

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

+ RFA No.401/2018

% 11th May, 2018

M/s UNITED ELECTRONICS & ANR. Appellants

Through: Mr. Vikas Yadav, Advocate.

Versus

M/s COMPUAGE INFOCOM LTD. & ANR. Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.19471/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.19472/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 211 days in re-filing the appeal is condoned.

C.M. stands disposed of.

RFA No.401/2018 and C.M. No.19470/2018 (stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant nos.1 and 3

in the suit impugning the judgments of the Trial Court dated 22.3.2017 and 12.7.2017, whereby the appellants/defendant nos.1 and 3 in an Order XXXVII CPC suit who were granted conditional leave to defend by depositing 50% of the principal amount being the amount of dishonoured cheques which totalled to Rs.88,71,105/- on having failed to comply with the pre-condition, hence the suit was decreed. As per the provision of Order XXXVII Rule 3(6) in case the condition imposed while granting leave to defend is not complied with, then the respondent no.1/plaintiff is entitled to a judgment forthwith.

4. The facts of the case are that the subject suit under Order XXXVII CPC was filed by the respondent no.1/plaintiff for recovery of Rs.96,41,902/- on account of the respondent no.1/plaintiff having supplied goods to the partnership firm being the appellant no.1/defendant no.1 and of which firm the appellant no.2/defendant no.3 was the partner. Goods supplied are pen drives and memory cards used in computers. The details of the invoices along with their amounts are stated in para 4 of the plaint and this para 4 reads as under:-

“4. That the defendants have purchased from the plaintiff, the goods vide invoices no.1402112102 dated 08-07-2014 & invoice no.1402112519 dated 23-07-2014, invoice no.1402112520 dated 23-07-2014, invoice no.1402112543 dated 24-07-2014, invoice no.1402112544 dated 24-07-2014, invoice no.1402112893 dated 06-08-2014 amounting to Rs.13,66,300/-, 1109,152.28/-, 7,37,803.51/-, 9,66,710.23, 1,15,084.53/-, 45,76,054 respectively including VAT, which are in total amount of Rs.88,71,105/- (EIGHTY EIGHT LAKH SEVENTY ONE THOUSAND ONE HUNDRED FIVE ONLY). And the same is annexed herewith as **Annexure II.**”

5. The facts with respect to balance amount due and for which amount the subject cheque was issued, are stated in para 7 of the plaint and which para 7 of the plaint reads as under:-

“7. That towards the balance amount from the above said transaction/dues/legal liability, respondent no.3 issued one cheque vide no 666835 dated 06-02-15, amounting of Rs.81,71,105/- (Eighty One Lakh Seventy One Thousand One Hundred Five Only) dated 06/02/2015 in favor of plaintiff payable on Syndicate Bank, Rajender Place, East Patel Nagar, New Delhi-110008. And the same is annexed herewith as **Annexure III.**”

6. The appellants/defendant nos.1 and 3 after service of summons of the judgment filed their leave to defend application and in the leave to defend application the main ground which was urged, and which is also the only ground urged before this Court in this appeal, was that the goods which were supplied by the respondent no.1/plaintiff to the appellants/defendant nos.1 and 3 were defective and hence the respondent no.1/plaintiff was not entitled to the amount. Trial court has

in this regard rejected the argument by stating as under in para 13 of the order dated 22.3.2017 and this para 13 reads as under:-

“13. The defendants have admitted the business transactions with the plaintiff during the period from 2010 to 2015 and the goods received from the plaintiff. It was therefore incumbent on the part of the defendants to plead as to how they have made the payment to the plaintiff towards the receipt of the non-defective goods. Besides stating that the defendants have paid the amount of the non-defective goods received from the plaintiff and returned the defective goods, the defendants have filed no document to substantiate the same. The defendants have even not filed any document on record to substantiate the contention that they had already returned the alleged defective goods.” (underlining added)

7. To the aforesaid reasoning of the trial court, this Court would like to add further reasoning by reference to Section 42 of the Sale of Goods Act, 1930 and which section provides that a buyer is deemed to have accepted the goods if intimation is not given to the seller that goods have been rejected. Section 42 of the Sale of Goods Act reads as under:-

“**Section 42. Acceptance.**-The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retain the goods without intimating to the seller that he has rejected them.”

8. On a query to the counsel for the appellants/defendant nos.1 and 3, it is conceded that neither in the leave to defend application nor in this Court documents have been filed showing any

intimation sent by the appellants/defendant nos.1 and 3 to the respondent no.1/plaintiff/seller, that the goods supplied under the subject invoices as stated in para 4 of the plaint, are defective. Once that is so, the provision of Section 42 of the Sale of Goods Act applies and hence it was not open to the appellants/defendant nos.1 and 3 to contend that payment could not be claimed by the respondent no.1/plaintiff on account of having supplied the defective goods.

9. The principles with respect to grant of leave to defend have been recently crystallized by the Supreme Court in the judgment in the case of *IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.*, (2017) 1 SCC 568, and the relevant paras of which judgment, being paras 17 to 17.6, read as under:-

"17. Accordingly, the principles stated in paragraph 8 of *Mechelec's* case will now stand superseded, given the amendment of Order XXXVII Rule 3, and the binding decision of four judges in *Milkhiram's* case, as follows:

17.1. If the defendant satisfies the Court that he has a substantial defence, that is, a defence that is likely to succeed, the Plaintiff is not entitled to leave to sign judgment, and the Defendant is entitled to unconditional leave to defend the suit.

17.2 If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the Plaintiff is not entitled to sign judgment, and the Defendant is *ordinarily* entitled to unconditional leave to defend.

17.3 Even if the Defendant raises triable issues, if a doubt is left with the trial judge about the Defendant's good faith, or the genuineness of the triable issues, the trial judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious

disposal of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4 If the Defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5 If the Defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the Plaintiff is entitled to judgment forthwith.

17.6 If any part of the amount claimed by the Plaintiff is admitted by the Defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the Defendant in court."

10. A reading of the aforesaid paras shows that unless a defendant in an Order XXXVII CPC suit raises genuine triable issues, leave to defendant cannot be granted on the basis of the defences which are frivolous and vexatious. In the present case the defence of the defective goods is completely frivolous and vexatious and the defence does not raise genuine triable issue in view of Section 42 of the Sale of Goods Act.

11. No other point or issue is urged in this appeal.

12. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed.

MAY 11, 2018/ Ne

VALMIKI J. MEHTA, J