IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 05.08.2024

\+ **RFA (COMM) 211/2023**

NAGPAL FABRICS PVT. LTD. ..... Appellant

versus

SH. RAJEEV GULATI AND ANR. ..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Rajiv Mehra with Mr Jagjit Singh, Advocates with AR of the Company.
For the Respondents : Mr M.N. Jha and Ms Meenakshi, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MS JUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J

INTRODUCTION

1. The appellant has filed the present appeal impugning a judgment dated 11.07.2023 (hereafter *the impugned judgment*) passed by the learned Commercial Court whereby the suit instituted by the appellant being CS(COMM) 1224/2022 captioned *Nagpal Fabrics Pvt. Ltd. v. Sh. Rajeev Gulati and Anr.*, was dismissed.

2. The appellant had filed the aforementioned suit for recovery of a sum of ₹20,16,632/- along with *pendente lite* and future interest at the rate of 18% per annum. It is the appellant's case that it had supplied fabric to M/s Gulati Enterprises (arrayed as defendant no.2 in the suit) for an aggregate price of ₹19,45,801/-. In addition to seeking recovery of the said amount, the appellant had also sought recovery of interest at the rate of 8% per annum with effect from 16.11.2021 till April, 2022 quantified at ₹70,831/-.

3. The appellant (plaintiff in the aforementioned suit – hereafter also referred to as *the plaintiff*), is a private limited company and carries on its business of supplying different types of clothes on cash and credit basis.

4. Respondent no.1 (arrayed as defendant no.1 in the suit) is an individual and it is not disputed that he carries on business in the name and style of M/s Gulati Enterprises (defendant no.2 in the suit). Respondent no.2's identity is not separate or independent of respondent no.1. Thus, the aforementioned suit was instituted by the appellant for recovery of the amount from respondent no.1 (hereafter also referred to as *the defendant*).

5. The learned Commercial Court found that the plaintiff had failed to establish that it had delivered the goods (fabrics), as claimed, to the defendant. The learned Commercial Court did not accept the plaintiff's case that it had received a cheque of ₹10,00,000/- from the defendant as consideration for the goods. It, accordingly, dismissed the suit instituted

by the plaintiff. Aggrieved by the same, the plaintiff preferred the present appeal.

THE PLAINTIFF'S CASE

6. It is the plaintiff's case that it had supplied fabric to the defendant. It had also raised invoices for the goods supplied. The details of the said invoices are set out below:

"S.NO.	INVOICE NO.	DATE	AMOUNT
1.	5962	01.11.2021	Rs. 95,015/-
2.	5966	01.11.2021	Rs. 99,141/-
3.	5967	01.11.2021	Rs. 94,965/-
4.	5972	01.11.2021	Rs. 48,064/-
5.	6044	02.11.2021	Rs. 91,014/-
6.	6077	03.11.2021	Rs. 99,561/-
7.	6078	03.11.2021	Rs. 96,180/-
8.	6147	08.11.2021	Rs. 97,004/-
9.	6214	09.11.2021	Rs. 96,194/-
10.	6219	09.11.2021	Rs. 87,003/-
11.	6233	09.11.2021	Rs. 97,885/-
12.	6235	09.11.2021	Rs. 74,798/-
13.	6236	09.11.2021	Rs. 90,959/-
14.	6191	09.11.2021	Rs. 98,648/-

15.	6362	11.11.2021	Rs. 99,488/-
16.	6368	11.11.2021	Rs. 98,525/-
17.	6460	13.11.2021	Rs. 95,794/-
18.	6461	13.11.2021	Rs. 94,603/-
19.	6473	13.11.2021	Rs. 91,350/-
20.	6480	13.11.2021	Rs. 99,656/-
21.	6515	15.11.2021	Rs. 99,954/-
		TOTAL	**Rs. 19,45,801/-"**

7. The plaintiff claimed that the goods supplied were received by the defendant in good condition and without any complaint as to the quantity and quality of the goods. The defendant had signed the invoices and affixed the seal of its sole proprietorship concern – M/s Gulati Enterprises as an acknowledgement of the amount due.

