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

\+ **RFA No.622/2017**

% **17th July, 2017**

BCI OPTICAL DISC LTD. ..... Appellant

Through: Mr. Ankit Jain, Advocate with Mr. H.D. Khanna, AR of the appellant.

versus

M/S SPINKS INDIA ..... 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. 24663/2017 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.622/2017

2. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) impugns the judgment of the trial Court dated 2.2.2017 whereby the suit of the respondent/plaintiff has been decreed for a sum of Rs.5,17,345/- along with interest at 6% per

annum on account of the non-payment of price of goods being inks supplied by the respondent/plaintiff to the appellant/defendant.

3. The facts of the case are that the suit was filed for recovery of Rs.8,85,883/- inclusive of interest of Rs.1,38,222/- and sales tax amount of Rs.1,19,229.2/- on account of respondent/plaintiff selling inks to the appellant/defendant. The relevant orders running into 16 in number and totaling in value to an amount of Rs.6,28,431.50/- are referred to in para 2 of the impugned judgment. The appellant/defendant is pleaded to have issued a cheque dated 7.8.2002 drawn on Oriental Bank of Commerce, G.T. Karnal Road, Delhi for a sum of Rs.1,11,086/- which was dishonored. Respondent/plaintiff thereafter served the legal notice dated 9.10.2002 and since the same failed to yield the result the subject suit was filed.

4. The appellant/defendant filed the written statement and pleaded that the suit be dismissed. The main grounds of defence, and which are the two grounds which have been urged before this Court, are, firstly that the appellant/defendant never received the goods and secondly the Courts at Delhi had no territorial jurisdiction.

5. (i) As regards the issue as to whether the appellant/defendant had received the goods, the trial court has dealt with this aspect in para 11 of the impugned judgment and which para shows that bills of supply have been proved and exhibited as Ex.PW1/2 to Ex.PW1/17. The challan has been exhibited as Ex.PW1/18. The witness of the respondent/plaintiff PW-1 Sh. Ashwani Mehta deposed that goods were received by three employees of the appellant/defendant, namely Mr. Philip Johnson, Sh. Inderjeet Grover and Ms. Sunita and it is not disputed by the appellant/defendant that these employees were working with the appellant/defendant in the relevant period and has denied to work till date. The signatures of these three persons were identified by PW-3 Sh. Sukh Prasad on the invoices/challans as regards the delivery of the goods.

(ii) Trial court has rightly held that the case pleaded by the appellant/defendant that three employees had illegally acted against the interest of the appellant/defendant was incorrect because neither any complaint was filed against the said three employees with the police for any alleged cheating/fraud and which is in fact clear from the aspect that these employees continued as employees of the appellant/defendant even after supply of goods and whose employment continued even during the pendency of the suit. By so holding, in my opinion, the trial court has not committed any illegality and perversity because the respondent/plaintiff had discharged the onus of supply of goods and the suit was hence rightly decreed. The relevant para 11 of the impugned judgment of the trial court reads as under:-

> "11 .***Issue no.2 & 3***
> ***Issue no.2:- Whether the plaintiff is entitled to recovery of Rs.8,85,883/- from the defendant? OPP***
> ***Issue no.3:- Whether the plaintiff is also entitled to interest, if so, at what rate? OPP***
> As both these issues are interconnected I am taking them both together. PW-3 Sh. Sukh Prasad has stated that he is the regular employee of the plaintiff and that he works with plaintiff at Delhi and also at Gurgaon. He has stated that he delivered the goods at premises of the defendant company. He has also stated that original invoices along with goods were delivered to the defendant and acknowledgments were taken on the carbon copy of the invoices/delivery challans. He has also stated that the goods were delivered to Mr.Philip Johson, Inderjeet and Ms. Sunita who signed the carbon copy of invoices/delivery challan in acknowledgment of receipt of the goods and that they had signed in his presence. He has identified the signatures of above said persons on carbon copies of invoices stating that "invoice no.118 bears the signatures of Sh.Inderjeet, invoice no. 258 bears the signature of Ms.Sunita and the other invoices (placed on record) bear the signatures of Philips Johson. He has stated that he had delivered most of the goods mentioned in the bills placed on record at Kundli except few. He has stated that he had not received any goods back from the defendant. He has stated that first invoice used to be prepared and then goods were taken from the store and loaded in the van or some times on the two wheeler scooter then he used to deliver the goods to the defendant. PW-2 Sh Ram Bali has stated that he is the accountant of the plaintiff firm. He has stated that accounts are maintained in ordinary course of the business as per standard accounting practice. He has stated that ledger account of defendant is Ex PW1/26. He has further stated that whatever the goods supplied by the plaintiff to the defendant company, the same were debited in

