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

\+ RSA 198/2018 & CM. APPL.50941-50942/2018

<u>Judgment reserved on: 07.12.2018</u>
<u>Date of decision: 12.12.2018</u>

VIKRAM KUMAR ..... Petitioner
Through: Mr. TPS Kang, Advocate with Mr. Sidharth Singh, Advocate

versus

PARVESH GUPTA ..... Respondent
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

<u>JUDGMENT</u>

<u>ANU MALHOTRA, J.</u>

1. The appellant vide this regular second appeal i.e. RSA 198/2018 under Section 100 of the Code of Civil Procedure, 1908 assails the impugned judgment dated 05.11.2018 of the Ld. ADJ-06, Central, THC, New Delhi in RCA 62003/2016 which upheld the judgment dated 18.10.2016 of the learned trial Court of the CCJ-cum-ARC (Central District), THC, New Delhi in Suit No.18/14 (old number), 96521/2016 (New Number) where a suit for recovery of Rs.183163 filed by the respondent herein as plaintiff thereof against the appellant herein as defendant thereof as price of the goods supplied to the defendant/appellant herein were held to have not been paid by the defendant/appellant which were supplied vide bills Ex. PW1/2 to Ex.PW1/4.

2. The appellant whilst disputing the receipt of any goods as noted hereinabove, as submitted that the following substantial questions of law arise in the matter:

> *"a. Whether a contract for delivery of goods requires under the Sale of Goods Act, 1930, to prove delivery of goods and also lays down that on whom the burden lies for proving such delivery of goods and whether in the present case, such a burden of proof has been discharged by the plaintiff in terms of Indian Evidence Act or not.*
>
> *b. Whether in terms of Chapter IV, the Plaintiff was able to prove the delivery, consequent upon which, he was entitled to the price of such goods whose delivery was disputed by the Defendant and in case of absence of such proof, in terms of Sale of Goods Act, 1930, and in terms of Indian Evidence Act, such recovery qua the delivery of goods could have been accepted and decreed."*

It is thus essential to consider the entire available evidence on record which is being so done.

3. It was contended by the appellant that the goods in question never reached the defendant i.e. the appellant herein and thus there was no question of any payment being ordered to be made by the defendant/appellant inasmuch as the burden for proving that the goods had been delivered to the respondent herein was on the plaintiff i.e. the respondent herein which had not been discharged.

4. Reliance was placed on behalf of the appellant on provision of Section 55 of the Sale of Goods Act, 1930 which provides to the effect:

> *"55. Suit for price.—*

(1) Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

(2) Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract."

5. As per averments made in the plaint in Suit No. 18/2014, the plaintiff i.e. the respondent herein had claimed that he was running a business of ABS, PVDF, PVC, HDPE, SWR, PPR, CPVC, ASTM and other allied articles under the name and style of M/s Pipe Linkers and the defendant i.e. the appellant herein had business dealings with the plaintiff which was being maintained by the plaintiff/respondent in his books of accounts and that as per the statement of accounts, a sum of Rs.183163/- was due from the defendant/appellant herein which the defendant had failed to pay despite repeated request and demands of the plaintiff/appellant herein and thus two legal notices of demand dated 20.02.2014 and 07.03.2014 were sent through speed post/courier which were both served on the defendant i.e. the appellant herein but despite the receipt of the same, he failed to comply with the terms thereof and thus the suit for recovery was instituted.

6. As per record, the appellant i.e. the defendant vide reply dated 18.03.2014 to the said notices submitted that the contentions of the notice issued by the respondent were incorrect and that no sum of Rs.1,83,163/- was due from the defendant i.e. the appellant herein

inasmuch as there was no delivery of any goods to the tune of Rs.1,83,163/-.

7. Through the written statement of the defendant i.e. the appellant herein, the defendant/appellant submitted that the plaintiff had raised erroneous and fabricated bills qua goods which were never delivered to the defendant/appellant herein and that the copy of the statement of accounts filed by the plaintiff/respondent herein was neither attested nor certified.

