

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

+ **RFA No.885/2017**

% **23rd October, 2017**

M/S PRABHU DAYAL LACHHMI NARAIN & ORS.Appellants

Through: Mr. Pankaj Gupta, Advocate
with Ms. Rimpay Gupta,
Advocate.

versus

M/S SHRI SAI CORPORATION & ORS. Respondents

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.37598/2017 (exemption)

Exemption allowed subject to just exceptions.

C.M. stands disposed of.

RFA No.885/2017 and C.M. No.37597/2017 (stay)

1. This Regular First Appeal is filed under Section 96 of Code of Civil Procedure, 1908 (CPC) impugning the judgment of the Trial Court dated 9.6.2017 by which the trial court has dismissed the suit filed by the appellants/plaintiffs for recovery of Rs.11,93,887.79/-.
2. The facts of the case are that the appellants/plaintiffs are

a partnership firm and its registered partners. In the plaint, it was pleaded that the respondents/defendants had purchased goods being grains, pulses, rice etc from the appellants/plaintiffs and the suit amount is the principal due amount as per the appellants/plaintiffs books of account and balance claim was for interest.

3. I may note that there were a total of seven defendants in the suit but the effective contesting defendants were defendant nos.1 and 3 in the suit with defendant no.1 pleading of it being the main purchaser from the appellants/plaintiffs. It is noted that written statements were also filed by the other defendants in the suit and who were the consignees with respect to the goods which were supplied by the appellants/plaintiffs.

4. A reading of the plaint shows that it contains the averments of the appellants/plaintiffs being entitled to the outstanding amount with the amount of Rs.5,58,967.32/- due on account of the goods which were supplied through railway rakes and Rs.82,930.47/- being due on account of supplies made through trucks. Interestingly there was a curious stand in the plaint and which was that in August, 1990 appellants'/plaintiffs' business ran into financial difficulties

resulting in creditors coming together and when demand notices through the crime branch of Delhi Police were sent to the respondent no.1/defendant no.1, it is then that the respondent no.1/defendant no.1 informed that as per its books there was an outstanding amount of Rs.6 lacs payable to the appellants/plaintiffs. It was therefore pleaded that since the respondents/defendants have not disputed the liability to pay the amount of Rs.6,41,627.7/- by way of principal amount as per its books as on 12.12.1989, hence the said principal amount along with interest at 21% per annum was payable by the respondents/defendants to the appellants/plaintiffs totaling to the amount claimed in the suit of Rs.11,93,887.79/-.

5. Defendant nos.1 and 3 filed their joint written statement and pleaded that the entire transaction was carried out by defendant no.1 through defendant no.3 and that other defendants have nothing to do with the suit claim. I may note that the defendant nos.1 and 3 in the suit are respondent nos.1 and 3 in the present appeal. Defendant nos.1 and 3 contested the suit by pleading that material supplied was short and weighed less besides being of inferior quality. Defendant nos.1 and 3 pleaded that they suffered a loss of about Rs.15 lacs and

which loss the appellants/plaintiffs were liable to pay but appellants/plaintiffs failed to pay. Hence it was pleaded that suit should be dismissed inasmuch as defendant nos.1 and 3 as per the written statement have given the details of the loss caused to them due to the putrefaction, rotten and torn gunny bags etc showing that there was a short supply also less weight supply besides the goods received being of inferior quality.

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

- “1. Whether the plaintiff no. 1 is a registered partnership firm and the suit has been signed, verified and filed by a registered partner?
2. Whether the suit is maintainable without impleading the heirs of deceased partner Shri Lachhmi Narain?
3. Whether the suit is within time?
4. Whether the plaintiff is entitled to interest? If so, to what rate and to what amount?
5. Whether the plaintiff are entitled to recover the suit amount? If so, from which of the defendant?
6. Whether there is any privity of contract in between the plaintiff and defendants Nos. 6 and 7? If so, its effect?
7. Whether the defendants suffered any loss on account of shortage in supply made by the plaintiff? If so, its effect?
8. Relief, if any?”

7.(i) The relevant issues are issue nos.5 and 7. It is surprisingly that while the trial court has decided issue no.7 in favour of the appellants/plaintiffs by holding that respondent nos.1 and 3/defendant nos.1 and 3 failed to prove their claim and set off

adjustment however while deciding issue no.5, it has been held that appellants/plaintiffs have failed to prove their claim because appellants/plaintiffs had to prove their claim by filing detailed consignment receipts and books of accounts etc and that none of which documents were filed by the appellants/plaintiffs. Learned counsel for the appellants/plaintiffs argued before this Court that once issue no.7 was decided in favour of the appellants/plaintiffs that respondents/defendants were held not entitled to adjustment or set off because they had failed to prove any damage or loss caused by them, therefore, it was necessary that the appellants/plaintiffs had to succeed because each entry with respect to supply of goods was specifically stated by the appellants/plaintiffs in the plaint and which was not denied in the written statement.

