



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

% **Date of Decision: 2nd June, 2023**

+ **RFA(COMM) 126/2023**

SUBHASH CHAND GUPTA

..... Appellant

Through: Mr. Piyush Gupta, Mr. Amit Sharma,
Mr. Prateep Gupta, Mr. Rakshit
Pandey and Ms. Bhawna Kaushik,
Advs.

Versus

TAHIR (PROP OF M/S RESHMA ENTERPRISES)

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.: (ORAL)

1. The appellant (*defendant*) by way of this appeal impugns the judgment and decree dated 1st April, 2023¹ whereby the learned Trial Court has allowed the suit for recovery of Rs.40,50,000/- of the respondent (*plaintiff*) by decreeing the same in his favour and calling upon the appellant to pay the said amount of Rs.40,50,000/- alongwith interest @ 9% per annum with effect from 1st September, 2020 till realization to the respondent, and if not paid within one month, to pay the said amount of Rs.40,50,000/- at an enhanced rate of interest of 12% per annum till realization thereof.



FACTUAL MATRIX:

2. Both parties before this Court were engaged in the business of scrap dealing and were known to each other. In August 2020, the appellant, carrying on his business of scrap dealing under the name and style of M/s. Garg & Sons, being in urgent need of money for entering into an Agreement with one M/s. Kaizen Alex Private Limited qua purchasing scrap of plant and machinery², approached the respondent, who is also carrying on his business of scrap dealing under the name and style of M/s. Reshma Enterprises, for Rs.40,50,000/- with an assurance to repay the same within a period of one month. Though the respondent transferred the said amount of Rs.40,50,000/- to the appellant via RTGS, the appellant neither delivered any scrap materials nor repaid the amount to the respondent. This resulted in the respondent sending repeated requests and demands, a Legal Notice dated 5th January, 2021 and filing of an application for pre-institution mediation under *Rule 2(c)* of The Commercial Courts (Pre-Institution) Mediation and Settlement Rules, 2018 prior to the institution of the suit against the appellant before the learned Trial Court.

3. The appellant, upon service filed a written statement alongwith an application under *Order I rule 10* of The Code of Civil Procedure, 1908 (as amended from time to time)³ seeking impleadment of one Mr. D.K. Singh and one Mr. Vikas Aggarwal, Director of M/s. Kaizen Alex Private Limited, contending that he was not engaged in the business of scrap dealing but was involved in the said business when he was introduced to one Mr. D.K. Singh carrying on the business of scrap dealing under the name and style of M/s. D.K. Enterprises on 28th August, 2020 by the respondent when they visited his house together. The respondent, offering

² Hereinafter referred to as “**scrap materials**”

³ Hereinafter referred to as “**Code**”



an amount of Rs.40,50,000/- for purchasing scrap materials worth Rs.1,07,50,000/- from the said Mr. D.K. Singh asked the appellant to contribute the remaining amount of Rs.67,00,000/- in lieu of becoming a partner in the deal and getting a fifty per cent share in the profits earned thereof.

4. Thus, the respondent, *admittedly*, transferred an amount of Rs.40,50,000/- via RTGS to the appellant on 1st September, 2020. Thereafter, though an Agreement for sale of scrap materials dated 2nd September, 2020⁴ was executed inter-se the said Mr. D.K. Singh and appellant, no such scrap materials were provided to the appellant and further as the cheques issued by the said Mr. D.K. Singh were dishonoured, a complaint case under *Section 138* of The Negotiable Instruments Act, 1881 (as amended from time to time)⁵ and an F.I.R. was also registered against him by the appellant. All in all, as per appellant, the respondent was in collusion with the said Mr. D.K. Singh.

5. The application filed by the appellant under *Order I rule 10* of the Code was dismissed by the learned Trial Court vide order dated 17th January, 2023 and the following issues were framed on the even date itself:

“(1) Whether the defendant had transferred the amount received from plaintiff in the account of M/s. D.K. Enterprises at the instance of plaintiff? If so, its effect. OPD

(2) Whether the plaintiff is entitled for recovery of suit amount, as claimed?”

6. Thereafter, the respondent led evidence by examining himself as the sole witness alongwith various documents to prove his case and the

⁴ Hereinafter referred to as “**Agreement**”

⁵ Hereinafter referred to as “**NI Act**”



appellant led evidence by examining two witnesses from his side along with various documents to defend his case.

IMPUGNED JUDGMENT:

7. The learned Trial Court, after considering the materials on record and upon hearing the learned counsel for parties found that the receipt of Rs.40,50,000/- by the appellant from respondent was undisputed. It also found that the appellant himself admitted to being engaged in the business of scrap dealing as there was a specific mention to that effect in his own complaint under *Section 138* of the NI Act (*Exhibit DW1/4*) and further one of his witnesses-DW2 before the learned Trial Court stated so. It further held that that there was no explanation from the appellant qua routing the transfer of Rs.40,50,000/- by the respondent to the said Mr. D.K. Singh through the appellant instead of a direct transfer.