8. Through his replication before the learned trial Court, the plaintiff i.e. respondent herein reiterated the averments made in the plaint and denied that the statement of account filed by him was erroneous, false and fabricated.

9. Through the affidavit of the plaintiff i.e. the respondent herein, proprietor of M/s Pipe Linkers, the statement of account Ex.PW1/1 was relied upon and so were the bills Ex.PW1/2 to PW1/4 with it having been reiterated that the plaintiff/respondent had regular business dealings with the defendant/appellant herein.

10. The plaintiff/respondent herein through his testimony before the learned trial Court as PW-1 affirmed the contents of his affidavit Ex.PW1/A. The plaintiff through his testimony on cross-examination stated that the material was supplied to the defendant/appellant on his call only at Gurgaon and bills of the material which was supplied to Gurgaon were duly acknowledged by the person at site and that he, PW-1 plaintiff/ respondent herein had personally informed the defendant telephonically that the material had been duly supplied at the site. The plaintiff/ respondent further stated as PW-1 that he could

not tell who signed the bills at the site but denied categorically that the material was not supplied to the defendant at the Gurgaon site. The plaintiff also denied that none of the defendant's employees had signed the bills of the material supplied at Gurgaon site and also denied that the defendant i.e. the appellant herein had informed him about non receipt of the material sent by the plaintiff at his Gurgaon Site.

11. The defendant i.e. the appellant herein through his affidavit and testimony as DW-1 recorded on 14.07.2016 while tendering his affidavit DW-1/A stated that he was a building contractor and running a business of construction of buildings and he did not know the person by the name of Shri Parvesh Gupta i.e. respondent herein and that he knew M/s Pipe Linkers as they had supplied some material to his firm. He further admitted that between the year 2010 and 2013, he had executed the work of M/s Orchid Island Group Housing in Gurgaon where some material was supplied by M/s Pipe Linkers and further stated that the amount of material taken from M/s Pipe Linkers was paid according to the agreed rates. *Inter alia* the appellant as DW-1 stated that

> ***"I cannot say specifically whether the material as per the Invoice dated 23.04.2011 was received by my staff as I have not seen the Statement of Account. It is correct that the road permit may have been obtained in my name but it is not certain whether the same material was received by our staff at the site. We do not make payment on bill to bill basis, but we make the payment as per out assessment of the value of goods received. My reply will remain the same for all the bills that are shown to me."***

12. The learned trial Court vide its judgment dated 18.10.2016 qua issue no.3 which reads to the effect that ***"Whether the plaintiff had supplied the goods to the defendant? OPP"*** observed as follows:-

> *"8.For the sake of convenience, issue no. 3 is taken up first. Onus to prove this issue was placed upon the plaintiff. The plaintiff in the present case had filed original invoices raised by the plaintiff upon the defendant Ex. PW1/2 to Ex. PW1/4. Perusal of these invoices show that the plaintiff after delivery of good had raised detailed invoices upon M/s Dewan Chand Builders & Constructions for purchases made on 23.04.2011, 30.07.2011, 25.04.2013 and 23.5.2013. Further, perusal of these invoices already shows that certain articles were supplied by the plaintiff to the defendant for the work at the site of M/s Orchid Island, Sector-51. The said invoices bears name of the defendant and even acknowledged to have been received by different persons. Further, invoice dated 25.04.2013 clearly shows that articles were received for M/s Dewan Chand Builders and Contractors at the site of Orchid Island and the same bears the seal of Orchid Island as well. Perusal of these invoices also shows that material was supplied by the plaintiff to the defendant. No proof has been filed by the defendant to show that adequate payment against these invoices were made by the defendant to the plaintiff. Further, plaintiff has also filed cheque bearing no. 122538 dated 30.05.2011 amounting to Rs.2,00,000/- showing that the payment was made by M/s Dewan Chand to Pipe Linkers. It is submitted by the defendant that the said payment was made for some other business transactions between the parties but the defendant has failed to file details of the said business transactions, for which said cheque was issued by the defendant to the plaintiff. Further, the plaintiff has also filed Statement of Accounts maintained by the plaintiff of M/s Dewan Chand Builders and Contractors showing balance amount due upon the defendant. The defendant has disputed the said Statement of Account but failed to file any other Statement of Account or*

