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

Date of Decision : 18th January, 2018

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RFA 383/2017

VINOD PRAKASH JOSHI

..... Appellant

Through: Mr. Rama Shanker & Ms. Seema
Sharma, Advocates (M-9967110041).

versus

NIRMALA DEVI

..... Respondent

Through: Mr. Rajesh Bhatia, Advocate (M-
9811331125).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

RFA 383/2017 & CM APPLs. 14644/2017 (Stay), 1011/2018 (for withdrawal of amount)

1. The present appeal has been filed by the Appellant/Defendant (*hereinafter, 'Defendant'*) impugning the judgment and decree dated 22nd December, 2016 passed by the Trial court, whereby the suit for recovery of Rs.5,90,178/- was decreed in favour of the Respondent/Plaintiff (*hereinafter, 'Plaintiff'*) and against the Defendant.

Brief Background

2. The Plaintiff is the proprietor of the M/s Upkar Steel Traders which was engaged in the business of iron and steel. It was stated that the Plaintiff supplied material i.e., iron and steel plates to the Defendant as per his requirements, and would, from time to time, issue invoices to the Defendant in respect of the material supplied. As per the statement of accounts maintained by the Plaintiff, it was alleged that the Defendant was liable to

pay a sum of Rs.5,90,178/- to her for supply of the material. To prove her case, the Plaintiff has produced 19 invoices raised by her as also the statement of accounts maintained by her in the period during which she was doing business with the Defendant.

3. That on 1st December, 2012, the Plaintiff had sent a legal notice to the Defendant demanding payment of the amount due within a period of seven days. It was alleged that the Defendant neither replied, nor complied with the said notice. The Plaintiff, thereafter, filed ***Suit No. 613958/2016*** for recovery of sum of Rs.5,90,178/- against the Defendant alongwith pendente lite and future interest and costs.

4. The Defendant, in his written statement, took two preliminary objections, namely, that the Plaintiff has relied upon an incorrect statement of accounts to show the Defendant's liability; and the suit was barred by limitation since the Plaintiff sought recovery of invoices of the year 2008 and the suit was filed only in the year 2013. In reply on merits, the Defendant contended that he used to first make the payment to the Plaintiff for each consignment and only then the goods were supplied to him. Thus, according to the statement of accounts maintained by the Defendant, no amount was due and payable to the Plaintiff. He categorically denied the invoices produced by the Plaintiff before the Trial court stating that the goods against those invoices were not delivered to him.

5. The Trial court, after due perusal of the evidence on record, held that the Defendant had failed to prove the averments made in his written statement as he had not produced any documentary evidence to support his claim. The Plaintiff, on the other hand, was successful in establishing the 19 invoices raised, as also the statement of accounts maintained by her during

the course of business with the Defendant. Thus, the Trial court decreed the suit in favour of the Plaintiff and against the Defendant for a sum of Rs.5,90,178/- alongwith costs and future interest @ 9% p.a. till realization of the entire amount. Aggrieved by the above, the Defendant preferred the present appeal.

Appeal Proceedings

6. On 21st September, 2017, this Court stayed the operation of the impugned judgment subject to deposit of the decretal amount in the Registry by the Defendant. On 21st November, 2017, this Defendant informed the Court that he had been able to arrange only a sum of Rs.6,50,000/- out of the decretal amount. This amount stood deposited with the Registry of the Court on 8th December, 2017.

7. Counsels for the parties submit that the parties are willing to settle the dispute on the basis that the sum already deposited in the Court to the tune of Rs.6,50,000/- be paid to the Respondent as a full and final settlement of the dispute. Both counsels submit that they have instructions from their clients to enter into this settlement. The law on authority of counsels to enter into a settlement on behalf of the parties is well settled. The Supreme Court in ***Byram Pestonji Gariwala v. Union Bank of India (1992) 1 SCC 31*** held as under:

“30. There is no reason to assume that the legislature intended to curtail the implied authority of counsel, engaged in the thick of proceedings in court, to compromise or agree on matters relating to the parties, even if such matters exceed the subject matter of the suit. The relationship of counsel and his party or the recognized agent and his principal is a matter of contract; and with the freedom of contract generally,

the legislature does not interfere except when warranted by public policy, and the legislative intent is expressly made manifest. There is no such declaration of policy or indication of intent in the present case. The legislature has not evinced any intention to change the well recognized and universally acclaimed common law tradition.

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38. Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject-matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in Court by elimination of uncertainties and enlargement of the scope of compromise.

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only

to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated.”

8. This view was upheld by the Supreme Court in ***Jineshwardas v. Jagrani & Anr. AIR 2003 SC 4596*** (hereinafter ‘Jineshwardas’) and ***Pushpa Devi Bhagat v. Rajinder Singh & Ors. AIR 2006 SC 628***.

9. In this view of the matter, the entire dispute between the parties is fully and finally settled with the payment of Rs.6,50,000/- by the Appellant to the Respondent.

10. The said amount already stands deposited in the court. The same may be released to the Respondent.

11. List before the Registrar for the said purpose, on 15th February, 2018, on which date, the Respondent shall be present personally.

12. The impugned judgement and decree is thus modified as settled.

13. In view of the above, the appeal and all pending applications stand disposed of.

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PRATHIBA M. SINGH
Judge

JANUARY 18, 2018
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