8. It claimed that the defendant had handed over a cheque bearing no.346762 dated 27.11.2021 [the date of the cheque in question has been erroneously mentioned as 22.11.2021 instead of 27.11.2021 in the impugned judgment] for a sum of ₹10,00,000/- drawn on Union Bank of India, Chandni Chowk Branch, Delhi-110006 as part payment of the goods supplied. The said cheque was signed by the defendant's father, Sh. Arjun Dev Gulati. The plaintiff had deposited the cheque in its bank account maintained with HDFC Bank Ltd., Mahalaxmi Building, Chandni Chowk, Delhi on 30.11.2021. However, the same was dishonored and returned with the remarks "CONTACT DRAWER

DRAWEE BANK" under the cover of a memo dated 07.12.2021. The plaintiff claimed that it had approached the defendant and thereafter, became aware that Sh. Arjun Dev Gulati, who had signed the cheque, had expired but the date of his demise was not disclosed.

9. The plaintiff alleged that the defendant had played foul and had induced it to supply fabrics or goods for a sum of ₹19,45,801/- on a representation that it would pay for the same, but had handed over a cheque, which he had no intention to honour.

10. The plaintiff sent a legal notice dated 05.01.2022 (Ex.PW1/27) calling upon the defendant to pay the outstanding amount of ₹19,45,801/- along with interest at the rate of 8% per annum with effect from 16.11.2021. But the defendant responded to the legal notice disputing the claims made by the plaintiff.

11. The plaintiff, thereafter, lodged a written complaint dated 05.01.2022 with Police Station Lahori Gate. However, since no action was taken, the plaintiff filed a criminal complaint under Section 200 of the Code of Criminal Procedure, 1973 (hereafter *the Cr.P.C.*) along with an application under Section 156(3) of Cr.P.C. seeking registration of an FIR under Sections 415, 417, 420, 468 and 471 of the Indian Penal Code, 1860. The said complaint (CC No.427/2022) is stated to be pending before the concerned learned Metropolitan Magistrate.

12. After filing the complaint, the plaintiff endeavored to resolve the disputes through pre-institution mediation in terms of Section 12A of

the Commercial Courts Act, 2015. The same was a non-starter. The plaintiff, thereafter, filed the aforementioned suit.

THE DEFENCE

13. The defendant contested the suit. He claimed that the goods were never supplied. He claimed that he did not have any commercial relationship or dealing with the plaintiff company. He stated that he had neither placed any order for purchase of fabrics nor were such goods supplied to him.

14. The defendant disputed that he had signed the invoices or put the seal of M/s. Gulati Enterprises on the invoices (Ex.PW-1/3 to Ex.PW-1/23) raised by the plaintiff, as an acknowledgement of receipt of the goods. The defendant claimed that the signatures and the seal of M/s Gulati Enterprises on the invoices raised by the plaintiff are forged and fabricated. He claimed that he became aware of the invoices for the goods allegedly supplied through his Chartered Accountant from the Goods and Services Tax (GST) portal during the course of preparing GST Returns for the month of December, 2021. He stated that since the defendant had not placed any order for supply of goods with the plaintiff, the plaintiff did not claim any GST (by Input Tax Credit) in respect of the alleged invoices. He claimed that he had, after making inquiries about the plaintiff, made a complaint with the Police Station Kotwali on 24.12.2021, which was recorded by a DD Entry made on 28.12.2021.

15. The defendant claimed that prior to 17.11.2017, his father Sh. Arjun Dev Gulati was carrying on the business under the name M/s.

Gulati Enterprises as its sole proprietor. However, he ceased to be the sole proprietor with effect from 17.11.2017 and the defendant became the sole proprietor of M/s Gulati Enterprises. He claimed that the banks were also informed about the said change and the change in signatory on 17.11.2017.

16. The defendant claimed that he has sent a letter dated 21.11.2020 (Ex.DW-1/2) to the Manager, Union Bank of India, Chandni Chowk Branch, Delhi – 110006, requesting him to destroy all cheques excluding the cheques under the series which were in current use. The defendant claimed that in view of the said letter, the earlier cheques which were not issued pursuant to any transaction were invalidated.

17. The defendant stated that his father, Late Sh. Arjun Dev Gulati expired on 19.11.2021 and the news of his demise was known in the market. He claimed that Sh. Yogesh Nagpal, one of the Directors of the plaintiff company had also visited the shop of the defendant to condole the death of Sh. Arjun Dev Gulati some days after his demise. He also stated that the defendant's shop was closed after the demise of Sh. Arjun Dev Gulati and had reopened on the fifth day after the fourth day rituals were performed.

18. The defendant also claimed that the plaintiff had somehow come into the possession of a cheque signed by Sh. Arjun Dev Gulati and was fraudulently misusing the same.

