

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

+ **RFA No.103/2018**

% **Reserved on: 2nd February, 2018**
Pronounced on : 5th February, 2018

RAHUL NARANG Appellant
Through: Ms. Shikha Sapra, Advocate
with Mr. Jatin Choudhary,
Advocate.

versus

HARINDER SINGH Respondent

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.3985/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.3986/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 9 days
in re-filing the appeal is condoned.

C.M. stands disposed of.

RFA No.103/2018 and C.M. No.3984/2018 (stay)

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

impugning the judgment of the Trial Court dated 27.9.2017 by which the trial court has decreed the suit filed by the respondent/plaintiff for a sum of Rs.5,92,000/- along with interest at 12% per annum.

4. The facts of the case are that the respondent/plaintiff provided his services to the appellant/defendant to arrange a suitable site for the appellant/defendant to run a gymnasium on profit/revenue sharing basis. For this purpose, parties entered into an agreement dated 1.11.2007 and the appellant/defendant was to pay to the respondent/plaintiff as per the terms laid down in this agreement dated 1.11.2007. The respondent/plaintiff arranged the suitable site to run the gymnasium and helped the appellant/defendant to enter into a binding contract for a term of 15 years, and therefore, the following cheques were given by the appellant/defendant to the respondent/plaintiff:-

S. No.	Cheque no.	Dated	Amount
(i)	833882	15.12.2007	5,15,000/-
(ii)	833823	01.01.2012(5 th years)	5,92,000/-
(iii)	833824	01.01.2016 (9 th years)	6,81,000/-

5. As regards the first cheque of Rs.5,15,000/- the respondent/plaintiff did not get it encashed as per the request of the

appellant/defendant and agreed to accept, and also received the amount in cash in installments upto April, 2008. The second cheque of Rs.5,92,000/- on being due for encashment was lodged by the respondent/plaintiff with his bank on 2.1.2012 but the same was dishonoured with endorsement that the payment was stopped by the drawer. Subject suit was therefore filed for recovery of the amount of this cheque of Rs.5,92,000/- along with interest.

6. The appellant/defendant contested the suit and filed his written statement. The appellant/defendant contended that the cheques in question were got issued by the respondent/plaintiff by giving false assurances. It was pleaded by the appellant/defendant that the respondent/plaintiff pursuant to false representations got the appellant/defendant to sign an Operation and Maintenance Contract dated 28.11.2007 with one M/s Swim Point with respect to premises at Kendriya Vidhyalaya Complex but it was found that M/s Swim Point was not legally competent to execute such contract with respect to the said premises, and therefore, the appellant/defendant got the payments of the cheques stopped. It was pleaded by the appellant/defendant in the written statement that the agreement dated 1.11.2007 failed to

materialize as no lease deed was executed for 15 years in favour of the appellant/defendant by M/s Swim Point. Suit was therefore prayed to be dismissed.

7. The following issues were framed in this suit:-

- “1. Whether the plaintiff is entitled for recovery of suit amount as prayed? If so, at what rate of interest and from which date? OPP.
2. Relief.”

8. Parties led evidence and this is recorded in paras 9 and 10 of the impugned judgment and which paras read as under:-

- “9. In evidence, plaintiff examined himself as PW1 vide affidavit Ex PW1/A. PW1 relied upon documents viz., (i) Agreement dated 01.11.2007 as Ex. PW1/1; (ii) receipt of payment dated 15.12.2007 as Ex. PW1/2; (iii) original cheque no. 833823 dated 01.01.2012 as Ex. PW1/3; (iv) cheque return memo dated 03.01.2012 as Ex. PW1/4; (v) copy of legal notice dated 21.01.2012 as Ex. PW1/5; (vi) original postal receipt as Ex. PW1/6; (vii) courier consignment note as Ex. PW1/7; (viii) P.O.D. of courier as Ex. PW1/8; (ix) A.D. form as Ex. PW1/9; (x) reply of defendant through counsel dated 10.02.2012 as Ex. PW1/10; (xi) copy of criminal complaint as Ex. PW1/11. PW1 was cross-examined.
10. Defendant also got examined himself as DW-1 vide affidavit Ex. DW1/A. DW-1 was cross-examined.”

9. Trial court has held issue no.1 in favour of the respondent/plaintiff for decreeing the suit. Agreement between the parties dated 1.11.2007 proved as Ex.PW1/1 has been relied upon by the trial court with respect to liability of the appellant/defendant. Trial court has also relied upon the receipt of payment Ex.PW1/2 executed

between the parties whereby three cheques were handed over to the respondent/plaintiff by the appellant/defendant. These two documents being the agreement Ex.PW1/1 and the receipt Ex.PW1/2 read as under:-

“

AGREEMENT

This Agreement is made and entered into this 01st day of November, 2007, by and between Mr. Rahul Narang, S/o Mr. Rajinder Kumar Narang R/o A-37, Lajpat Nagar-II, New Delhi (hereinafter referred to as “**First Party**”) which expression shall mean and include its successors, legal heirs, representatives, executors and permitted assigns,

AND

Mr. Harinder Singh, S/o Late S. Inder Singh R/o E-71, Greater Kailash Enclave-I, New Delhi-1100148 (here-in-after referred to as the “**Second Party**”) which expression shall mean and include its successors, legal heirs, representatives, executors, assigns and authorized representatives.

