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

\+ RFA 369/2017

M/S DIAMOND TRADEX COMPANY LTD ..... Appellant

Through

versus

M/S RAVILO TRADE INDIA PVT LTD ..... Respondent

Through: Mr. Vaibhav Sinha, Advocate.

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

<u>O R D E R</u>

% 22.01.2019

<u>CM No. 3125/2019 (Exemption)</u>

1. Exemption allowed subject to just exceptions.

CM stands disposed of.

<u>CM No. 3124/2019 (U/o 9 Rule 13 CPC filed by the respondent.)</u>

2. By this application, which is titled as under Order 9 Rule 13 CPC, and wrongly so because such an application is moved before the first appellate court, and even if we take the application for re-hearing the appeal, there is no valid argument of the respondent by which the judgment dated 14.12.2018 can set aside the judgment dated 14.12.2018 inasmuch as by the judgment the suit for recovery of Rs.10,72,000/- alongwith interest filed by

the appellant/plaintiff which was dismissed by the trial court, was decreed in terms of the judgment of this Court dated 14.12.2018 by giving detailed reasons.

3. It is also required to be noted that the respondent/defendant was ex parte in the trial court, and therefore, in this appeal this Court only has to consider the evidence which was led by the appellant/plaintiff in the trial court. These aspects and the evidence led have been considered in detail in paras 2 to 6 of the impugned judgment for allowing of the appeal, and these paras read as under:-

> "2. Plaintiff company was having business transactions with defendant. Defendant used to supply raw as well as finished diamond jewellery and plaintiff used to make the payment for the same. In the month of June and July 2012 plaintiff took some mix diamond jewellery (including labour) and also some diamond and made the payment of Rs.19,89,000/- being value of the same. Defendant in this regard stated to have also issued a Tax Invoice No. 216 dated 7.7.2012.
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> 3. It is stated that defendant had approached plaintiff and asked for some advance payment from plaintiff for purchasing raw gold. Plaintiff being in the same business with defendant, therefore, issued six cheques being advance payment to defendant being cheques No. 006526, 006527, 006528, 006529 and 006531, of Rs.2,00,000/- each and another cheque No. 006532, of Rs.24,000/-. All cheques were drawn on Karnataka Bank, Karol Bagh. It is stated that out of above mentioned cheques, four cheques No. 006526, 006527, 006528 and 006529 a total amount of Rs.8,00,000/- were duly encashed by the defendant. However, it is alleged that not a single jewellery items were supplied by defendant to plaintiff. It is stated that plaintiff informed the defendant, either to supply the raw material or jewellery or return the amount as well as also to return two other cheque No. 006531 of Rs.2,00,000/- and cheque No. 006532 of Rs.24,000/- It is

alleged that defendant refused to return those cheques and also failed to supply any jewellery worth Rs.8,00,000/-. It is alleged that defendant informed the plaintiff that the above said cheques of Rs.2,00,000/- and Rs.24,000/- respectively were misplaced.

4. It is further mentioned in the plaint that plaintiff was shocked to receive notice from the court of MM regarding a complaint filed under Section 138 Negotiable Instrument Act against the plaintiff. It is alleged that a false Tax Invoice receipt No. 224 has been relied upon in the complaint and false complaint has been filed before the Ld. MM. It is alleged that defendant played a fraud with the plaintiff for encashing four cheques totalling to Rs.8,00,000/- and thereafter filing complaint under Section 138 of Negotiable Instrument Act. Therefore, for return of Rs.8,00,000/- with interest at the rate of 12% per annum. Hence the present suit was filed for recovery of Rs.10,72,000/-.

5. Summons were issued at the given address of defendant. However, despite service when none appeared on behalf of the defendant, Ld. Predecessor of this court vide order dated 13.10.2015 proceeded ex-parte.

6. In its ex-parte evidence, plaintiff has examined two witnesses. PW-1 is Sh. Vinod Patel and plaintiff No. 2 is Binay Tiwari. I have heard the Ld. Counsel for the plaintiff and has gone through the record carefully."

4. In view of the aforesaid discussion, there is no argument which is raised which will entitle the respondent/defendant to set aside the judgment passed on merits by this Court on 14.12.2018 allowing the appeal and thereby decreeing the suit for recovery of moneys filed by the appellant/plaintiff.

Dismissed.

VALMIKI J. MEHTA, J

JANUARY 22, 2019/ib