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

Reserved on: 7th February, 2019.

Date of decision: 10th April, 2019

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RFA 495/2017

TILAK SONDHI

..... Appellant

Through: Mr. Vikas Arora and Ms. Radhika
Arora, Advocates. (M: 9811414440).

versus

DEV CHANDRA JHA

..... Respondent

Through: Mr. Satender Sharma, Mr. Nityanand
and Mr. Sachin Tyagi, Advocates.
(M: 9810254366).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present appeal has been filed challenging the decree and judgment passed in a suit filed under Order XXXVII CPC. The Respondent/Plaintiff (*hereinafter, 'Plaintiff'*) is a supplier of fruits and vegetables to the Appellant/Defendant (*hereinafter, 'Defendant'*), which runs a hotel, namely, Hotel Cross Roads, Sector 15, Part-II, Chandan Nagar, Near IIT College, Gurgaon- 122001. The case of the Plaintiff is that it made continuous supplies of fruits and vegetables to the Defendant for its hotel, upto 31st December, 2015 and payment of a sum of Rs.7,64,171/- remained outstanding. The Plaintiff relies on copies of the bills, vouchers, ledger accounts, etc, which, according to the Plaintiff, bear the acknowledgement

of the Defendant.

2. The reliefs prayed for in the suit are as under:

(a) To pass a decree of Rs. 7,64,171/- (RUPEES SEVEN LAC SIXTY FOUR THOUSAND ONE HUNDRED SEVENTY ONE ONLY) in favour of the plaintiff and against the Defendant;

(b) Award pendente lite and future interest @ 18% per annum from the date of institution of the present suit till the realization of the decretal amount in favour of the plaintiff and against the defendant.

(c) Cost of the suit and litigation charges also may be awarded in favour of the plaintiff and against the defendant.”

3. The Trial Court issued summons in the suit. The Defendant filed its leave to defend application. After hearing the parties, vide judgement dated 10th April, 2017, the suit was decreed in the following terms:

“7.....Plaintiff has prima-facie proved on record that he is entitled to the amount as he has supplied the goods for which payment has not been made. No case of leave to defend is made out. The defendant is not entitled to any leave to defend. Accordingly, the leave to defend application of the defendant is hereby dismissed. The suit of the plaintiff is hereby decreed for an amount of Rs.7,64,171/- (Rs. Seven lacs sixty four thousand one hundred and seventy one only) alongwith cost and interest @ 10% pa from the filing of the suit i.e. 16.12.2015 till the realisation of the decretal amount.”

Case of the Plaintiff

4. The Plaintiff's position is that the Defendant had contacted the

Plaintiff and had sought a quotation for supply of fruits and vegetables and a price list was called for. The quotation sent by the Plaintiff was then accepted by the Defendant. The Plaintiff started making supplies from March, 2014. The last supply contract was entered into for a period till June, 2016. The payment for the supplies was to be made within every 45 days, however, the Defendant was irregular in its payments. After giving credit to the payments which were received by the Plaintiff, the outstanding balance was a sum of Rs. 7,64,171/-. Some part-payment was made by cheques but only cheques of Rs. 82,000/- were honoured and the remaining cheques were dishonoured. Along with the suit, the Plaintiff placed on record copies of the quotations/price list issued by it to the Defendant. The contracts for the periods from 1st July, 2014 to 30th June, 2015, and from 1st July, 2015 to 30th June, 2016, various copies of the invoices and copies of the cheques, as also the ledger account, have been placed on record. The Plaintiff also placed on record copy of the legal notice dated 2nd November, 2015.

Case of the Defendant

5. The Defendant, in the leave to defend application claimed that the suit was bad for misjoinder/non-joinder of parties and on the ground of territorial jurisdiction. According to the Defendant, the outstanding amount was Rs.29,537/-. It also took the stand that a settlement was arrived at between the parties, whereby a total sum of Rs. 96,000/- was paid to the Plaintiff. The Defendant categorically denied the account statement filed by the Plaintiff.

