* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No.409-10/2006**

% 8th October, 2018

UNION OF INDIA & ANR.

..... Appellants

Through: None.

versus

M/S RANGANATHAN ENTERPRISES

..... Respondent

Through: None.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit impugning the judgment of the Trial Court dated 12.04.2004 by which the trial court has dismissed the suit for recovery of Rs.10,25,728.27 along-with interest filed by the appellant/plaintiff/Union of India against the respondent/defendant/partnership firm being the balance due on account of lottery tickets supplied by the appellants/plaintiffs

to the respondent/defendant. The Trial Court has dismissed the suit on the sole ground that the documents filed by the appellants/plaintiffs were not proved on record. At this stage itself, this court would like to take note of the fact that the respondent/defendant was moved against *ex-parte* in the suit as it did not appear after service.

2. The facts of the case are that the respondent/defendant/partnership firm was appointed by the appellants/plaintiffs as a Stockist for the sale of the lottery tickets for various lottery schemes of the appellants/plaintiffs. That pending the execution of a written agreement between the parties, and in view of the oral agreement of July 1991, the respondent/defendant was appointed as a Lottery Stockist of the appellants/plaintiffs. The terms and conditions between the parties are those as stated in para 4 of the plaint and this para 4 of the plaint reads as under:-

> "4. That, pending execution of a written agreement, vide an oral agreement entered into between the department and the defendant in July 1991 the defendant was appointed a stockist for the sale of lottery tickets of the department within the State of Karnataka on the following terms and conditions:-
>
> a) The defendant was required to furnish security to the department either in cash or in the form of a bank guarantee. The department had the right to vary the amount of security so required.

b) The defendant was to indicate the number of tickets wanted by it for each lottery scheme. The department was to deliver the tickets to the defendants.

c) The defendant was required to submit prompt draw accounts of each lottery scheme and to remit the sale proceeds of tickets every week either in cash or by bank draft to the department.

d) The defendant was entitled to a commission and service charges on the tickets sold by it. The amount of commission and service charges to be given for a particular lottery scheme was to be decided by the department and could be varied by the department. It was agreed that the defendant would be entitled to Commission and service charges at the rate at which the same were given by the department to its other stockists.

e) For each specific draw, the number of tickets remaining unsold was to be intimated by the defendant to the department atleast 24 hours before each draw. On the failure of the defendant to do so, all the tickets of a draw supplied by the department to the defendant were to be treated as sold.

f) Tickets reported as unsold atleast 24 hours before a draw were to be physically returned by the defendant to the department. On the failure of the defendant to do so, the defendant was liable to make payment for such tickets as if the same had been sold.

g) The defendant was entitled to a credit for all prize winning tickets of a draw physically submitted by the defendant to the department.

h) An open, current and mutual account to be maintained which was to be settled at the close of each financial year and payment liquidated forthwith."

3. The case of the appellants/plaintiffs was that it maintained an open, mutual and current account where all the transactions were reflected. Respondent/defendant committed default in submitting accounts in-spite of lottery tickets being supplied and draws being held by the respondent/defendant. At the request of the respondent/defendant further sale of tickets was stopped from the first

week of November 1991 and for the period of engagement of the respondent/defendant as a lottery stockist of the appellants/plaintiffs, the draws which were held, and the amounts which were due because of respondent/defendant failing to submit the accounts, are those as per paras 14 and 15 of the plaint and these paras read as under:

> "14. That from July 1991 till 8.11.1991 the department supplied tickets of 7 lottery schemes to the defendant for the following draws:-
>
> | | Lottery Scheme | No. of draws. |
> |---|---|---|
> | 1. | Indraprastha | 192nd to 241st draw |
> | 2. | New Delhi Weekly | 29th & 30th draw |
> | 3. | Sarvodaya | 35th draw. |
> | 4. | Bhagyanidhi | 35th & 36th draw. |
> | 5. | Qutab | 26th to29th draw |
> | 6. | Vikas | 26th to 29th draw |
> | 7. | Bhagyodaya | 133rd to 138th draw. |
>
> 15. That after the defendant stopped taking further tickets the department settled the accounts being maintained by it. After settling the accounts the following position emerged.
>
> | | Lottery Scheme | Amounts in Rs. |
> |---|---|---|
> | 1. | Indraprastha | 9,31,249/- Payable by the defendant. |
> | 2. | New Delhi Weekly | 90/- Payable by the defendant. |
> | 3. | Sarvodaya | 60/- excess paid by the defendant. |
> | 4. | Bhagyanidhi | 115/- excess paid by the defendant. |
> | 5. | Qutab | 1811/- excess paid by the |

