex.PW1/16** which confirms that the plaintiff and the defendant were known to each other and had contacted each other.
> (15) **Secondly**, the aspect of the company being run in two names I.e. M/s. Multi Decor and M/s. Multi Décor India Pvt. Ltd. stand established and the defendant no.2 Sh. Pradeep Choudhary had admitted that he was Manager of earlier erstwhile Multi Decor and is now Director of M/s. Multi Décor India Pvt. Ltd. and both the entities are running from the same address with same telephone number, same set of employees etc. who are looking after the business of both the firms. The documents placed on record by the plaintiff which are **Ex.PW1/8** to **Ex.PW1/16** also confirm that the defendant had been doing the business in the name of Multi Decor whereas he has incorporated this company in the name of Multi Décor India Pvt. Ltd.
> (16) **Thirdly**, it has been duly established that the goods allegedly supplied by the plaintiff had been delivered at the address of defendant. Initially, the defendant no.1 tried to skirt out the issue by denying that he

had received any furniture and had also denied that the furniture had been delivered at 162, Block-E, Sector¬II, Faridabad (Haryana) but then he admitted that it was his residential address and in the same breath stated that he was not supplied with any furniture. If that be so, then there was no reason why he would have made the payment in respect of said delivery last payment of which to the tune of Rs. 50,000/¬ had been admitted to be made by the defendant to the plaintiff on 07.04.2012 leaving the balance amount of Rs. 5,41,791/¬. In fact, in the entire cross examination of DW1 the thrust of the case of the defendant was that M/s. Multi Decor and M/s. Multi Décor India Pvt. Ltd. were two different entities and Sh. Pradeep Choudhary in his capacity as Director of Multi Décor India Pvt. Ltd. had never transacted with the plaintiff, which aspect stands duly controverted.

(17) **Fourthly**, the defendant despite having denied the entire case of the plaintiff had taken a stand that TIN No.06701311495 as mentioned in the bills do not pertain to the defendant, however, the defendant has failed to bring on record their own actual TIN No. This aspect however, becomes irrelevant in view of the fact that the defendant no.2 has himself admitted that he was the Manager of Multi Decor and later became Director of M/s. Multi Décor India Pvt. Ltd. (i.e. converted the same firm in the private limited company) from the same address, same telephone number and with the same staff. DW1 has failed to bring on record a single document to confirm that he has no concern with the defendant no.1 firm or M/s. Multi Decor.

(18) **Lastly**, I may observe that defendant no.2 has totally exposed himself in his cross examination. He has tried to mislead the court initially by stating that he had no firm by any other name and later refusing to answer the specific question put to him. The relevant portion of his cross examination I highlight as under:¬

> *"........... I have no other firm by the name. Question whether the firm namely Multi Décor is belongs to either you or your family. Answer:¬ I have been called upon in the present case as director of Multi Décor India Pvt. Ltd. And I am liable to answer any question pertaining to company multi décor Pvt. Ltd. Only. It is wrong to suggest that I have been running the business under the name and style of Multi Décor but I am concealing this fact from the court just to avoid the liability of the plaintiff. My mobile number is 9953558947. There is an official website of our company. I have not mention on the website that multi décor is also my concern. It is wrong to suggest that I have mentioned this fact that multi décor is my concern on our official webpage as reflected vide **Ex.DW1/PX¬1** (running into 29 pages) at page number 24 encircled X....."*
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> *"...... My email ID is pradeep@multidecor.in. I had sent emails relating to the business transaction to the plaintiff from this ID.......**it is correct that I had interacted with the plaintiff from this ID***

***vide Ex.PW1/8. It is also correct that I had made some payment to the plaintiff vide Ex.PW1/10. It is correct that the mail Ex.PW1/14, 15 & 16 had been sent by me**.........."*

"........I was working as manager in Multi Decor and later I started fresh company by the name of Multi Décor India Pvt. Ltd. ***It is correct that the office of multi Décor and Multi Décor India Pvt. Ltd. Started from the same premises. Vol. As on date multi Décor does not exist and there is no office**....."*

*"..........**It is correct that my address and mobile number is reflecting from the website whose documents are Ex.DW1/PX1 (on page no.1)**.*

*"..........**It is correct that C form Ex.DW1/PX2 was issued from Multi Décor as against the invoices bearing no. 425...........it is correct that invoices Ex.DW1/PX3 (a) to Ex.DW1/PX¬3 (f) relate to Multi Décor..........Sh. Virender Singh was the accountant of the both M/s. Multi Décor India Pvt. Ltd. Sh. Virender Singht Might have sent the mail Ex.PW1/13, from my email ID. I have never informed the plaintiff that the multi Décor and Multi Decor India Pvt. Ltd. are two different companies. Vol. I am not bound to tell.......** I did not tell the plaintiff that multi décor has closed down and it was Multi Décor India P. ltd., which was running at the site. I have not placed any document to show that multi Decor does not belong to me......."*

(19) Hence, it is evident from the aforesaid that the defendant no.2 has been doing business in two names i.e. M/s. Multi Decor and M/s. Multi Décor India Pvt. Ltd. It also stands established that he had placed order for and on behalf of company which aspect stands established from his admitted e¬mail Ids. It further stand established that the defendant no.2 had deliberately issued C From from second company i.e. Multi Décor India Pvt. Ltd. having same address and infrastructure and same website i.e. www.multidecor.in. It also stand established that the defendant has failed to place on record a single document relating to Multi Décor India Pvt. Ltd. or any single document showing that both the firms are totally independent of each other. Rather it is admitted by defendant no.2 that all the goods were delivered at the address of defendant no.2 and **all correspondences were done by defendant no.2 and also the last payment was also made by them**." (underlining added)

7. Counsel for the appellants/defendants tried to argue the distinction between Multi Décor and M/s. Multi Décor India Pvt. Ltd., however, it is not unknown that in emails instead of using the full

name of a customer/buyer part of the business name is used on many occasions. Also if the appellants/defendants had not received goods then there was no reason why the appellant no.1/defendant no.1 made payment to the respondent/plaintiff and which is to be taken with the fact that goods were actually supplied at the address which was in fact the residential address of the appellant no.2/defendant no.2. Trial court therefore was in my opinion justified in arriving at the conclusion of existence of the liability of the appellants/defendants towards the respondent/plaintiff.

8. This Court as a first appellate court would interfere with the findings and conclusions of the trial court if the findings and conclusions are illegal or perverse. If the trial court arrived at the conclusions which are as per the record and as per the law as applicable, this Court would loathe to interfere with such findings and conclusions even assuming an alternative view was possible.

9. There is no merit in the appeal. Dismissed.

AUGUST 01, 2017 **VALMIKI J. MEHTA, J**

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