Trial Court judgment

6. The Trial Court, after perusing the applications and hearing the parties, arrived at the following conclusions:

- The Defendant had issued a total of 6 cheques for the outstanding amount, however, only 3 of them for the total sum of Rs.82,000/- were honoured.
- 3 cheques, for a total sum of Rs.87,875/- were dishonoured, due to insufficiency of funds.
- On territorial jurisdiction, the Trial Court held that the Plaintiff has supplied the goods from Delhi, payment was to be made in Delhi and the contract concluded in Delhi. Thus, the jurisdiction vested in Delhi.
- The transaction between the parties is duly admitted by the Defendant.
- The plea of the Defendant is a sham.
- The plea that Rishi Associates was a partnership firm and not a proprietorship firm was also rejected on the ground that the cheques, were signed by the authorised representative of the Defendant, as “FOR RISHI ASSOCIATES”. Thus, irrespective of whether it was a partnership or a proprietorship concern, it has a duty of the Defendant to honour the cheques and make the payments.

7. Thus, the Trial Court decreed the suit for a sum of Rs. 7,64,171/- along with costs and interest at 10% per annum from date of filing of suit till realisation.

8. The present RFA was then preferred by the Defendant, and vide order dated 24th August, 2017, an interim order was passed in the following terms:

“In the meanwhile, the operation of the impugned judgment and decree dated 10.04.2017 shall remain stayed, subject to the appellant depositing the entire decretal amount within a period of four weeks from today, with the Registrar General of this court. In case of deposit, the Registrar shall

invest the same in FDR initially for a period of one year, subject to further orders passed by this court. It is made clear that in case the appellant does not deposit the amount as aforesaid, the decree holder shall be at a liberty to execute the decree and the stay of the impugned judgment and decree shall cease to exist.”

9. Thus, stay of the trial court judgement was granted to the Defendant subject to deposit of the decretal amount.

10. The Defendant, thereafter, deposited the decretal amount in two tranches i.e., Rs. 5,00,000/- vide demand draft dated 6th October, 2017 and Rs. 4,08,327/-vide demand draft dated 7th November, 2017. Considering that the entire decretal amount was deposited in the Court and there appeared to be a possibility of settlement of the disputes, vide order dated 23rd January, 2018, the parties were sent to mediation. On 23rd January, 2018, the Court had also noticed that there was discrepancy in the bills filed by the Plaintiff. It was claimed by the Plaintiff that inadvertently multiple copies of the same bill had been filed in the trial court, instead of all the bills showing the supplies. However, the original bills were available with the Plaintiff. The same also bore the acknowledgment of receipt of Hotel Cross Roads i.e., the Defendant.

11. It was the stand of the Plaintiff that the original bills were shown to the Court at the time of arguments in the leave to defend application and copies were supplied to the Defendant. In fact, this plea appears to be correct because copies of these original bills have been annexed with the appeal by the Defendant who could not have had copies of the bills if they were not part of the trial court record. Mediation has however failed.

12. Submissions were heard and judgment was reserved on 7th February, RFA 495/2017

2019.

13. During the course of hearing in the appeal, the Plaintiff/Respondent had filed a written synopsis to the following effect:-

“3. The appellant had admitted before this Hon’ble Court to give Rs.7,00,000/- for settlement though he has deposited more than Rs.9,00,000/- before the Registry of this Hon’ble Court.

4. According to the appellant, he had to pay Rs.29,537/- to the Respondent as mentioned in the appeal at para J, page 14 last 4th line from bottom. Had that been so, in actual, then appellant or any one else from any remotest corner would not have been serious enough to settle the case for Rs.7,00,000/-. As per decree dated 10th April, 2017, the amount after adjusting is Rs.6,76,298/- after deducting Rs.87,876/- from Rs.7,64,171/-.

