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

\+ **RFA No. 90/2019**

% ***4th February, 2019***

TRUSTLINE SECURITIES LTD.

..... Appellant

Through: Mr. Sumit Kalra, Advocate (Mobile No. 9873353654).

versus

SKYLARK EXPRESS (DELHI) 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. 5045-46/2019 (for exemptions)

1. Exemptions allowed, subject to just exceptions.

C.Ms. stand disposed of.

RFA No. 90/2019 and C.M. Appl. No. 5047/2019 (for stay)

2. 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 31.10.2018 whereby the trial court has decreed the suit filed by the respondent/plaintiff, courier company, for balance due payable by the appellant/defendant company, and this balance was due against the appellant/defendant and in favour of the respondent/plaintiff on account of the respondent/plaintiff acting as a courier company carrying letters and packages for the appellant/defendant company.

3. The facts of the case are that the subject suit was filed by the respondent/plaintiff for recovery of Rs. 9,93,090/- on account of the transactions of courier services provided by the respondent/plaintiff. For the services from September, 2007 till March, 2008 there were no disputes. As from April, 2008 till October, 2008, as per the accounts of the respondent/plaintiff, as on 14.11.2008, a sum of Rs. 9,93,090/- was due, and when this amount was demanded by the respondent/plaintiff from the appellant/defendant, then appellant/defendant only wanted to pay 45.5% of the claimed amount. The respondent/plaintiff requested for a meeting which was fixed but it did not take place. The appellant/defendant is alleged to have only agreed to pay Rs. 18,166/- and not the amount due of Rs. 9,93,090/-,

and therefore for recovery of this balance amount, the subject suit was filed.

4. The appellant/defendant contested the suit by filing a written statement. It was not disputed by the appellant/defendant that there were transactions between the parties. It was, however, pleaded by the appellant/defendant that the invoices raised by the respondent/plaintiff are forged and fabricated by manipulating the number of packets and the weight of these packets. It was also pleaded by the appellant/defendant that some invoices were fabricated. The suit was therefore prayed to be dismissed.

5. The following issues were framed in the suit:-

> "i) Whether the invoices/bills filed by the plaintiff alongwith the suit are forged and fabricated? OPD
>
> ii) Whether any mutual terms and conditions were settled between the parties on 30.10.2007? OPP
>
> iii) Whether the plaintiff is entitled for recovery of suit amount as prayed? OPP
>
> iv) Whether the plaintiff is entitled for interest on suit amount, if so, at what rate and for which period? OPP
>
> v) Relief."

6. The parties thereafter led evidence, and these aspects are recorded in paras 6 to 8 of the impugned judgment, which read as under:-

" **Plaintiff's Evidence**

6. Plaintiff examined one witness i.e. its director Sh Rakesh Yadav as PW1 by way of evidence affidavit Ex.PW1/A wherein the witness reiterated contents of the plaint and relied upon the following documents:-

S. No.	Description of Documents	Exhibit Number
1.	Board Resolution	Ex. PW1/1
2.	Certificate of Incorporation	Ex.PW1/2
3.	Letter dated 30.10.2007	Ex.PW1/3
4.	Original samples of Airway bills	Ex.PW1/4 to Ex.PW1/6
5.	Invoices	Ex.PW1/7 to Ex.PW1/19
6.	Statement of account	Ex.PW1/20
7.	E-mails dated 14.11.2008 and 19.11.2008 exchanged between the parties	Ex.PW1/21

7. PW1 was cross examined by the defendant wherein he admitted that no courier receipts and proof of deliveries were filed on record. He further admitted that the invoice Ex.PW1/7 does not bear stamp of defendant company. He deposed that after executing Ex.PW1/3 which is a concluded contract, oral terms were settled between the plaintiff and defendant with respect to the business transactions. He admitted that in certain months separate bills were raised but explained that one set of bill was with respect to the contract notes and another was for normal packets. He admitted that formats for maintaining these two sets of bills were different. He also admitted that it could not be ascertained from the invoices to whom the courier packets were sent. He denied the suggestion

that no proof of delivery or courier receipts were handed over to the defendant. He admitted that bills no. 3620 and 3627 which are reflected in Ex.PW1/20 were not placed on court record but did not explain any reasons for this. He could not explain the discrepancy in the amounts in Ex.PW1/20 against bills Ex. PW1/7 and Ex.PW1/11.

Defendant's Evidence

8. Defendant also examined only one witness i.e. DW1 Sh. Sanjay Singhal, by way of evidence affidavit Ex.DW1/A. This witness proved the Board Resolution Ex.DW1/1 and denied during cross examination that one Sh. H.C. Arora used to work with the defendant. He denied having any knowledge about the associate companies of the defendant and did not identify the information sheet Mark DW1/P2, printed from the web site of Ministry of Corporate Affairs, purportedly containing details of the associate companies of the defendant. He admitted Ex.DW1/P1 containing details of defendant company, printed out from the web site of Ministry of Corporate Affairs."

