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

+ **RFA No. 446/2018**

% **29th August, 2018**

**M/S BHASIN INFOTECH & INFRASTRUCTURE
PVT LTD & ORS**

..... Appellants

Through: Mr. Madhur Gulshan Sapra, Adv.
(9810955755)

versus

NARESH KUMAR DUA

..... Respondent

Through: Mr. Neeraj Tyagi, Advocate
(9810114261)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. At the time of issuing notice in this appeal on 25.5.2018,
the following order was passed:-

"1. This Regular First Appeal under Section 96 CPC is filed by the defendants in the suit impugning the judgment of the trial court dated 23.1.2018 by which the trial court has decreed the suit for recovery filed by the respondent/plaintiff for a sum of Rs.17 lacs alongwith interest at 9% per annum.

2. Learned counsel for the appellants argues that admittedly the contract of the respondent/plaintiff was only with the appellant no.1

and there was no contract with the appellant nos. 2 to 4 who were only the Directors and Representatives of the appellant no.1-company, and in law liability of a company is not the liability of the shareholders and directors or employees of the company. It is argued that though this aspect was not taken up in the pleadings, this aspect is a legal issue which arises from admitted facts and therefore, this Court should take note of the same, including for the reason that such an aspect was argued at the time of final arguments before the trial court as reflected by paras 24 and 25 of the impugned judgment.

3. Accordingly, this appeal is disposed of as not pressed so far as appellant no.1 is concerned but with respect to there being no liability of appellant nos. 2 to 4, notices be issued in this appeal to the respondent, both in the ordinary method as well as by registered AD post, returnable on 29th August, 2018.

4. For the present no interim orders are sought by the appellants inasmuch as there are no attachment proceedings which have been effected so far as the appellant nos. 2 to 4 are concerned,

Dasti."

2. Therefore, this Court only has to decide whether the trial court has rightly passed the impugned judgment and decree dated 23.1.2018 against the appellant nos. 2 to 4/defendant nos. 2 to 4 who are only the Directors/representatives of the appellant no.1 company.

3. It cannot be disputed on the basis of the record that even as per the plaint no personal liability was alleged to exist of the appellant nos. 2 to 4/defendant nos. 2 to 4 because these persons have not stood as guarantors to repay the amount claimed by the

respondent/plaintiff. Even the subject shop which was to be sold, and for which payment was to be made, was to the appellant no.1/defendant no.1 and therefore the liability would only be of the appellant no.1/defendant no.1. As noted in the order dated 25.5.2018 this appeal was not pressed so far as the impugned judgment and decree was passed against the appellant no.1/defendant no.1.

4. In view of the aforesaid discussion, this appeal is allowed by holding that the impugned judgment and decree wrongly passes a money decree against the appellant nos. 2 to 4/defendant nos. 2 to 4 and that appellant nos. 2 to 4/defendant nos. 2 to 4 are held not to be liable because there was no contract of the appellant nos. 2 to 4/defendant nos. 2 to 4 with the respondent/plaintiff to repay the amount to the respondent/plaintiff, and the contract was only as between the appellant no.1/defendant no.1 and the respondent/plaintiff. The suit against the appellant nos. 2 to 4/defendant nos. 2 to 4 filed by the respondent/plaintiff will hence stand dismissed, leaving the parties to bear their own costs.

5. The appeal is accordingly allowed and disposed of in terms of the aforesaid observations.

AUGUST 29, 2018/ib

VALMIKI J. MEHTA, J