

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

+ **RFA No. 1017/2018**

% **18th December, 2018**

BHUPENDER SINGH TOMAR AND ANRAppellants

Through: Mr. Shiv Ram Singh, Advocate
(Mobile No. 9990671101).

versus

M/S PRASANNA PURPLE MOBILITY SOLUTIONS (PVT) LTD
..... Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 53197/2018 (for exemption)

1. Exemption allowed, subject to just exceptions.

C.M. stands disposed of.

C.M. Appl. No. 53198/2018 (for delay)

2. For the reasons stated in the application the delay of 30 days in re-filing the appeal stands condoned, subject to just exceptions.

C.M. stands disposed of.

RFA No. 1017/2018 and C.M. Appl. No. 53196/2018 (for stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the Judgment of the trial court dated 29.08.2018 by which the trial court has decreed the suit for recovery of Rs. 11,05,750/- along with interest at 9% per annum.

4. The appellants/defendants are brothers. As per the suit plaint, the appellants/defendants were engaged in providing Metro Feeder Bus services on route nos. ML-57 and ML-72 with the respondent/plaintiff since September, 2011. The appellants/defendants were paid part of the earnings, however, since a balance amount was due and payable by the appellants/defendants to the respondent/plaintiff, a cheque was issued by the appellant no. 2/defendant no. 2 for a sum of Rs. 3,00,000/- bearing no. 237584 dated 05.02.2014 drawn on Axis Bank, as part payment, but this cheque was dishonoured on presentation on two occasions i.e. on 20.03.2014 and 01.05.2014 for the reason that the account was closed. The appellants/defendants also executed a Memorandum of

Understanding (*hereinafter* ‘MOU’) dated 11.04.2014 admitting their liability for the amount claimed by the respondent/plaintiff of a sum of Rs.11,05,750/-. As the appellants/defendants failed to pay the amount, the subject suit was filed after serving the Legal Notice dated 24.05.2014.

5. The appellants/defendants contested the suit and there was a complete and general denial of all averments made in the plaint. The appellants/defendants denied that they ever had any transaction with the respondent/plaintiff. The appellants/defendants further denied the execution of the MOU dated 11.04.2014 and the cheque dated 05.02.2014 of Rs. 3,00,000/-. The suit was prayed to be dismissed.

6. After the pleadings were complete, the trial court framed issues and parties led evidence, and these aspects are recorded in paras 7 to 11 of the impugned judgment, and these paras read as under:

“7. The suit was filed on the following issues:

- 1. Whether suit of the plaintiff is without any cause of action against the defendants? ...OPD*
- 2. Whether the suit of the plaintiff is not maintainable in the present form? ...OPD*

3. *Whether the plaintiff is entitled for recovery in the sum of Rs 11,05,750/- (Rs Eleven Lacs Five Thousand Seven Hundred and Fifty only) from the defendants?* OPP

4. *Whether the plaintiff is entitled for interest, if so, at what rate?* OPP

5. *Relief*

8. The witnesses for the plaintiff were its Manager and Accountant (PW1 and PW3, respectively). Another witness i.e. PW2 was dropped by the plaintiff. Hence, there were only two witnesses for the plaintiff.

9. PW-1, apart from stating that he was conversant with the facts of the present case and reiterating the contents of the plaint, tendered the following documents in evidence:-

- i) copy of authorization letter dated 02.07.2014 (Ex PW1/A)
- ii) certified copy of account statement (Ex PW1/B)
- iii) MOU dated 11/4/2014 (Ex PW1/C)
- iv) Cheque dated 05.02.2014 (Ex PW1/D)
- v) Return memo dated 20.2.2014 and 01.05.2014 (Ex PW1/E and Ex PW1/F)
- vi) Legal notice dated 22.5.2014 alongwith original postal receipts (Ex PW1/G)
- vii) Complaint (Mark PW1/H)
- viii) Legal notice dated 14.7.2014 and dated 19.9.2014 alongwith postal receipts (Ex PW1/I and Ex PW1/J)

10. PW3 supported the PW1 in his deposition and relied upon the documents already tendered by PW-1.

11. In response, one of the defendants i.e defendant no.1 namely B.S Tomar deposed as DW-1 to deny the liability of the defendants. No documents were filed by him. His affidavit denied any transaction with the plaintiff.”