Balance Sheet to prove that what type of business transactions took place or whether the defendant has paid all the balance due amount to the plaintiff. Further, it is vaguely averred by the defendant that a breach of trust has been committed by the plaintiff upon the defendant since no goods were ever supplied by the plaintiff to the defendant. However, the said averment is not substantiated by any document by the defendant. Thus, from the original invoices filed on record alongwith Statement of Account and the cheque, it is clear that certain goods were supplied by the plaintiff to the defendant and that no payment was made with respect to said goods which were supplied by the plaintiff to the defendant. Thus, this issue is decided in favour of the plaintiff and against the defendant."

13. The First Appellate Court observed vide its judgment dated 05.11.2018 vide paragraphes-7, 8, 9 & 10 thereof to the effect:

7.(ii) On the other hand, Ld. Counsel forrespondent/plaintiff argued that PWl proved four invoices viz.:

(a) dated 23/04/2011 for Rs.4,50,889/-, Ex. PWl/2.

(b) dated 30/07/2011 for Rs. 29,786/-, Ex. PWl/3.

(c) dated 25/04/2013 for Rs.18,764/-, and dated 23/05/2013 for Rs. 17,944/-, collectively Ex. PWl/4.

The said invoices had been raised by plaintiff for supply of sanitary hardware material at the construction site i.e. Orchid Island, Sector-51, Gurgaon, at the behest of defendant. The invoices collectively Ex. PWl/4 also bear signature and stamp of Orchid Island in acknowledgment of receipt of material at the construction site. All the invoices have been raised upon M/s. Dewan Chand (Builder & Contractors) of which defendant is a partner. Thus, there is *no doubt about the delivery of material by plaintiff upon order of the defendant.*

7.(iii) Indeed, the invoices have been raised upon M/s. Dewan Chand (Builder & Contractors) for supply of sanitary hardware material at Orchid Island construction site, Sector-51, Gurgaon. The invoices Ex. PWI/4 (Colly.) also bear the signature and stamp of Orchid Island in acknowledgment of receipt of material at the construction site. DWl Vikram Kumar, who deposed as partner of M/s. Dewan Chand, replied in cross-examination that he is a building contractor and constructs the building. He admitted that M/s. Pipe Linkers, of which plaintiff is the proprietor, supplied material to his firm. He admitted that between the year 2010 and 2013 he executed the work of M/s. Orchid Island Group Housing in Gurgaon, where some material was supplied by M/s. Pipe Linkers but stated that all the bills raised by M/s. Pipe Linkers stood duly paid on agreed rates. He replied that he could not specifically say if the material as per invoice dated 23/04/2011 Ex. PWl/2 was received by his staff as he had not seen his statement of account. He admitted that the road permit was obtained by plaintiff in his name but he was not certain if the material was received by his staff at the site.

7.(iv) In his testimony, DWI admitted his business relationship with plaintiffs firm. He admitted that plaintiff supplied material between year 2010 and 2013 at his *construction site in Gurgaon i.e. at Orchid Island. DWI stated that the bills raised by the plaintiff for supply of material stood paid but adduced no evidence to prove the payments. Anyhow, in view of admission of DWI Vikram Kumar, the factum of delivery of material by plaintiff to defendant at his construction site and the genuineness of the invoices raised by the plaintiff were duly proved. There is no infirmity in the findings of the Trial Court that plaintiff proved delivery of material and invoices Ex. PWl/2 to Ex. PWl/4, which constituted valid contract unto themselves and engendered the defendant's liability to pay the invoice amount.*