the account and whatever payments were made by the defendant company to the plaintiff company the same were credited in the account. He has further stated that as per statement of account, a sum of Rs.6,28,431/- is due and outstanding on 30.09.2002. He has further stated that statement of account of the defendant is correct. He has stated that he works in Delhi as well as in Gurgaon. He has admitted that plaintiff has withdrawn amount from the court of Sh Mukesh Kumar Gupta, Ld MM, Delhi and that the same has been credited in the ledger account of the defendant. He has further stated that as per ledger account there is a debit balance of Rs.6,28,000/- approximately in the books of accounts of the plaintiff. He has also stated that he cannot tell as to whether this balance is after adjustment of the aforesaid credit of the amount withdrawn from the court of Sh.M.K.Gupta, Ld MM, Delhi or not.

PW-1 Ashwani Mehta, has stated that he is a partner of the plaintiff firm. He has stated that upon orders placed by the defendant, the plaintiff sold, supplied and delivered to the defendant goods including the following goods upon the terms and conditions agreed to by and between the plaintiff and the defendant.

Sr. No.	Description	Item No.	Dated	Amount
1	White-01CDV-SGX	60	03.05.2002	32,260/-
2	White-01CDV-SGX	66	06.05.2002	21,370/-
3	Process Cyan UV 5185 Process Magnets 050 UV 32212 Process Yellow 050 UV 2088 Process black 0505 UV 9034	69	07.05.2002	39,520/-
4	01 White-15 Kg.	74	10.05.2002	22,896/-
5	01 White HFT magnets	81	14.05.2002	17,770.50/-
6	White-01 CDV-SGX	96	25.05.2002	7,632/-
7	White-01 CDV-SGX	173	30.05.2002	30,528/-
8	Plate offset Toray	118	11.06.2002	1,60,000/-
9	White 01-CDV-SGX-series Magenta-SGX	153	01.07.2002	38,140/-
10	White-01 CDV-SGX/Magenta	166	03.07.2002	42,000/-
11	Plate Offset Toray white 01-CDV-SGX-series	182	13.07.2002	1,08,000/-
12	White 01-CDV-SGX-series	223	02.08.2002	42,000/-
13	Process Cyan UV 5185 Process Magnets 050 UV 3212 Process Yellow	232	06.08.2002	36,480/-

	050 UV 2088 Process black 0505 UV 9034			
14	White 01-CDV-SGX-series	258	21.08.2002	14,000/-
15	White 01-CDV-SGX-series	275	30.08.2002	5600/-
16	White 01-CDV-SGX-series	276	30.08.2002	7000/-

Net Total:6,28,431.50/-

The goods supplied by the plaintiff were duly received and consumed by the defendant. The carbon copy of bills are Ex. PW1/2 to Ex PW1/17. The carbon copy of the challan dated 15.07.2002 is Ex. PW1/18. He has stated that defendant did not supply the Sale Tax Forms of Rs.9,93,571/- for the period of 2002-03. He has also stated that sales tax due for period 2002-03 is Rs.1,19,229 (calculated @ 12% p.a.). He has stated that plaintiff is also entitled to recover interest @ 18% p.a. on the tax paid by the plaintiff on demand. He has stated that plaintiff got issued notice dated 23.10.2002 to the defendant calling upon the defendant to pay Rs. 6,49,304/- including interest 18% per annum and to give Sales Tax Form. He has stated that despite service of notice, defendant neither paid the said amount nor given the S.T Form. He has further stated that plaintiff is entitled to recover of Rs.6,28,431/- towards the principal amount and Rs. 1,38,222/- towards interest component @ 18% per annum and Rs.1,19,229/- towards sales tax @ 12% per annum of the sales made in the period 2002-03. He has stated that as per the statement of account of sum of Rs.6,28,431/- is due and outstanding as on 30.9.2002.

