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

+ **RFA 78/2009 & 13783/2018**

ZENITH LTD

..... Appellant

Through: Mr. Ashok Chhabra & Mr. Nikhil
Karwal, Advocates (M-9810008481).

versus

RAMSONS ENTERPRISES

..... Respondent

Through: Mr. P.K. Agarwal & Ms. Mercy
Hussuain, Advocates.

AND

+ **RFA 521/2011**

RAM SONS ENTERPRISES

..... Appellant

Through: Mr. P.K. Agarwal & Ms. Mercy
Hussuain, Advocates.

versus

ZENITH LTD & ORS

..... Respondent

Through: Mr. Ashok Chhabra & Mr. Nikhil
Karwal, Advocates (M-9810008481).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

%

03.05.2018

1. The present appeals arise out of the Trial Court's judgment and decree dated 11th July, 2008. The impugned judgment arises out of a suit for recovery for Rs.15 lakhs filed by the Respondent/Plaintiff (*hereinafter 'Plaintiff'*) against the Appellant/Defendant (*hereinafter, 'Defendant'*) arising out of a dealership agreement between the parties. The Trial Court framed the following issues on 3rd November, 1998:

“(1) Whether this Court has got no territorial jurisdiction to entertain the present suit as alleged in

para 2 of the written statement (preliminary objections)?

(2) Whether the suit is barred by time as alleged in para 8 of the written statement (preliminary objections)?

(3a) Whether the defendants terminated the contract unilaterally, wrongly and illegally as alleged in para 11 of the plaint?

(3b) Whether the plaintiffs are entitled to recover damages on the said score?

(4) Whether the plaintiffs are entitled to recover a sum of Rs.2,50,000/- from the defendants alleged to have been paid by them by way of security vide para 5 of the plaint?

(5) Whether the plaintiffs are entitled to recover the damages on account of short supply, shortage of weight and substandard quality as alleged in para 12 of the plaint?

(6) Whether the plaintiffs are entitled to recover the damages? If so, to what amount and from which of the defendants?

(7) Whether the plaintiffs are entitled to interest? If so, at what rate and to what amount?"

2. Evidence was led by the Plaintiff. Two witnesses had appeared, PW-1, Sh. Jagan Nath Gupta and PW-2, Sh. Jagdish Garg. The Defendant Sh. M.M.S. Kohli deposed as DW-1. The Trial Court after appreciating the pleadings and evidence held that the court had territorial jurisdiction to entertain the suit. On the issue of limitation, the Trial Court held that the dealership was terminated on 23rd June, 1990 and the suit was instituted on 6th July, 1992. Thus, the suit was within limitation. On the question of recovery of amounts, the Trial Court held that the security amount of Rs. 2,50,000/- is liable to be refunded along with interest @ 10% p.a. Insofar as

losses suffered by the Plaintiff on account of short supply of goods and supply of sub-standard quality goods are concerned, the Trial Court held that the Plaintiff is not entitled to any relief. On the question of termination of dealership, the Trial Court after examining the clause 18 of the agreement held that the termination of dealership is illegal being contrary to the terms of the agreement. The basis of the Trial Court's order was that prior notice, of six months time should have been given. However since the Plaintiff could not make out or provide any basis for the monetary claims of Rs.10 lakhs on account of termination of the dealership,. the Trial Court granted damages to the tune of Rs.1 lakhs on this account. Insofar as interest is concerned, the Trial Court decreed the suit @ 10% p.a. The operative portion of the Trial Court's judgment reads as under:

"15. RELIEF

In the light of my findings on the issues above, a money decree of Rs.2.50 lakh on account of refund of security amount alongwith simple interest @ 10 % per annum from the date of actual payment i.e.(09.11.82 on the sum of Rs.1.25 lakh while 14.12.82 on the sum of Rs.1.25 lakhs) till the realisation of the amount is passed in favour of the plaintiff and against the defendant No.1

A money decree in the sum of Rs.1.00 lakh on account of damages alongwith simple interest @ 10% per annum from the date of filling of the suit till the realisation of the amount is passed in favour of plaintiff and against the defendant no.1

Definition no.1 shall also bear the cost of the suit. Decree sheet be prepared accordingly. File be consigned to record room."

3. RFA 78/2009 has been filed by the Defendant challenging the impugned judgment/order and RFA 521/2011 has been filed by the Plaintiff

challenging the non-grant of other reliefs including damages claimed by it. At the time of preliminary hearing of this appeal, this court had vide order dated 15th December, 2011 directed the Appellant to deposit the decretal amount before the Trial Court and that the same would be released to the Respondent after the Respondent furnished the personal bond of the Managing Partner to reinstitute the Appellant in case the Appellant succeeds. Counsel submits that they are unsure as to whether the entire decretal amount was deposited and withdrawn by the Respondent. They further submit that some deposit was made and was withdrawn.

4. On 17th January, 2018, the appeals were called for hearing and Mr. Ashok Chhabra, counsel appearing for the Appellant submitted that the Appellant appears to have gone into liquidation and the matter was adjourned on 6th March, 2018. On the next date, Ms. Hussain, Advocate appearing for the Respondent made a submission that if the impugned judgment is confirmed, her client would not press the cross appeal. Mr. Chhabra sought some time to seek instructions in the matter. However, it appears that despite repeated attempts, Mr. Chhabra is unable to contact the Appellant. The notice issued by Mr. Chhabra has also been returned with the remark “left”. He submits that the e-mails which have been sent by him have bounced back. It appears that the Appellant is not interested in prosecuting the present appeals.

5. The appeal and all pending applications are dismissed. Cross appeal RFA 521/2011 is dismissed as not pressed.

PRATHIBA M. SINGH, J

MAY 03, 2018

Rahul