

2024:DHC:9006



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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RSA 72/2024 & CM APPLs. 21513/2024, 21518/2024 & 24828/2024**

Between: -

JAIN COOPERATIVE BANK LTD
THROUGH ITS AUTHORISED REPRESENTATIVE
HEAD OFFICE, 80 DARYA GANJ,
NEW DELHI-110002APPELLANT

(Through: Mr. Abhinav Sharma and Mr. Ravi Singh Chhikara, Advs.)

AND

BSA CITI COURIERS PVT. LTD.
9A, PHELPS BUILDING, 2ND FLOOR, MIDDLE CIRCLE,
CONNAUGHT PLACE, NEW DELHI-01RESPONDENT

(Through: Mr. Arjun Dewan, Mr. Shahryar Khan and Mr. Jasraj Singh, Advs.)

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Reserved on: 05.11.2024

Pronounced on: 21.11.2024

J U D G M E N T

The appeal is directed against the impugned judgment and decree dated 25.03.2023, passed by the learned Additional District Judge-08, Central District, Tis Hazari Court, Delhi, dismissing the Regular First Appeal, preferred by the appellant-defendant, against the judgment and decree dated 30.03.2017, in Civil Suit No. 597707/2016 by the learned Civil Judge-05, Central District, Tis Hazari Court, whereby, the Civil Suit filed by respondent-plaintiff for recovery of Rs. 1,76,128/-, along with interest, was decreed.

2. The facts of the case would indicate that the appellant-defendant is a Bank located in Delhi, while the respondent-plaintiff is a company engaged in courier and delivery services. According to the findings of the Trial Court, the appellant-defendant engaged the services of the respondent-plaintiff for delivering packets and consignments to its clients. The parties had agreed upon specific charges for each delivery, which were consistently reflected in the invoices raised by the respondent-plaintiff. Upon receipt of these invoices, the appellant-defendant would process and release the payment to the respondent-plaintiff.

3. It is the case of the respondent-plaintiff that in September 2013, the appellant-defendant availed its services, and an invoice bearing No. 42977, dated 01.10.2013, was raised for an amount of Rs. 1,76,128/-. However, the payment was not released. Following the issuance of a legal notice and further communication, the respondent-plaintiff proceeded to institute the present Civil Suit.

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4. The appellant-defendant contested the Civil Suit mainly on the ground of deficiency of service, contending that the respondent-plaintiff had failed to fulfill its contractual obligations. The appellant-defendant asserted that the letters containing the agenda for its Annual General Meeting had not reached the members of the appellant-defendant Bank, thereby resulting in breach on the part of the respondent-plaintiff.

5. In view thereof, the appellant-defendant argued that no payment could be legitimately claimed by the respondent-plaintiff. It was further submitted that the respondent-plaintiff had failed to produce proof of delivery or any evidence of undelivered agenda books prior to raising invoices for the outstanding balance. The appellant-defendant also contended that it had received numerous complaints from its members regarding non-receipt of the agenda books, which caused considerable embarrassment and reputational damage to the appellant-defendant. Consequently, the appellant-defendant sought damages to the tune of Rs. 1,50,000/- for the alleged loss of reputation.

6. After completion of pleadings, the Trial Court framed following issues:-

“ i. Whether the Plaintiff is entitled to recover a sum of Rs.1,76,128/- from the Defendant, as prayed for? OPP

ii. Whether plaintiff is entitled to recover the interest from the Defendant as prayed for? OPP

iii Relief.”

7. The Trial Court decreed the Civil Suit, directing the appellant-defendant to pay Rs. 1,76,128/-, along with interest at the rate of 12% per annum from the date of the invoice, i.e., 01.10.2013, until the realization of the amount. The respondent-plaintiff was also awarded the costs of the suit. The judgment and decree passed by the Trial

Court were subsequently affirmed by the impugned decision, leading the appellant-defendant to prefer the instant appeal.

8. Learned counsel appearing for the appellant-defendant vehemently criticized the findings rendered by the Courts below, submitting that the burden of proving the factum of delivery of agenda books was improperly shifted upon the appellant-defendant, a burden which primarily lay with the respondent-plaintiff. He contended that any deficiencies in the procedural steps of the appellant-defendant cannot be construed in favor of the respondent-plaintiff, who bears the legal responsibility to substantiate its own claim. He pointed out that, as admitted by the respondent-plaintiff, 30,299 packets were received for distribution solely within the Delhi and NCR region, as the services of the respondent-plaintiff were limited to those regions.