7. The trial court in para 11 of the impugned judgment has framed the questions which are required to be answered, as to whether respondent/plaintiff is guilty of manipulating the number of packets and weights of some packets and consequently manipulating the invoices and also as to whether some invoices are completely fabricated, and in this regard, the trial court has observed that once the transactions between the parties are admitted, and the respondent/plaintiff has proved the invoices raised upon the appellant/defendant as Ex.PW1/7 to Ex.PW1/19 with the statement of account as Ex.PW1/20, then it was upon the appellant/defendant to file

its record and statement of account to show that as per its record and statement of account whether the invoices as claimed by the respondent/plaintiff were not entered in the statement of account of the appellant/defendant, but the appellant/defendant did not file its statement of account, and therefore the trial court rightly raised presumption against the appellant/defendant under Section 114 of the Indian Evidence Act, 1872. The trial court has also adverted to the fact that the pleas of the appellant/defendant are vague, and this is stated in para 14 of the impugned judgment, which reads as under:

> "14. The initial onus to prove this issue was upon the defendant. Defendant has not explained what kind of record was maintained by it that was used to compare the statement of account relied upon by the plaintiff. No such record has been filed in the Court either. All the allegations of forgery are vague because defendant has not explained in which invoice the number of packets and weight has been manipulated, and what was the actual number of packets and weight. It is further not indicated which of the invoices are completely fabricated. The allegations are bereft of material particulars and contain evasive denial with respect to the invoices relied upon by the plaintiff."

8. I may also note that the trial court has very exhaustively gone through all the invoices, and with respect to some invoices it has been specifically found that *qua* some invoices there are some difference of amounts, as also the fact that three bills which were

allegedly raised upon the appellant/defendant by the respondent/plaintiff were not filed and proved, and accordingly, the trial court has reduced the amount claimed by the respondent/plaintiff, and instead of granting a decree for a sum of Rs. 9,93,090/-, the suit has only been decreed for a sum of Rs. 6,36,546/-. The relevant discussion of the trial court for reducing the amount claimed by the respondent/plaintiff, by holding that some invoices have not been proved and for some invoices there exists differences, are the relevant paras 23 to 27, which read as under:-

> 23. The relevant entires regarding the invoices in the statement of account which is from April 2008 till October 2008, are as below:-

S.No	Bill number	Date of entry	Amount
1.	3615	30.04.2008	Rs. 38,422/-
2.	3620	30.04.2008	Rs.2,06,540/-
3.	3627	30.04.2008	Rs. 69,148/-
4.	3665	31.05.2008	Rs. 33,209/-
5.	3666	31.05.2008	Rs. 78,268/-
6.	3750	30.06.2008	Rs. 29,875/-
7.	3751	30.06.2008	Rs. 91,969/-
8.	3780	31.07.2008	Rs. 14,473/-
9.	3779	31.07.2008	Rs.1,18,135/-
10.	3781	31.07.2008	Rs.2,90,889/-
11.	3826	31.08.2008	Rs. 24,243/-
12.	3825	31.08.2008	Rs.1,14,376/-
13.	3866	30.09.2008	Rs. 42,301/-
14.	3867	30.09.2008	Rs. 55,373/-
15.	3910	31.10.2008	Rs. 62,399/-

16.	3909	31.10.2008	Rs. 22,752/-

24. A perusal of the invoices and the statement of account filed by the plaintiff on record reflect certain differences. The bill no. 3620 in the sum of Rs.2,06,540/-, bill no. 3627 in the sum of Rs.69,148/- and bill no. 3666 in the sum of Rs. 78,268/-, which are reflected in the statement of account, have not been filed on court record by the plaintiff and these entries are thus not proved.

25. There is difference in the amount reflected in the invoice and amount reflected in the statement of account against at least three invoices. These three entries, which reflect an amount different from the invoices, are as below:-

S.No	Bill Number	Bill amount	Amount in account	Difference (Rupees)
1.	3615	Rs. 36,764/-	Rs. 38,422/-	Rs.1,658/-
2.	3780	Rs. 13,543/-	Rs. 14,473/-	Rs.930/-
3.	3781	Rs. 2,92,338/-	Rs.2,90,889/-	Amount mentioned in account statement is less so difference not calculated.

26. These differences were put to PW1 but he was unable to explain the same. Since the first two entries against bill no. 3615 and 3780 reflect more amount in the statement of account, the extra amount is liable to be deducted from the total amount reflected as due at the foot of the account. The third entry with respect to the bill no. 3781 reflects lesser amount in statement of account then the amount reflected in the invoice. No reason for such a difference is explained. The entry of lesser amount in the statement of account is an acknowledgement by the plaintiff against his own interest and amounts to admission that against bill no. 3781 a sum of Rs.2,90,889/- and not Rs.2,92,338/- is due.

> 27. After deduction of amount qua the three bills which have not been proved, which amounts to Rs.3,53,956/- and the difference of amount in two entires with respect to the bill no. 3615 and 3780 i.e. Rs.2,588/-; the total amount found due against the defendant is Rs.6,36,546/- and not R.9,93,090/- as is reflected at the foot of the account."

9. I completely agree with the aforesaid reasoning and conclusions of the trial court because the respondent/plaintiff has duly proved the invoices and the statement of account, and the best evidence with the appellant/defendant was its own statement of account to show that invoices were manipulated or fabricated, but the appellant/defendant deliberately did not file its statement of account, and therefore the respondent/plaintiff was rightly held as being entitled to succeed to the extent of Rs. 6,36,546/- out of the suit amount claimed of Rs. 9,93,090/-. I also note that the trial court has also granted a very fair rate of interest being *pendente lite* 9% per annum and future at 6% per annum simple.

10. In view of the aforesaid discussion, there is no merit in the appeal. Dismissed. All pending applications are also disposed of.

FEBRUARY 04, 2019/AK **VALMIKI J. MEHTA, J**