*8. Ld. Counsel for appellant disputed the accuracy and admissibility of the statement of account Ex. PWl/1. In the statement of account, the plaintiff mentioned the date and value of material supplied to the defendant through the invoices, the periodical part payments received from the defendant, and the amount remaining outstanding upon the defendant. The statement of account Ex. PWl/1 is a computer generated document, unaccompanied by requisite certificate U/s. 65-B of Indian Evidence Act. However the defendant raised no objection when PWl adduced the statement of account in evidence, thereby waived the objection to mode of proof of statement of account Ex. PWl/1 [**ref: R.V.E. Vanketchala Gonder Vs. Arulmigu Viswesaraswami & V.P. Temple & Anr. (2003) 8 SCC***

752]. Moreover, the defendant adduced no statement of account of his own to counter the correctness of statement of account Ex.PW1/1, which tallies with the invoices Ex.PWl/2 to Ex. PWl/4. The plaintiff proved his case even independent of the statement of account Ex. PWl/1 as the suit is based preliminarily upon the invoices Ex. PWl/2 to Ex. PWl/4.

9. DWl Vikram Kumar admitted his signature on the cheque Ex. PWl/D-1 that was issued in favour of M/s. Pipe Linkers. The said cheque is dated 30/05/2011 and is drawn in the value of Rs.2 lakh. The cheque was dishonored upon presentation to defendant's bank for payment. In lieu thereof, the defendant paid cheque of Rs.l lakh each to plaintiff on 18/07/2011 and 29/08/2011 respectively, as reflected in the statement of account Ex. PWl/1. The defendant failed to explain to the contrary.

10. I find no infirmity in the impugned judgment, wherein the Trial Court relied upon the invoices Ex. PWl/2 to Ex. PWl/4 and statement of account Ex. PWl/1 as duly proved in evidence. The Trial Court rightly observed that, on the other hand, the defendant, failed to file any documentary proof in challenge to the plaintiff's case and was indebted to pay the suit amount to plaintiff."

14. The concurrent findings of facts of the learned trial Court and the First Appellate Court are cogent and categorical in view of the

testimony of the appellant/defendant herein and the defendant/appellant herein in relation to the supply of goods to the M/s Orchid Island Group Housing construction site which establishes the delivery of the goods to the site where construction was being carried out by the plaintiff/ respondent herein coupled with the testimony of the defendant/appellant herein that he could not specifically say whether the material as per the invoice dated 23.04.2011 Ex.PW1/2 was received by his staff as he had not seen his statement of account and had also admitted that the road permit may have been obtained his name, but he was not certain whether the material was received by his staff at the site and in view thereof even though as contended on behalf of the appellant that the stamp on the invoices Ex.PW1/2 was of M/s Orchid Island Group Housing, it cannot however be overlooked as rightly by held the learned trial Court and the First Appellate Court that the invoice was in the name of M/s Dewan Chand (Builders and Contractors) of which the appellant herein was a partner and significantly Ex.PW1/3, the Bill No.95394 dated 25.04.2013 categorically indicates that the delivery was at Orchid Island and had been received by M/s Dewan Chand (Builder & Contractors) and Ex.PW1/2 also shows that the delivery had been received on credit. To similar effect are the observations qua Ex.PW1/4 in the concurrent findings of the learned trial Court and the First Appellate Court. Taking the same into account, it stands established on the record as rightly held by the learned trial Court and the First Appellate Court that the goods as per invoices Ex.PW1/2 to PW1/4 were delivered to the defendant/appellant herein.

15. As observed hereinabove, the available records thus establishes the delivery having been made of the goods in question vide invoices Ex.PW1/2 to PW1/4 to the appellant as the defendant of Suit No.18/2014 and thus it is apparent that there is no substantial question of law as sought to be urged by the appellant that arises in the facts and circumstances of instant case.

16. RSA 198/2018 and the accompanying applications CM. APPL.50941-50942/2018 are thus dismissed.

ANU MALHOTRA, J.

DECEMBER 12th, 2018
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