5. That the interest has been awarded at the rate of 10% from 16.12.2015 and penalty of Rs.10,000/- also impose upon the appellant so the amount comes to Rs.8,79,000/- and from date of decree including interest the amount is Rs.7,43,000/- + 10,000/- cost the amount comes the Rs.7,53,590/-.

6. That the respondent leaves to this Hon’ble Court to decide any amount in between Rs.7,53,590/- and Rs.8,79,000/- so that it will be a win win situation to the appellant.”

14. The case of the Defendant in its written submissions is that none of the original documents were filed by the Plaintiff before the Trial Court. The account statement is self-serving and has not been admitted by the Defendant. Insofar as the amounts covered by the cheques are concerned, out of six cheques, three cheques were encashed and three were dishonoured. Finally, in respect of the three cheques, which were dishonoured, a settlement on 24th September, 2016 was arrived at between

the parties before the Rohini Court in Criminal Revision No.57562/16. The said order reads as under:

“After due deliberations between the parties, they have settled their disputes with regard to subject matter of three cheques in respect of which complaint case bearing CC No. 7/1/2016 titled as “Dev Chandra Jha vs Tilak” is pending before the Ld. MM.

Statements of both the parties have been recorded separately in this regard. The settled amount of Rs.96,000/- has also been paid by petitioner to respondent no.2 in the manner as disclosed in the statements of both the parties.

In view of the settlement between the parties and the statements made by them before the Court, the cost of Rs.10,000/- imposed by Ld. Trial Court upon petitioner stands waived off and shall not be insisted upon by the trial Court. With these observations, the present revision petition is disposed off as settled. The respondent no.2/complainant shall withdraw the aforesaid complaint case from the Court of Ld. MM on or before the next date i.e., 31.10.2016. TCR be sent back alongwith copy of this order. Copy of the proceedings be also given dasti to both the sides today itself against proper receipt. File of revision petition be consigned to Record Room.”

15. Thus, after adjusting the amounts received in the settlement of the above dispute, the outstanding is only Rs. 6,76,298/-, as per the Defendant himself, in his written synopsis, which reads as under:

“3. That the appellant submits the following points in support of his appeal for the kind consideration of the Hon’ble Court:-

a).....e).....

f) That with respect to the three cheques, a settlement was arrived at before the Ld. ASJ in revision. Wherein it was ordered that the three cheques subject matter of

revision are also subject matter of the civil suit thus the payment made in the revision petition would be adjusted. This fact has been admitted by the respondent in his reply to leave to defend application in para 6&7 and thus the balance required to be recovered by the respondent comes down to Rs.6,76,298/- from Rs.7,64,171/-. But the Ld. ADJ simply overlooked the facts.”

16. The Court has considered the competing stands of the parties. During the proceedings before the High Court, copy of a criminal complaint, dated 19th September, 2018, filed by the Defendant alleging forgery by the Plaintiff, has been placed on record. Cash vouchers have been filed on record by the Plaintiff and the Plaintiff has also given inspection of the original bills to the Defendant. The fact that the Defendant had annexed copies of the various original invoices along with appeal, shows that the Plaintiff had supplied these documents to the Defendant at some point during the pendency of the suit before the Trial Court. The allegation of forgery is also an afterthought as the complaint has been filed only on 19th September, 2018. The Plaintiff had originally, along with the plaint placed on record invoices for the period, 1st April, 2015 to 15th April, 2015. However, the appeal filed contains invoices till July, 2015. The original documents were shown to the Court and to the Defendant. They clearly bear the seal of Hotel Cross Roads, which shows that the supplies were actually made. Moreover, in the leave to defend application, there is no allegation that the invoices were forged, or that supplies were never made.