7(i). The trial court has decreed the suit by holding that the MOU was signed by the appellant no.2/defendant no.2 but the appellant no.2/defendant no.2 did not have the courage of conviction

to enter into the witness box and stand the test of cross-examination. It is also noted that alongwith the MOU, there is a hand-written account sheet which is signed by the appellant no.2/defendant no.2, thereby showing the payment due to the respondent/plaintiff of a sum of Rs. 11,05,750/-. The trial court has also for decreeing the suit observed that it cannot be doubted that the dishonoured cheque is admittedly issued by the appellant no.1/defendant no.1, and the case of the appellants/defendants is false that the cheque was issued not in favour of the respondent/plaintiff but in favour of the one Sh. Dharambir, and with whom the appellants/defendants claimed to have an agreement for Metro Feeder Buses.

7(ii). Therefore, this Court notes that in any case it was admitted by the appellants/defendants that they were in the business of providing Metro Feeder Buses, and this aspect has to be taken with the fact that really Sh. Dharambir was none other than the employee of the respondent/plaintiff, and therefore there was no question of the employee of the respondent/plaintiff doing business of Metro Feeder Bus services with the appellants/defendants. It is also further required to be noted that the respondent/plaintiff at one stage filed the affidavit

by way of evidence of Sh. Dharambir as its employee, but as Sh. Dharambir left the services of the respondent/plaintiff and was not traceable, he was dropped. Also, the trial court rightly notes that the appellants/defendants made no efforts to summon Sh. Dharambir to show that they had agreement for providing Metro Feeder Bus services with Sh. Dharambir and not the respondent/plaintiff.

8(i). The Ld. counsel for the appellants/defendants argued that the MOU dated 09.04.2014 along with the annexed statement of account written in handwriting is dated 09.04.2014 and the statement of account is also signed on 09.04.2014, whereas below the signatures of appellant no. 2/defendant no. 2 the date of 11.04.2014 appears, and that therefore the MOU should be held to be a manipulated document.

8(ii). I cannot agree with this argument because all that the facts show is that the MOU is typed on 09.04.2014 along with the annexed handwritten sheet also signed on 09.04.2014, however the appellant no.2/defendant no.2 signed the MOU on 11.04.2014 i.e. the facts show that the MOU with the annexure was prepared earlier on 09.04.2014 but it was signed by the appellant no.2/defendant no. 2 on 11.04.2014. Signing an earlier prepared document on a later date, does

not render the document invalid in the eyes of law. This argument is therefore rejected.

9(i). The Ld. counsel for the appellants/defendants then argued that since the cheque was dated 20.03.2014, i.e. prior to the MOU, and the same was dishonoured on two occasions, therefore since the cheque is not mentioned in the MOU dated 09.04.2014, hence this cheque cannot be said to have been issued to the respondent/plaintiff.

9(ii). I, however, reject this argument, by noting that it was not necessary for the details of the cheque to be mentioned in the MOU because MOU was only for crystallizing the financial liability as against the appellants/defendants, and which was done in terms of the MOU as also the annexed sheet duly signed by the appellant no.2/defendant no. 2, and the appellant no. 2/defendant no. 2 did not bother to step into the witness box if the signatures of the appellant no. 2/defendant no. 2 did not appear in the MOU and the annexed account sheet. Also, it is not disputed that the cheque does bear the signatures of the appellant no. 1/defendant no. 1 and is also filed in his handwriting except the name of the payee.

10. In view of the aforesaid discussion, there is no merit in the appeal and the same is hereby dismissed.

DECEMBER 18, 2018

VALMIKI J. MEHTA, J

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