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

% Delivered on: 29th January, 2020

\+ **<u>RFA 92/2019 & CM APPL No.5056/2019</u>**

M/S SUNPRO INTEGRATED
COMMUNICATION SERVICES LTD ..... Appellant

Through : Mr.Mritunjay Kumar Singh and Ms.Ranjana Tiwary, Advs.

versus

M/S CAPRICOT TECHNOLOGIES
PVT LTD & ANR ..... Respondents

Through : Mr.Saurabh Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

<u>YOGESH KHANNA</u>, J.

1. This appeal is against the judgment dated 26.07.2018 whereby suit No.*5906/2016* under Order *XXXVII* CPC filed by the respondent herein was decreed by the learned Additional District Judge-05, South, Saket, New Delhi.

2. The suit was filed on the following facts:

a) the appellant herein raised a purchase order bearing No.SUNPRO/CSASC/1209012 dated 12.09.2012 for 3DS Max Design 2013 or Higher SLM, 2 User for Design and display division, 2 User for Architecture Division, and, Auto Cad 3D 2013 (SLM), 2 User for Design and Display Division, 4 User for Architecture Division. In lieu of the purchase order the appellant had issued two cheques viz. bearing no.154188 dated 14.09.2012 in the sum of Rs.4,45,000/- and cheque bearing no. 154189 dated 29.10.2012 in the sum of Rs.13,35,000/- to respondent No.2. The items were supplied by the respondent No.2 as per the purchase order and were successfully installed. The software installation reports dated 24.09.2012 and 29.09.2012 as also the training reports dated 24.09.2012 and 27.12.2012 were duly signed by the representative of the appellant herein. The items were delivered vide delivery challan dated 03.10.2012 and the two invoices dated 03.10.2012 in the sum of Rs.13,54,554/- and in the sum of Rs.4,25,446/- were raised and duly accepted / signed by the representative of the respondent.

3. It is the case of the respondent that out of the two cheques above, one of Rs.4,45,000/- was honoured but another cheque of Rs.13,35,000/- was dishonoured on its presentation. On persistent asking of the respondent, the appellant had issued yet another cheque of Rs.5,42,900/-, which was honored on presentation, thus leaving a balance of Rs.7,92,100/-, hence the suit.

4. The appellant had filed an application for leave to defend wherein he alleged the suit of the plaintiff is essentially based upon cheque bearing No.154189 dated 29.10.2012 for Rs.13,35,000/- and out of which, admittedly, part payment of Rs.5,42,900/- has been made, hence a suit under Order *XXXVII* CPC would not be maintainable for the balance amount of such cheque.

5. The learned trial court passed the impugned order dismissing the application for leave to defend for the reasons mentioned below:

> *16. An invoice acknowledged by the opposite party amounts to written contract and cheque is a bill of exchange. A suit under Order XXXVII CPC is maintainable on both these documents. So far assignment of rights in favour of plaintiff no.1 is concerned, the objection of defendant is unfounded because plaintiff no.2, the other party to the contract with defendant, is admitting about assignment and has filed documents to this effect. Assignment of rights of plaintiff no.2 in favour of*

plaintiff no.1 is not an issue in dispute in this suit and does not bring it out of the purview of Order XXXVII CPC.

19. Defendant has averred that it had released payment of Rs.5,42,900/- to the plaintiff in April, 2013 on promise that the plaintiff no.2 shall rectify all the problems. Reply obtained under RTI reveals that defendant had received full payment from ITPO in April, 2013 thereby suggesting that entire work was complete qua the end consumer in that month. If that is so, where was the question of obtaining promise from the plaintiff regarding support in rectification of problems, is inexplicable. It rather explains the conduct and reason of part payment in April, 2013.

20. The total amount of invoice is not in dispute. The total payment received from the defendant is also not in dispute. Suit is based upon a written contract and bill of exchange. The defence raised by the defendant is moonshine and unsubstantiated. Plaintiff no.2 had supplied software to the defendant in terms of purchase order. The software was successfully installed and is being utilized by the end consumer i.e. ITPO. Defendant has failed to place on record any document which suggests that there were complaints from end consumer with respect to the software, except email dated 09.12.2012. There are no supporting documents for providing in house training by the defendant at its own expenses. No triable issue has thus been raised by the defendant. The defence raised by the defendant is moonshine. Hence, the leave to defend is rejected.

6. In this appeal the learned counsel for the appellant has relied upon *IFCI Factors Ltd. V. Maven Industries Ltd. & Ors.* 225(2015) DLT32 to say since the present suit is based upon the payment of balance amount of an invoice, the suit under Order *XXXVII* CPC shall not be maintainable. I have gone through the cited case. The facts in the cited case are totally different, as in the cited case a factoring agreement of limit of Rs.5.00 Crores was entered into between the parties therein and under the said agreement, bills raised by defendant No.1 were discounted by the plaintiff by granting defendant No.1 the financial facility. After exhausting the final limit, yet an amount of Rs.10.00 Crore approx was due and the Court was of the opinion, since the suit was based upon the statement of account, hence was not maintainable under Order XXXVII CPC. However, in para No.*18* of the cited judgment, this Court rather distinguished the facts of the cited case from the case of *Bijender Chauhan @ Bijender Kumar V. Financial Eyes (India) Ltd.* 2013 (4) ILR

(Del) 3234 and held *Bjinder's* (supra) was essentially based upon an amount claimed on invoices, which were held to be a *written contract* and as the cited case was not based invoice but was filed upon the statement of account it was held to be not maintainable under Order 37 CPC. Thus in a way in *IFCI Factors Ltd.* (supra) the High Court rather agreed to the view taken by the learned trial court herein.

7. Further in *Inventa Cleantec Pvt. Ltd. V. Amit Mudgal* 2016 IX AD (Delhi) 329 the Court held as under :

> *17. xxx. I may however record that I have in TTK Prestige Vs. India Bulls Retail Services Ltd. 2013 (136) DRJ 217 held a suit under Order XXXVII on the basis of invoices to be maintainable for a lesser amount than of the invoices, after adjusting the payments made to be maintainable. To the same effect is the judgment of this Court in Bharat Forge Ltd. Vs. Onil Gulati 2005 (83) DRJ 140 and Dura-Line India Pvt. Ltd. Vs. BPL Broadband Network Pvt. Ltd. AIR 2004 Delhi 186. In the latter judgment it was also held that merely because the plaintiff, in the plaint, besides referring to the invoices on the basis of which suit had been filed also averred it maintains a running account, would not change the nature of the suit to one based on a running account. This judgment was recently followed in Bijender Chauhan Vs. Financial Eyes (India) Ltd. MANU/DE/2138/2013. xxx.*

8. Also in *Mist Avenue Pvt. Ltd. Vs. JMS Steels & Power Corporation & Ors.* MANU/DE/3223/2018 a similar view was taken.

9. Admittedly, in the present case, there is on record a tax invoice bearing No.DL/2012-2013/0665 dated 03.10.2012 in the sum of Rs.13,54,554/-, out of which an amount of Rs.5,42,900/- was admittedly paid and thus suit for the balance of such tax invoice is maintainable under Order 37 CPC. The argument of learned counsel for the appellant viz. para *17* of the plaint reveals the suit is essentially based upon the balance of an impugned cheque, is however incorrect, as the plaint need to be read in total and not in piecemeal.

10. There is no illegality in the impugned order passed by the learned trial court, hence the appeal is dismissed. The pending application(s), if any, is also dismissed. No order as to costs.

YOGESH KHANNA, J.

JANUARY 29, 2020
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