DW-1 Sh M.P.Khurana has stated that he is the manager of defendant company. He has stated that plaintiff had colluded with defendant's employee who was supervisor and purchase officer of the defendant company. He has stated that plaintiff sent false bills and obtained signatures on forged bills from some unauthorized person/employee. He has stated that in the month of November 2002, defendant suspected foul play at their Kundli factory as production of the CD plant had not increased and purchase of printing material allegedly purchased from the plaintiff was unproportionate to the production and no printing material was found in the stock. He has stated that in this regard report was lodged with Kundli police but the plaintiff being the influential no action was taken by the police. He has stated that thereafter criminal complaint was filed against the partners of plaintiff firm, their employee Gurdeep Singh and Krishan Kumar printing supervisor and purchase officer of the defendant company which is still pending in the court of Judicial Magistrate First Class, Sonepat, Haryana. He has stated that none of the documents/orders/bills is signed by any authorized representative of defendant company and none of the documents bear its rubber stamp. He has stated that Plaintiff's partner and employee hatched conspiracy with defendant's purchase officer. He has stated that bills are required to be signed by Authorized Representative along with rubber stamp of the defendant company, so that the same can be used as form ST-15 as per Rule 21-A. He has stated that claim made by the plaintiff regarding sale tax for lack of ST-15 amounting to Rs.1,19,220/- @ 12% and the interest claimed thereon has got no relevancy as ST-15 was not required as per provisions of Rule 21-A. He has stated that plaintiff has become dishonest and has not given credit of the goods returned which had been duly mentioned on the bills alleged to be issued by the plaintiff itself. He has stated that malafide of the plaintiff is exposed from its conduct of not giving adjustment of Rs.1,11,086/- the cheque amount which the plaintiff received from the court of Sh. M.K. Gupta, LD MM Delhi. He has stated that there was no such agreement of interest after 45 days or 30 days as alleged in the plaint. He has stated that no copy of any order has been placed on record. He has further stated that defendant had not placed any order to the plaintiff nor the plaintiff sold, supplied and delivered all the goods as mentioned in the plaint and no bill has been placed on record pertaining to item no.1 to 7. He has stated that entire account placed on record is forged. He has stated that no amount is due from the defendant to the plaintiff as the last bill received by the defendant from the plaintiff is bill no.287 dated 03.9.2002 for a sum of Rs.2,40,000/-. He has stated that same has been paid vide cheque no.266730 dated 07.9.2002 for a sum of Rs.1,00,000/- and cheque no.266731, dated 18.9.2000 for a sum of Rs.1,40,000/- which has been duly acknowledged by the plaintiff on copy of the ledger account as reference no.237 against the bill. He has stated that plaintiff has given wrong totaling in the plaint as the total of the entries does not come to Rs.6,28,431/- but the same come to Rs.6,25,196/-. He has admitted that invoice Ex.PW1/1 to Ex PW1/17 bears the correct name and address of his company. He has stated that Johnson Philip and Inderjeet Grover were working as account clerk in the defendant company and Ms. Sunita was probably working with the production department of the defendant company. He has stated that they did not take any action against these three persons when in the year 2003 a fraud relating to the suit transactions was discovered by them. He has stated that record relating to account and ledger of the defendant for the period 2002-03 is missing from the custody of defendant's counsel at Sonipat and FIR is being registered. It is also stated that sale tax records were given to their counsel at Sonipat from where record is missing. On being suggested that goods were received by Johnson Philip and Inderjeet and Ms. Sunita, he has stated that no action was taken against them and that they were not made parties to the fraud complaint filed by the defendant. He has stated that transaction with the plaintiff were started some time in the year 1989-90. He has expressed his inability to produce in the court any documents on the basis of which defendant discovered fraud and filed the complaint. He has admitted that in the year 2002 defendant company was dealing with the plaintiff. He has also admitted that defendant company does not have any record to produce before the court to show the short supply of goods or that goods were of inferior quality. He has also stated that after receiving notice they never informed the plaintiff that the goods supplied by the plaintiff were of inferior quality or short in supply. He has