The first party is in business of running and operation of gymnasium under the name & style of **OLYMPIA GYM**. And is desirous and looking for a place for expansion for his business in South Delhi on profit/revenue sharing basis.

The **second party** has a client who has a place where a gymnasium can be run and is in a position to bring both the parties on negotiating table and get a deal done so that both the parties are in a win-win situation.

The **first party** has agreed to pay to the second party a sum equivalent to one month revenue which he will be paying for running the gymnasium if the deal is matured. Further the first party has also agreed to pay to the second party a sum equivalent one month revenue which he will be paying for the running of the gymnasium at the beginning of forth year and at the beginning of seventh year to the other party if the deal is matured and the total agreement is done and signed for a period of 15 years with the other party for opening and running of the gymnasium in south Delhi.

The second party will try its level best to get the deal done and signed between the first party and his client on mutually agreed terms as early as possible and latest by 10th of Dec. 2007.

Signed on this day of 01st November 2007, at New Delhi in the presence of following witnesses.

1. sd/-
2. sd/-

First Party
Second Party

RECEIPT OF PAYMENT

In reference to the agreement dated 01st November 2007 between me and Harinder Singh for arranging a place for me for operation of Gymnasium in South Delhi.

1, Rahul Narang s/o Mr. Rajinder Kumar Narang R/o A-37, Lajpat Nagar-II, New Delhi states that the deal has been signed between me and M/s Swim Point for operation and maintenance of Gymnasium at Pacific Sport Complex, at Kendriya Vidyalaya, Andrews Ganj, New Delhi for a period of 15 years on mutually agreed terms with the help and coordination of Mr. Harinder Singh and as per the above mentioned agreement. I am issuing the following cheques in favour of Mr. Harinder Singh as agreed by me in the above mentioned agreement.

Chq. No.833822 dated 15.12.2007 for Rs.5,15,000/- (Rupees Five Lacs and Fifteen thousand only) drawn on The Federal Bank Ltd. S-571, Greater Kailash-II, New Delhi.

Chq. No.833823 dated 01.01.2012 for Rs.5,92,000/- (Rupees Five Lacs and Ninety Two thousand only) drawn on The Federal Bank Ltd. S-571, Greater Kailash-II, New Delhi.

Chq. No.833824 dated 01.01.2016 for Rs.6,81,000/- (Rupees Six Lacs and Eighty One thousand only) drawn on The Federal Bank Ltd. S-571, Greater Kailash-II, New Delhi.

-sd-

(RAHUL NARANG)
15/12/07

-sd- and 15/12/2007

Accepted in full and final
HARINDER SINGH"

10. Trial court also notes that in the cross-examination of the appellant/defendant who deposed as DW-1, it was conceded by the appellant/defendant of having signed the agreement with one Mr. Prem Pal Kathuria, who was proprietor of M/s Swim Point for an Operation and Maintenance contract pertaining to the gymnasium. This agreement between the appellant/defendant and M/s Swim Point was for a total of five years plus five years plus five years. DW-1 also admitted that as against the first cheque of Rs.5,15,000/-, the respondent/plaintiff was paid in cash instead of the cheque being

encashed. It was also admitted by the DW-1 that he stopped the payment of said cheque of Rs.5,92,000/-. Trial court has also further held that though the appellant/defendant had contended that no proper agreement could be entered into of the appellant/defendant with M/s Swim Point, however the appellant/defendant had failed to file any orders of OMP No. 518/2007 filed in this Court pertaining to the property taken by the appellant/defendant from M/s Swim Point and which could have shown that the appellant/defendant could not take benefit of the Operation and Maintenance contract entered into by it with M/s Swim Point so that respondent/plaintiff was not to be paid. Trial court has further noted that the only liability of the respondent/plaintiff was to facilitate the maturing of the deal which was done. Trial court accordingly held the respondent/plaintiff entitled to the sum of Rs.5,92,000/-.