			defendant.
6.	Vikas		3253/- excess paid by the defendant.
7.	Bhagyodaya		2045/- excess paid by the defendant.
Amount payable by Defendant		Rs.	9,24,055/-

It is relevant to mention that the defendant had not submitted any account for the 206th to 241st draws of Indraprastha lottery scheme."

4. The appellants/plaintiffs pleaded that after waiting for a sufficient time and crediting an amount of Rs.1,36,560/- to the respondent/defendant, the liability of the respondent/defendant stood crystallized at Rs.7,87,495/-. After adjusting an amount of Rs.1,00,000/- by encashing the bank guarantee, the liability of the defendant/respondent stood at Rs.6,87,495/-, and this amount was claimed in the suit along-with interest at 15% per annum.

5. As already stated above, the respondent/defendant was moved against *ex-parte* as it failed to appear after service.

6. Though the trial court is correct in observing that the documents filed by the appellants/plaintiffs have not been formally proved i.e exhibit numbers have not been given, however, in the

affidavit by way of evidence filed on behalf of the appellants/plaintiffs by Dr. Pooja Gupta, Joint Director of Lotteries, Govt. of NCT of Delhi, there is reference to all the documents as also the agreement between the parties. The affidavit of Dr. Pooja Gupta attested on 25.05.2002 states on oath with respect to supply of lottery tickets to the respondent/defendant, as also the terms of the supply, with the fact of open, mutual and current account being maintained between the parties, as also encashment of bank guarantee of Rs.1,00,000/-. The documents which are referred to by the appellants/plaintiffs are those as filed in terms of the List of Witnesses filed by the appellants/plaintiffs dated 11.04.2002. The relevant documents as per the List of Documents dated 11.04.2002, and which have been referred to in the affidavit by way of evidence of the appellants/plaintiffs through Dr. Pooja Gupta read as under:-

"IN THE MATTER OF:

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VS.

RANGANATHAN ENTERPRISES DEFENDANTS

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PLAINTIFF"

7. Since the affidavit by way of evidence has been filed by the appellants/plaintiffs with the fact that the affidavit has referred to the relevant documents filed along-with a List of Documents dated 11.04.2002, therefore, in my opinion such documents stand proved although there are no formal exhibit marks given to the respective documents. It's pertinent to note that if exhibit marks are not given to the documents the same is an administrative mistake of the court and that would however not mean that the documents have not been proved. This is all the more so when the respondent/defendant is moved against *ex-parte* and has raised no objection to the proof of documents, and once no objection is raised to the mode and manner of proof of documents, then the documents stand proved as held by the Hon'ble Supreme Court in the case of ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Anr., (2003) 8 SCC 752.***

8. In view of the aforesaid discussion, in my opinion the trial court has committed a complete illegality in dismissing the suit merely on the ground that the documents have not been formally proved i.e. documents not being given exhibit numbers. It has already

been held above that merely because exhibit marks are not given does not mean that the documents are not proved. In my opinion, therefore, appellants/plaintiffs had proved their case through the affidavit filed by Dr. Pooja Gupta and documents proved by her in her affidavit, and as stated in the List of Documents dated 11.04.2002.

9. This appeal is allowed. Impugned judgment of the Trial Court dated 12.04.2004 is set aside. Suit of the appellants/plaintiffs is decreed for a sum of Rs.10,25,728.27 alongwith *pendente lite* and future interest till payment at 9% per annum simple. Appellants/plaintiffs will be entitled to costs of the suit as also the appeal. Decree sheet be prepared. The appeal is accordingly allowed and disposed of.

OCTOBER 08, 2018/ib **VALMIKI J. MEHTA, J**