(ii) In my opinion, this argument of the appellants/plaintiffs is valid only at the first blush because when we go in depth it is seen that the argument carries no weight. Actually, the trial court ought to have decided both the issue nos.5 and 7 together, but the trial court chose to decide issue nos.5 and 7 independently resulting in a sort of contradiction that respondents/defendants failed to prove their claim of

loss that they have suffered loss of Rs.15,20,168/- yet the suit has been dismissed. In my opinion in a case such as the present onus of issues really was on both the parties, and especially the appellants/plaintiffs as regards issue no.5 to prove their claim of entitlement as to how there was remaining the balance due in their books of accounts against the respondents/defendants. This is because the respondent nos. 1 and 3/defendant nos. 1 and 3 may have failed to lead sufficient evidence on the defence of losses suffered, yet, if the appellants/plaintiffs had filed their books of accounts it would have been known if the appellants/plaintiffs had given the respondents/defendants adjustment for losses claimed to have been suffered by them. One cannot ignore the averment in the plaint that only in response to notices of crime branch respondents/defendants showed that as per its books certain balance was due and thus appellants/plaintiffs woke up thereafter. Even if respondents/defendants failed to prove their case of loss, yet, appellants/plaintiffs had to prove as to how the balance was due to them as per their books of account and for proving such dues the books of account were necessarily to be filed. However, admittedly the appellants/plaintiffs failed to file its books of accounts to prove

their claim against the respondents/defendants and these aspects have been noted by the trial court *inter alia* in paras 47 to 51 of the impugned judgment and these paras read as under:-

“47. Admittedly, plaintiffs have not sent any reply of these letters to dispute the averment made or to put across its own stand. In the letter Ex. D-4, defendants have stated that till then a sum of Rs. 1,41,30,000/- have already been paid and plaintiff has been requested to send bills of four Racks. Even this letter Ex D-4 was also not replied by the plaintiff thereby either questioning the contents thereof or taking its own stand with respect to averments made in the said letters.

48. In the above background, plaintiffs were required to prove that the goods which they sent by way of rails and truck was worth Rs. 1,54,41,405.29/- out of which they received payments of Rs 1,47,99,777.5 leaving outstanding of Rs. 6,41,627.79/- against defendant. Admittedly, books of account has not been brought on record to prove the same as per law.

49. The plaintiffs relied on annexure A which could at best be termed as extract of goods supplied and payment received but same cannot be acted upon in the absence of books of accounts. Plaintiffs have also not proved on record the all the bills showing the value/quantity of goods dispatched to the defendant. Photocopies of two bills are on record even if same is taken into consideration the total value of the goods sold through those bills are only 46,97,133.52/-. No doubt, defendants have admitted to have received the goods and therefore, dispatched and receipt of goods is not in dispute but defendants have also successfully proved the letters Ex. D-1 to D4 wherein defendants are disputing to the plaintiffs the value, quality and quantity of the goods supplied by plaintiff but plaintiffs have remained silent. Defendant has been continuously asking the plaintiff to send the bills so that shortage etc could be intimated but no bills was sent by plaintiffs as is clear from the letters Ex D-1 to Ex D-4.

50. Plaintiffs were required to prove on the record of this case that a sum of Rs. 6,41,627.79/- was outstanding which plaintiffs could have done by proving all the bills, railway receipts and books of account and other relevant material. It is not known as to what was the number of bags or quantities of goods were sent by way of rail/trucks and therefore, it could not be held as to what was the value of the goods sent by the plaintiff to the defendant. It is the settled preposition of law that plaintiff has to stand on its own legs. Plaintiffs cannot rely upon the letter of defendants to prove the quantities of goods and its value supplied. In the letter defendants have admitted only receipts of goods not the value or quantity or its worth. Defendants have been asking plaintiff to send bills in particular manner

mentioning the details of weight etc but plaintiff neither disputed the contents of the letters nor brought on record any material to show that grievance of defendants was rectified. Plaintiffs failure to reply the above letters of the defendants despite the fact that defendant was questioning the actual value/quantity of the goods supplied, calls for drawing of adverse inference against the plaintiffs. More over plaintiffs had another chance in the trial of the present matter to prove the quantity, quality and worth of the good supplied but plaintiffs have failed to prove its case by not proving all the bills, RRs and books of account.

51. PW1 had filed additional affidavit to the effect that original of documents was in possession of the plaintiffs but same was misplaced. In the said affidavit there is reference of only three bills but the third bill is not on record. In any case plaintiffs have failed to prove even by secondary evidence all the bills, RRs and books of account for goods supplied through Racks and Trucks as referred to in the extract of statements of account. Accordingly, issue no. 5 is decided in favour of defendants and against the plaintiff.” (underlining added)

8. The aforesaid paras, especially para 48, arrives at a correct conclusion because if a plaintiff in a suit claims a particular amount to be due from the defendant in the suit on account of balance due as per the books of accounts of the plaintiff, then, the plaintiff must necessarily file books of accounts as to the fact that such balance is due in the books of accounts of the plaintiff and against the defendant. Admittedly, the books of accounts were not filed on the lame excuse that the same were lost. I therefore put a query to the learned counsel for the appellants/plaintiffs that even if books of accounts were lost, income tax returns could have been filed and to which are annexed the profit and loss account showing the list of debtors and creditors of the appellants/plaintiffs including the respondents/defendants being debtors,

but it is admitted that there was no attempt made by the appellants/plaintiffs to file or prove their income tax returns. In my opinion therefore on account of not only books of accounts being not filed by the appellants/plaintiffs but the appellants/plaintiffs deliberately not having filed their income tax returns, the issue no.5 had necessarily to be decided against the appellants/plaintiffs by drawing adverse inference that really nothing was due as per books of account to the appellants/plaintiffs. Failure by a defendant to prove its claim of adjustment does not in all cases necessarily lead to the conclusion that plaintiff's suit for recovery of money has to be decreed because failure by a defendant to prove its case of loss being caused on account of short supply or faulty supply or defective supply etc will only be one of the factors for proving the defences to the suit of the plaintiff, but plaintiff has to independently stand on its own legs and prove as to how a particular amount which was claimed by the plaintiff in the suit was due from the defendant in the suit and which onus the trial court has rightly held that the appellants/plaintiffs failed to discharge.

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

OCTOBER 23, 2017/ Ne

VALMIKI J. MEHTA, J