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

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Decision delivered on: 28.05.2024+ **RFA(COMM) 214/2024 & CM Nos.32247-51/2024****LAL BAHADUR PROP.OF M/S ICRTC APPELLANT**Through: Mr Mahesh Chand Sharma, Adv. along
with appellant.

versus

M/S SAMRIDDHI ELECTROMART PVT.LTD..... RESPONDENT

Through: None.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):****CM No.32249/2024**

1. Allowed, subject to just exceptions.

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2. This appeal is directed against the judgment and decree dated 06.12.2023, passed by the learned District Judge, Commercial Court-08, Tis Hazari Courts, Delhi.

3. The record discloses that the respondent/plaintiff had filed a suit for recovery, claiming Rs.4,65,000/- against the materials supplied to the appellant/defendant.



3.1 The case set up by the respondent/plaintiff was that Rs.4,08,476/- was due and payable by the appellant/defendant.

4. It is not in dispute that towards the outstanding amounts, the appellant/defendant had issued three cheques, having a cumulative value of Rs.1,10,500/-. The intent, apparently, was that the outstanding liability would be liquidated by June, 2019.

4.1 Since the appellant/defendant failed to liquidate the outstanding liability, a legal notice was issued on 16.07.2019, followed by a suit for recovery.

5. The learned counsel for the appellant/defendant submits that a settlement had been arrived at between the appellant/defendant and the respondent/plaintiff with the intercession of, one, Mr Santosh Ji.

5.1 In this context, our attention has been drawn to the photocopy of a handwritten document dated 13.06.2019.

6. Based on the aforesaid document, it is claimed by learned counsel for the appellant/defendant that on behalf of the respondent/plaintiff, Mr Santosh Ji had interceded and after accounts were reconciled, it emerged that the respondent/plaintiff owed Rs.5,47,956/- to the appellant/defendant.

6.1 In other words, instead of the appellant/defendant having to pay monies to the respondent/plaintiff, amounts were owed by the respondent/plaintiff to the appellant/defendant.

7. Concededly, the appellant/defendant did not file any counter-claim.

7.1 The record also discloses that the respondent/plaintiff had examined one witness, i.e., its authorized representative, named, one, Mr Prem Sethi, while the appellant/defendant had examined himself as DW-1 and examined two



other witnesses, i.e., DW-2 and DW-3.

8. The trial court has rejected the defence raised by the appellant/defendant that a settlement had been arrived at between the parties, on the ground that even if it was true, it was not binding on the respondent/plaintiff.

9. The trial court has also returned a finding that the testimonies of two witnesses examined by the appellant/defendant to establish the settlement of the outstanding liability was unreliable. In particular, it was noticed that the two witnesses, i.e., DW-2 and DW-3 were not even sure about the date when the settlement was arrived at.

10. It was, thus, concluded by the trial court that the settlement document [Ex.DW1/1] tendered by the appellant/defendant could not be relied upon. The conclusion arrived at by the learned trial court was that the appellant/defendant had failed to discharge the onus with regard to purported settlement recorded in Ex.DW1/1.

11. This apart, it appears that the appellant/defendant had not produced its ledger accounts, which led the trial court to conclude that the best evidence that was available with the appellant/defendant had not been placed before it.

12. As noticed above, what is not in dispute is that the invoices against which the claim had been set up by the respondent/plaintiff were three in number, with a cumulative value of Rs.1,44,501/-. As against this, the appellant/defendant had issued, as noticed above, three cheques having a cumulative value of Rs.1,10,500/-.

13. The court's reasoning with regard to the invoices and the issuance of cheques, including the defence set up by the appellant/defendant that he had



purchased a motorbike in the name of Mr Santosh Ji which cost him Rs.8,00,000/, is captured in paragraph 8 of the impugned order. For convenience, paragraph 8 of the impugned judgment is set forth hereafter:

“8. Record shows that the plaintiff has specifically stated that the defendant in partial discharge of his liability issued cheques in February and May, 2019. As per the defendant, there was a settlement between him and Santosh Ji on 13.06.2019. Why the plaintiff was not informed about this settlement remains unclear. Further, the plaintiff in para 7 of the plaint has specifically mentioned that the defendant in discharge of his liability issued three cheques. The defendant has simply denied about issuing these cheques but has not specified as to why these cheques were issued when there was no liability. Ld. Counsel for the defendant had argued that only the invoices at page no. 24, 25 and 26 of Ex. PW1/4 (colly) are the genuine invoices and the other invoices are fabricated. The total amount of these three invoices is Rs. 1,44,501/-. The total of the cheques issued by the defendant is Rs. 1,10,500/-. Even if it is presumed for the sake of argument that all other invoices are fabricated, why the defendant issued cheques of the lesser amount and why the defendant settled with Santosh Ji as allegedly and gave him Rs. 8 Lac and also purchased a bike on installment in the name of Santosh Ji is unclear. No prudent person shall pay such a higher amount when the liability is only of Rs. 1,44,501/-, which is the total of the three invoices at page no. 24, 25 and 26. Further, the plaintiff has proved on record its ledger account Ex. PW1/3. This ledger account reflects all the payments made by the defendant in due course of business with the plaintiff and not even a single question was asked on this ledger from PW1 except the suggestion that the ledger account is forged and fabricated. The defendant did not produce its own books of account to show the material purchased from the plaintiff and the payments made thereof. Any alleged settlement between the defendant and Santosh Ji was done by defendant at his own risk. As per the ledger filed by the plaintiff, all the payments received from the defendant are through cheque only. So the contention of the defendant that certain payments were made through cash was not established. The onus to prove the settlement Ex. DW1/1 was on the defendant, which the defendant has failed to prove. A perusal of this settlement shows that the settlement was between defendant and Santosh Ji and by no reasoning, the same can bound the plaintiff. Otherwise also, the two witnesses to this settlement are not even sure about the date of settlement and the same is unreliable document. The defendant did not produce his account books to show the transactions between the defendant and the plaintiff and withheld the best evidence available to rebut the burden of making the payments to the plaintiff. The plaintiff has, therefore, proved that he is entitled to recover the suit amount



from the defendant. The issue is decided in favour of the plaintiff.”

14. The learned counsel for the appellant/defendant has raised the very same arguments that were made before the trial court. Clearly, if the submission of learned counsel for the appellant/defendant that the respondent/plaintiff was to pay monies to the appellant/defendant is accepted, normally, it would be expected by the appellant/defendant to file a counter-claim or a separate suit for claiming the said amount. No step in this direction was taken by the appellant/defendant.

15. Therefore, this aspect, coupled with the fact that cheques were issued by the appellant/defendant to liquidate the liability, clearly demonstrates that the amounts were owed by the appellant/defendant to the respondent/plaintiff.

16. The case set up by the appellant/defendant of having arrived at some settlement with a person named Mr Santosh Ji is far-fetched.

16.1 There is no evidence on record which would demonstrate that Mr Santosh Ji acted for or on behalf of the respondent/plaintiff. As a matter of fact, PW-1, in his testimony, has stated that Mr Santosh Ji was a man who was dismissed from service.

17. Thus, for the foregoing reasons, we find no good reason to interfere with the impugned judgment.

18. The appeal is, accordingly, dismissed.

19. A certified copy of the decree will be issued to the appellant/defendant on payment of the deficit court fee.

19.1 CM No.32251/2024 is disposed of, in the aforesaid terms.



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20. Consequently, pending applications shall stand closed.
21. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MAY 28, 2024/aj

Signature Not Verified

Digitally Signed By: VIPIN
KUMAR RAI

Signing Date: 04.06.2024
16:19:44

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