stated that they had informed Ashwani Mehta who assured that he will look into the matter but they do not have any record of their telephonic talk. Thus it is clear from the evidence on record as discussed that plaintiff supplied goods to the defendant through its delivery man PW-3 Sukh Prasad. The delivery man Sh. Sukh Prasad has also stated that no goods were returned back to him by the defendant. Defendant has not produced any evidence to establish that goods supplied by the plaintiff were short in supply or inferior in quality, and not production of such record has been clearly admitted by DW-1 Sh. M.P. Khurana. It is pertinent to note that even after the notice dated 23.10.2002 Ex.PW1/21 having been given by the plaintiff to the defendant, the defendant still did not send any reply in writing to the plaintiff objecting to the contentions made in the notice regarding supply of the goods of item no 1 to 16 of the value of Rs.6,28,431/-. Two cheques being dated 07.09.2002 bearing no. 266730 for a sum of Rs.1,00,000/- and second dated 18.9.2000 bearing no. 266731 for a sum of Rs 1,40,000/- paid against the bill no. 287 as mentioned by the DW-1 Sh. M.P. Khurana are found to have been adjusted in the ledger account of the defendant maintained by the plaintiff Ex PW1/26.
It is after the above two cheques adjustment plaintiff has arrived at claimed amount of Rs 6,28,431/- as due from the defendant in the notice dated 23.10.2002 Ex PW1/21. To this notice, defendant has not given any written reply to the plaintiff objecting to the correctness of the said amount in balance shown as due from the defendant towards the goods supplied nor has defendant produced on record any account maintained by it to show as to what exactly is the correct account of the goods received and payment made. Though undisputedly defendant has agitated about non adjustment by the plaintiff of the cheque amount of Rs 1,11,086/- received by the plaintiff from the Court. This fact has been mentioned in the defendant's WS as also in the statement of DW-1 Sh. M.P. Khurana. Record reveals that plaintiff has not given credit/adjustment to the defendant the cheque amount of Rs.1,11,086/- which the plaintiff had received from the court of Sh. M.K. Gupta, Ld MM, Delhi during the proceedings u/s 138 NI Act, as the said amount given to the plaintiff (complainant) given by way of compensation was the amount of the cheque given by the defendant to the plaintiff so the defendant is entitled to get adjustment of the said amount as payment and plaintiff is liable for the same. In that view of the matter considering the material on record I find that amount of Rs.5,17,345/- (6,28,431-1,11,086/-=5,17,345/-) was due to the plaintiff from the defendant as on 23.10.2002, the date of giving of the notice."

(underlining added)

6. No worthwhile argument could be raised before this Court as regards goods not having been received by the

appellant/defendant, and in view of the fact that goods were shown to have been delivered to the appellant/defendant through its employees Mr. Philip Johnson, Sh. Inderjeet Grover and Ms. Sunita. Mr. Philip Johnson and Mr. Inderjeet Grover were working as Account Clerks and Ms. Sunita was working in production department. Respondent/plaintiff proved its books of accounts as Ex.PW1/26. Appellant/defendant failed to reply to the legal notice served upon it by the respondent/plaintiff. Trial court has therefore rightly decided issue no.2 against the appellant/defendant.

7. As regards the argument urged before this Court as also before the trial court as regards the lack of territorial jurisdiction of the courts at Delhi, the same was subject matter of issue no.1, and the trial court has rightly held that courts at Delhi would have territorial jurisdiction inasmuch as payment was made in Delhi. Before me also it is not disputed on behalf of the appellant/defendant that cheque was issued by the appellant/defendant at Delhi and realized at Delhi, and therefore, once payment is made at Delhi, the courts where payment is made is a court where part of cause of action arises and therefore there is jurisdiction on the courts at Delhi to try the suit in view of sub-

section (c) of Section 20 CPC and the ratio of the judgment of the Supreme Court in the case of ***A.B.C. Laminart (P) Ltd. Vs. A.P. Agencies, Salem (1989) 2 SCC 163*** and which holds that in contractual matters part of cause of action arises where either the contract is executed or the contract has to be performed or where the payment has to be or is made or where breach occurs with respect to the contract. Accordingly I reject the argument urged on behalf of the appellant/defendant that courts at Delhi no territorial jurisdiction.

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

JULY 17, 2017 **VALMIKI J. MEHTA, J**
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