9. This, he argued, conflicts with the invoice issued by the respondent-plaintiff, which included charges for courier services in Delhi and NCR amounting to Rs. 1,53,957/- for 30,187 packets, alongside an additional Rs. 2,800/- for approximately 112 packets intended for destinations outside NCR to the rest of India. Learned counsel asserted that the evidence by way of affidavit and documents are inconsistent with one another, highlighting an email dated 26.09.2013, which reported that 1,715 packets were undelivered. Learned counsel further argued that the Courts below failed to adequately appreciate these inconsistencies, resulting in a patent illegality that warrants the intervention of this Court under Section 116 of the CPC to set aside the impugned judgment and decree.

10. He also submitted that the terms and conditions on the invoice cannot supersede those explicitly agreed upon in the main contract.

Referring to the communication dated 31.08.2013, learned counsel

noted that the agreement required a final delivery report to be provided within 10 working days to the appellant-defendant, with payment contingent upon confirmation of delivery from the respondent-plaintiff. In the absence of conclusive proof of delivery, he contended, the respondent-plaintiff was not entitled to the payment claimed through the invoices.

11. Learned counsel appearing for the respondent-plaintiff opposes the submissions advanced by the learned counsel for the appellant-defendant asserting that in light of the concurrent findings of both Courts, no interference is warranted.

12. According to him, the documents relied upon by the appellant-defendant were not formally exhibited before the learned Trial Court. Further, he contends that the terms of the invoice clearly stipulate that proof of delivery is to be provided only upon request and, under no circumstances, is it a pre-condition for the payment of invoices. Learned counsel also argues that after the invoices were raised, the appellant-defendant did not request proof of delivery. Hence, raising such a plea now, in response to the recovery suit, should be dismissed as an attempt to evade payment. He additionally submits that the burden of proof is a dynamic concept and shifts between the parties. In this case, the initial burden was effectively discharged by the respondent-plaintiff through the production of invoices. In the absence of any evidence from the appellant-defendant demonstrating deficient service, the Courts below were justified in decreeing the suit. Accordingly, learned counsel urges for the dismissal of the instant appeal.

13. I have considered the submissions made by learned counsel appearing on behalf of the parties and have perused the record.

14. The respondent-plaintiff presented Mr. Anil Sinha as its witness, who, through his affidavit of evidence [Exhibit PW-1/A], relied on various documents, including the invoice [Exhibit PW-1/2], certified copy of the statement of account [Exhibit PW-1/3], reminders issued to the appellant-defendant [Exhibit PW-1/4 to Exhibit PW-1/6], legal notice [Exhibit PW-1/7], and the reply to the legal notice [Exhibit PW-1/9]. This witness was cross-examined by the appellant-defendant. In support of its case, the appellant-defendant examined Mr. Naveen Gupta, Deputy Manager, as DW-1. While the business relationship between the parties is not in dispute, the appellant-defendant contests the alleged non-delivery of the courier packets, claiming a deficiency in service. With the consignment having been entrusted by the appellant-defendant to the respondent-plaintiff and an invoice subsequently raised, the standard course of action would entail either the payment of the invoice or a formal complaint regarding the alleged service deficiency.

15. In the present case, both the Courts below have observed that neither any document was submitted to evidence any complaint regarding any deficient service, nor was any independent witness presented to testify to this effect. The invoice [Exhibit PW-1/2] explicitly stipulates that proof of delivery may be provided upon request but is not, under any circumstances, a precondition for bill payment.

16. Notably, there is no written communication or evidence indicating that even an oral request was made for proof of delivery at the relevant time. Regarding the alleged inconsistencies related to undelivered packets and out-of-Delhi services, the Trial Court, in

paragraph No. 17 of its decision, has made the following pertinent observations:-

“17. PW-1, Sh. Anil Sinha was confronted with an e-mail, which is Ex. PW1/D-3 which showed that 5,116 letters were undelivered and 25,183 were delivered. Further, he was confronted with a receipt dated 25.09.13 which is Ex. PW1/D-2 showing that 5028 letters were RTO packets. But the witness PW-1, Sh. Anil Sinha deposed that neither the said documents were signed by the Plaintiff nor he had any knowledge about the same. Hence, it is apparent that the Defendant, despite confronting the Witness, with the aforesaid documents, could not extract anything in the cross-examination, which weakened the case of the Plaintiff. Further, it is pertinent to note that no certificate in terms of Section 65B of the Indian Evidence Act, in respect of the said email, Ex.PW1/D-3, which is an electronic record was brought on record and therefore, the same cannot otherwise also be admitted in evidence.”