11. Some of the relevant paras containing the aforesaid conclusions are paras 15, 16, 18 and 19 and which paras read as under:-

“15. In the course of cross-examination on 06.02.2017, defendant as DW1 admitted of having signed one agreement with Mr. Prem Pal Kathuria, Proprietor of M/s. Swim Point, which agreement was for the purpose of leasing the place (Operation and Maintenance

Contract). DW1 elicited that for him it was lease but Mr. Kathuria could only enter into an operation and maintenance contract. The period of said agreement was for 5 years plus 5 years plus 5 years i.e. total of 15 years. In said cross-examination DW1 candidly admitted of having issued Receipt of Payment Ex. PW1/2 dated 15.12.2007 as well as the cheques mentioned therein. Also was stated by DW1 that he was not sure if the amount of cheque issued by him to M/s. Swim Point was around 15 lakhs. It makes clear of existence of fact of payment of a cheque by defendant to M/s. Swim Point on entering into contract with it. DW1 also admitted of having given cash to plaintiff against first cheque of Rs. 5,15,000/-. DW1 further elicited that he had stopped payment of cheque Ex. PW1/3 of Rs. 5,92,000/- of date 01.01.2012.

16. It is the defence of defendant that later to signing of the agreement he came to know that M/s. Swim Point was neither authorised nor legally competent to execute any contract /agreement with respect to the said place; as such the defendant could not in any manner open a gymnasium in said property. It is also the case of the defendant that he came to know about a case pending before the High Court of Delhi bearing OMP No. 518/2007 pertaining to said property wherein it was directed to maintain the status quo in relation to the user of said property. Also is the defence of defendant that on becoming aware of said facts regarding dispute in the property, defendant asked for refund of his amount already paid as deal remained incomplete and could not be matured as per brokerage agreement Ex. PW1/1 dated 01.11.2007. The defendant has neither filed nor proved any certified copies of Order of High Court of Delhi in the afore elicited OMP 518/2007. No cogent evidence has been led by defendant that M/s. Swim Point was neither authorised nor legally competent to execute any agreement with respect to the said place and / or defendant could not in any manner open a gymnasium in the said property.

XXXXX

XXXXX

XXXXX

18. As per Ex. PW1/1, the plaintiff was only to facilitate maturning of deal (agreement) between defendant and other party for running of gymnasium. Defendant in Ex. PW1/2 categorically admitted of maturning of said deal (agreement) signed between him and M/s. Swim Point for operation and maintenance of gymnasium at Pacific Sports Complex, at Kendriya Vidyalaya, Andrews Ganj, New Delhi. Cash in installments in lieu of cheque of Rs. 5,15,000/- bearing no. 833822 dated 15.12.2007 was paid by defendant to plaintiff.

19. For completing his part of the agreement Ex. PW1/1, the plaintiff PW1 had been instrumental in maturning the promised deal (agreement) interse defendant and M/s. Swim Point for operation and maintenance of gymnasium at Pacific Sports Complex, at

Kendriya Vidyalaya, Andrews Ganj, New Delhi for a period of 15 years on mutually agreed terms. The party entering into such deal before concluding the agreement needs to be beware and take all precautions whatsoever and is always at liberty to put in any kind of default clause for defaulting party. Be that as it may, fact remains it is proved on record that defendant had entered into an agreement with M/s. Swim Point for operation and maintenance of gymnasium at Pacific Sports Complex, at Kendriya Vidyalaya, Andrews Ganj, New Delhi for a period of 15 years on mutually agreed terms, as is borne out of Ex. PW1/2 and admitted by DW1. Accordingly, plaintiff becomes entitled for the sums promised by defendant for which he had given the post dated cheques on 15.12.2007 to plaintiff as elicited in detail hereinabove in the averments of Ex. PW1/2. The defendant/DW1 had stopped the payment of cheque Ex. PW1/3 of Rs. 5,92,000/- in question. Plaintiff is held entitled for sum of Rs. 5,92,000/- from defendant. Plaintiff was working for gain and transaction was commercial in nature. In the fact of the matter, having regard to nature of the commercial transaction between the parties, finding it expedient, in the interest of justice, plaintiff is accordingly held entitled for interest @ 12% per annum on sum of Rs. 5,92,000/- from the date of filing of the suit till realisation from defendant. Issue no.1 is accordingly decided in favour of the plaintiff and against the defendant.”
(underlining added)

12. I do not find any illegality or perversity whatsoever in the impugned judgment and this Court is therefore not inclined to interfere with the impugned judgment as this Court accepts the reasoning and conclusion given by the trial court for decreeing the suit, and as stated above.

13. Counsel for the appellant/defendant sought to argue that the Negotiable Instruments Act case filed under Section 138 by the respondent/plaintiff against the appellant/defendant was dismissed,

and therefore, it was argued that the said suit also had to be dismissed, however besides the fact that there are no such documents on record even if the documents were on record in law the judgment in a criminal case does not operate as *res judicata* or binds the civil court to decide the cause of action and issue of entitlement of the respondent/plaintiff to commission.

14. Learned counsel for the appellant/defendant then sought to argue that the appellant/defendant could not enter into a proper lease deed as M/s Swim Point did not have the necessary documents and to which argument in para 16 of the impugned judgment it is noted that no such documents were filed by the appellant/defendant, and therefore, no argument can be urged on such basis. This argument of the appellant/defendant is also therefore rejected.

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

FEBRUARY 05, 2018
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VALMIKI J. MEHTA, J