



2023:DHC:8409-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 23rd November, 2023*+ **RFA(COMM) 242/2023, CM APPL. 57329/2023, CM APPL. 57330/2023, CM APPL. 57331/2023 & CM APPL. 57332/2023**SH. UMA SHANKAR SHARMA PROP
OF GROOM STUDIO

..... APPELLANT

Through: Mr. Nityanand Singh &
Ms. Aachal Sah, Advs.

versus

M/S HIGH LINE APPARELS
PRIVATE LIMITED

..... RESPONDENT

Through:

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal, impugning judgment dated 14.02.2023 (hereafter '**the impugned judgment**'), passed by the learned Commercial Court in CS(COMM) No. 4925/2021, captioned as *M/s High Line Apparels Pvt. Ltd. v. Sh. Uma Shankar Sharma*. The respondent had instituted the aforesaid summary suit under Section 37 of the Code of Civil Procedure, 1908 ('**CPC**'), for recovery of ₹6,03,565/-.

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2. It was the respondent's case that he had supplied goods worth ₹17,62,195/- to the appellant, during the period from 11.05.2017 to 15.03.2021, which were covered under 44 separate invoices. Against the aforesaid invoices, the appellant had paid a sum of ₹11,44,608/-, thus, according to the respondent, the balance amount of ₹6,17,587/- was due and payable. Admittedly, the appellant had also issued two post dated cheques for a sum of ₹3,53,580/- and ₹2,46,985/- dated 23.02.2021 and 05.03.2021 respectively, drawn on HDFC Bank. However, the said cheques were dishonoured on presentation.

3. The appellant had filed an application seeking leave to defend the said suit, raising various grounds including that he had paid the entire amount due; the post-dated cheques issued were handed over to the respondent as a security and not in discharge of any delay; the respondent had fabricated the invoices on the basis of which the respondent was claiming the amounts due; the respondent had not produced the GST returns to establish that the GST was paid on the material supplied and, therefore, the appellant was not liable to pay for the same.

4. By order dated 20.09.2022, the appellant was granted leave to defend the suit by the learned Commercial Court, *albeit* on a condition that the appellant deposits a sum of ₹6,03,565/- in the form of FDR.

5. The appellant assailed the said decision before this Court in Civil Revision Petition No. 189/2022. The same was listed before this Court on 11.11.2022. However, after some arguments, the learned counsel for the appellant sought permission to withdraw the said



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appeal, and the same was dismissed as withdrawn.

6. Concededly, the order dated 20.09.2022, passed by the learned Commercial Court granting the conditional leave to defend to the appellant, becomes final.

7. In the present case, the appellant did not comply with the condition of depositing the sum of ₹6,03,565/- and, therefore, the learned Commercial Court had proceeded to pass the impugned judgment and decree in favour of the respondent for the amount as claimed.

8. In terms of Order XXXVII, Rule 3, Sub-rule 6(b) of the CPC, the plaintiff (the respondent herein) was entitled to a judgment forthwith when the defendant (the appellant herein) had admittedly failed to provide the security as specified by the learned Commercial Court.

9. The learned counsel for the appellant submits that the non-compliance of the order dated 20.09.2022 of the learned Commercial Court was on account of the medical issues faced by the appellant and his brother.

10. The defences as now sought to be raised by the appellant are clearly not available as the appellant had sought to raise the same defences before the learned Commercial Court. However, since the appellant had not complied with the conditions for grant of leave to defend, it is not open for the appellant to now urge the same.

11. The learned counsel for the appellant submits that the appellant is now willing to deposit 50% of the amount of ₹6,03,565/-, and

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requests that it be permitted to defend the suit instituted by the respondent.

12. We are not persuaded by the aforesaid submissions.

13. As stated above, the order of the learned Commercial Court dated 20.09.2022, whereby the appellant was granted a conditional leave to defend, has attained finality.

14. We are unable to accept that the said order requires any modification. In the given circumstances, we find no fault with the impugned judgment.

15. The appeal is, accordingly, dismissed.

16. All pending applications also stand disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 23, 2023

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