17. It is thus seen that, in the absence of proper legal compliance for proving the documents, they were not admitted into evidence.

18. The cross-examination of PW-1 (Anil Sinha) clearly indicates his denial of the e-mail [Exhibit PW-1/D-3], which purportedly stated that 5,116 letters were undelivered and 25,183 were delivered. The relevant portions of his cross-examination are as follows:-

“Q: Is it correct that you sent e-mail Ex.PW-1/D3 stating that 5116 letters were undelivered and 25,183 were delivered, what do you have to say?

Ans: This document has not been sent by us. I have no knowledge regarding the same.

Q: Is it correct that you issued a receipt dated 25.09.2013 Ex. PW-1/D2 stating that 5028 letters were RTO Packets?

Ans: This document has not been sent by us. I have no knowledge regarding the same.

I do not know the exact date of the Annual General Meeting of Defendant bank. Approximately 30,200 packets were received by us for distribution in Delhi NCR area. We do not provide service to any other state other than Delhi NCR area. We did not receive any packets from the Defendant bank for

the purpose of sending them outside Delhi NCR area i.e. any other state.

At this stage, witness is confronted with document PW-1/3 and asked the following question:

Q:- In Ex. PW-1/3, you have stated that packages outside Delhi NCR area were also delivered by you, what do you have to say?

Ans: We do not deliver to other state outside Delhi NCR area I cannot confirm as to whether packages were sent outside Delhi. NCR area i.e., to other state. Vol. There may have been an agreement between the Plaintiff and the Defendant and another agency in the other states would have been appointed by us for sending those packages.

It is correct that in our terms and conditions attached with the invoice, it is stated that proof of delivery of consignment can be provided at request.

Q: You have not provided till date any proof of delivery of consignment?

Ans: The same was never provided as the Defendant bank never asked for the same.

I cannot produce the proof of delivery of consignment as on date. Vol. We destroy the record after six months and the proof of delivery can be provided to the client upto six months. It is correct that payment of invoice dated 01.10.2013, has not been made till date by the Defendant bank. It is wrong to suggest that we have deliberately destroyed the proof of delivery of consignment/packages. It is wrong to suggest that despite repeated requests by the Defendant, that we did not provide the proof of delivery of consignment/packages. It is wrong to suggest that we are intentionally not willing to produce the proof of delivery of consignment/packages as the courier services were defective. It is wrong to suggest that we did not have adequate man power for distribution of the courier packages. It is wrong to suggest that we have instituted the present suit on a false claim. It is wrong to suggest that I am deposing falsely."

19. It is also noteworthy that during cross-examination, the same witness clarified that their services are limited to the Delhi-NCR region. However, he added that, for fulfilling the delivery requirements of the appellant-defendant, the respondent-plaintiff may

have engaged or appointed another agency. He further explained that proof of delivery of consignments could have been provided upon request but again emphasized that, at no point, was such proof requested by the appellant-defendant.

20. In view of the above and upon careful examination of the material on record, this Court finds that the findings of the Trial Court are well-grounded in the evidence presented. These findings adhere to established legal principles and were thus correctly upheld by the First Appellate Court. This Court also acknowledges the legal framework governing the exercise of powers under Section 100 of the Civil Procedure Code, 1908(CPC).

21. The Supreme Court in the case of *Balasubramanian v. M. Arockiasamy*¹, placing reliance on *Ramathal v. Maruthathal*² and *Ram Daan v. Urban Improvement Trust*³ held that when both the lower Courts have arrived at concurrent findings of fact and disbelieved the evidence of certain witnesses, interference by the High Court in a second appeal is generally unwarranted. However, the Court clarified that this restraint on interference is not absolute. Where findings are perverse, lack evidentiary support, or the appreciation of evidence suffers from material irregularity, the High Court may justifiably intervene on questions of fact. However, in the present case, the appellant-defendant has not demonstrated any material irregularity or perversity in the findings of the Courts below as gleaned from the arguments and the material shown as placed on record.

¹ (2021) 12 SCC 529.

² (2018) 18 SCC 303.

³ (2014) 8 SCC 902.

22. In view of the aforesaid, the Court does not find any substantial questions of law to have arisen in the instant case. Consequently, the appeal fails and stands dismissed, along with all pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 21, 2024

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