17. Even before the Revision Court a sum of Rs. 96,000/- was readily paid by the Defendant, which shows that the Defendant, who had initially issued cheques which were dishonoured, accepted his liability to the

Plaintiff. The Plaintiff has had to struggle for recovering the payments from the Defendant. The allegations in the leave to defend are very general in nature. The only pleas raised in the leave to defend application are in respect of misjoinder, jurisdiction, non-signing of the plaint by a competent person. There are only 2 paragraphs on merits in the leave to defend application which are set out below:

“6. That as per the account statement maintained by the defendant in its due course of business the total amount due and payable by the defendant to the plaintiff comes to Rs.29,537/- after making the payment of Rs.87,876/-. This payment had been made to the plaintiff by the defendant on 24.9.2016 pursuant to a settlement that was arrived at between the parties whereby the defendant had paid a sum total sum of- Rs.96,000/- i.e. Rs.87,876 through demand draft and another sum of Rs.8,124/- through cash towards interest on the principal amount. It has been agreed that payment so made would be adjusted towards the liability if any that may arise in the present civil suit provided the cheques in question are subject matter of suit as well. The cheques are in fact subject matter of the suit. In para 8 of the plaint the description of the cheques is mentioned and even the copies of the cheques are also annexed. Thus the cheques which were subject matter of proceedings Us 138 NIA are also subject matter of present civil suit.

7. That the present suit has been filed on the basis of the account statement which is categorically denied by the defendant. The cheques bearing No. 445362, 445364 and 445365 placed alongwith the suit plaint are only worth Rs.28,074/-, Rs.29000/- and Rs. 30,802/-/- totaling to Rs.87,876/. As such the present suit for recovery of the amount of Rs.7,64,171/- is absolutely not maintainable. Even

further the payment towards these cheques along with interest thereon have already been paid to the plaintiff vide order dated 24.9.2016.”

18. In the leave to defend application, there is no explanation whatsoever as to how six cheques were issued by the Defendant and how three of them were dishonoured. It is a vague application for leave to defend. Moreover, the inspection of the original invoices which bear the acknowledgement of the Defendant having been given by the Plaintiff, and the same having been placed on record, there is no reason to disbelieve them. The grounds on which leave to defend is sought is nebulous to say the least. The Defendant has continuously defaulted in payments. The cheques given were dishonoured for which action under Section 138 of the NI Act was taken. Even after original invoices were shown, the Defendant has failed to agree to make payment. Further, to compound the circumstances, a criminal complaint has been filed alleging forgery. These facts indicate lack of *bonafides* on behalf of the Defendant. Under these circumstances, the Trial Court rightly arrived at the conclusion that the Defendant had not been able to make out a case for grant of leave to defend.

19. However, there has been one lapse by the Plaintiff that along with its plaint, the Plaintiff failed to file the original invoices and one invoice was copied multiple times and placed on record. It is not clear as to at what stage the original invoices were produced before the Trial Court, however, copies of the same were available with the Defendant as they were annexed in the appeal. Thus, this court is of the opinion that the period for which Plaintiff is entitled to interest can be reduced. The contract entered into between the parties, did not specify any rate of interest for delayed payment.

20. The amount which was deposited by the Defendant with the Registrar General has now matured to a total sum of Rs.9,87,337/-, as on 9th April, 2019.

21. Keeping in mind the conduct of both parties and there being no triable issue in the case, the decree of the Trial Court is modified as under:

- The suit is decreed in favour of the Plaintiff for a sum of Rs. 6,76,298/- along with interest at 6% from date of judgement of the Trial Court i.e., 10th April, 2017 to 10th April, 2019.
- From the amount deposited with the Registrar General, a sum of Rs. 6,76,298/- be released to the Plaintiff as principal along with interest calculated at 6% for a period of two years thereon, be released to the Plaintiff/Respondent (subject to deduction of TDS).
- The remaining sum lying deposited with the Registrar General, shall be released to the Defendant/Appellant after deductions on the interest component, if any.

22. The present appeal is disposed of in the above terms. Decree sheet be drawn. All pending applications also stand disposed of.

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**PRATHIBA M. SINGH
JUDGE**

APRIL 10, 2019

MR