8. The learned Trial Court found that the Agreement was only executed inter-se the appellant and the said Mr. D.K. Singh and as there was no mention of the respondent therein, there was no privity of contract between the respondent and the appellant. In any event, the respondent not only denied his signatures therein but the same were also illegible. Interestingly, though the said Agreement was executed at Phagwara as one of the attesting witnesses and the attestation by a Notary Public were both done at Phagwara, *however*, according to both witnesses of appellant the Agreement was instead executed at the house of appellant in Delhi. The same was found to be untrue by the learned Trial Court. The learned Trial Court further found that the appellant had neither filed any complaint(s) against the respondent qua what was alleged by him nor apprised the respondent of the complaint under *Section 138* of the NI Act at any point of time.



9. The learned Trial Court thus held that the appellant did not dispute his liability to pay the amount of Rs.40,50,000/- to the respondent and the same was fortified from his own affidavit in evidence wherein he categorically stated of having assured the return thereof to the respondent. Also, the appellant was unable to prove that he received the said amount of Rs.40,50,000/- from the respondent at the instance of the said Mr. D.K. Singh.

APPELLATE PROCEEDINGS:

10. Hence the present appeal challenging the impugned judgment wherein, amongst the various grounds taken, the appellant primarily contended that the said Mr. D.K. Singh was a necessary and proper party who ought to have been impleaded as he was the go-between him and the respondent.

FINDINGS AND ANALYSIS:

11. This Court, after hearing learned counsel for appellant finds that the appellant has, *once again*, sought to raise the same contentions, which have already been dealt with and denied by the learned Trial Court.

12. In the opinion of this Court, reliance upon the Agreement executed inter-se the appellant and the said Mr. D.K. Singh by the appellant was/ is of no relevance for the issues involved before the learned Trial Court whence the execution thereof had nothing to do with the advancement of the amount of Rs. 40,50,000/- by respondent to the appellant. The same was foreign to the Agreement executed inter-se the said Mr. D.K. Singh and appellant only and the respondent not being a party thereto, there was no privity of contract with him. What transpired between the said Mr. D.K. Singh and appellant as a fallout of the Agreement had nothing to do with the respondent as the payment of the amount of Rs.40,50,000/- was not



contingent upon failure/ performance of either party to the Agreement. Thus, in view of the fact that the due receipt of the amount of Rs.40,50,000/- via RTGS transfer by the appellant from the respondent has been admitted, there was hardly anything else left for the respondent to prove.

13. Much has been made out of the Agreement and/ or the conduct of the respondent, *however*, surprisingly, no allegation/s of any kind have ever been made by the appellant against the respondent at any stage whatsoever till date. The appellant was unable to prove the Agreement or its connection/ importance with the facts involved or with the respondent in any way. Though the Agreement filed by the appellant showed that it was executed in Phagwara, *however*, both witnesses from his side instead stated that it was executed at the house of appellant in Delhi. Further, though the appellant before the learned Trial Court stated that he was not dealing in scrap materials whereas in his complaint under *Section 138* of the NI Act against the said Mr. D.K. Singh (*Exhibit DW1/4*), he had himself pleaded otherwise.

14. As such, this Court finds that all the defenses raised by the appellant qua the Agreement are concocted as they are totally contrary to reality. All the averments raised qua the Agreement belie the defenses and contentions raised by the appellant before the learned Trial Court. As the appellant has been clearly guilty of taking contrary stances, the same exudes no confidence in him.

15. Interestingly, it is a matter of fact that though the application under *Order I rule 10* seeking impleadment of the said Mr. D.K. Singh was dismissed by the learned Trial Court vide order dated 17th January, 2023, the said order was never challenged by the appellant.



16. The fact that, though the appellant examined two witnesses and filed various documents for leading evidence before the learned Trial Court, *however*, the appellant never summoned the said Mr. D.K. Singh to appear as witness in support of his defense, militates against the case set up by the appellant. In the wake of the aforesaid, this Court has no hesitation in concluding that the said Mr. D. K. Singh was neither a necessary nor a proper party to the present litigation.

CONCLUSION:

17. Thus, in view of the aforesaid, this Court is in complete concurrence with the findings, reasonings and conclusion drawn by the learned Trial Court in the impugned judgment under challenge. In the considered opinion of this Court, no ground has been made out for interference with the said impugned judgment.

18. Accordingly, the present appeal, alongwith all the pending applications, being without any merit, is *dismissed in limine*.

SAURABH BANERJEE, J.

MANMOHAN, J.

JUNE 02, 2023/rr