THE TRIAL

19. On the basis of pleadings, the learned Commercial Court framed the following issues:

i. "Whether the suit is bereft of any cause of action and is liable to be dismissed, as alleged by the defendants? (OPD)

ii. Whether the plaintiff has played a fraud upon the defendant and as the cheques in question were never issued to the plaintiff company against any liability, as alleged by the defendants? (OPD)

iii. Whether the plaintiff is entitled for recovery of the decretal amount as prayed for? (OPP)

iv. Whether the plaintiff is entitled for the interest, if any. If so, at what rate and for which period? (OPP)

v. Relief."

20. The plaintiff examined Sh. Narender Kumar (PW-1), who was stated to be its manager and its authorized representative, in support of its case. Further, the plaintiff examined Mr. Vipin Kumar (PW-2), who is Assistant Ahlmad in the court of Sh. Mayank Aggarwal, learned Metropolitan Magistrate for production of original documents; PW-3 being SI George Kutty and PW-4 being SI Rakesh Deswal to prove the complaints given to the police station; PW-5 being Tushar Bali, Manager of HDFC Bank, Chandni Chowk Branch, Mahalaxmi Building, Delhi-110006 to prove record of bank of the plaintiff, and PW-6 being Ravinder Kumar Rajak, Manager of the bank of the defendant.

21. The defendant examined DW-1 being Rajeev Gulati in support of its case.

22. The learned Commercial Court had after evaluation of evidence had decided issue no.1 in favour of the plaintiff, however, decided the remaining issues in favour of the defendant.

23. The learned Commercial Court rejected the plaintiff's claim that the cheque in question of ₹10,00,000/- was handed over by the defendant and held that the same was obtained by the plaintiff from "somewhere/someone else". The learned Commercial Court doubted the claim that the cheque was handed over to the plaintiff on 22.11.2021 as claimed. In addition, the learned Commercial Court found that the plaintiff had failed to establish that the cheque was issued in consideration of the goods supplied.

REASONS AND CONCLUSION

24. The principal issue to be addressed is whether the plaintiff had supplied the goods covered under the invoices in question and whether the defendant was obliged to pay the invoiced amount. The onus to establish that it had delivered the goods rested with the plaintiff. The plaintiff had examined its Manager (Sh. Narender Kumar, PW-1). He had furnished an affidavit affirming that the defendant was running the business under the name and style of M/s Gulati Enterprises and that the plaintiff had supplied goods to the defendant on verbal orders against the invoices it claimed. He also claimed that the defendant had handed over a cheque bearing no.346762 dated 27.11.2021 for a sum of ₹10,00,000/- (Ex PW1/25), which was deposited by the plaintiff with its bank (HDFC Bank Ltd.) on 30.11.2021 and was returned dishonored under cover of the return memo dated 07.12.2021 (Ex.PW1/26).

25. In his cross-examination, he testified that he knew the defendant for the last seven to eight years and his father Late Sh. Arjun Dev Gulati was in constant contact with the directors of the plaintiff. He testified that he had recently become aware that the defendant had become the proprietor of M/s. Gulati Enterprises after the cheque in question had been dishonoured. He testified that the goods involved in the suit were supplied on credit basis and the usual credit term was 25 to 30 days. He was cross-examined in regard to the receipt of verbal orders as affirmed by him in the affidavit. In this regard, he testified that a number of verbal orders (possibly 14 to 15 in number) were received. He also testified that such orders were received by the Directors of plaintiff company and he had no knowledge in what manner they had received those verbal orders. He also volunteered that such orders may have been received telephonically and also in person.

26. It is apparent from his cross-examination that PW-1 had no direct knowledge of when and how verbal purchase orders for the goods in question had been received from the defendant. In regard to delivery of goods, he stated that the employees of the defendant used to pick up the goods from the premises of the plaintiff. However, he stated that he used to sit on the third floor of the office and could not tell the name of the employee of the defendant that had accepted delivery of the goods. He also claimed that he had not noticed any employee of the defendant receiving the goods. He accepted that there were CCTV cameras in the office of the plaintiff, but no CCTV footage of any employee of the defendant accepting delivery of the goods were placed on record.

27. It is, plainly, evident from PW-1's testimony and cross-examination that he had no personal knowledge of the delivery of the goods and therefore, his deposition that the goods covered under the invoices had been delivered to the defendant cannot be relied upon to establish the same. The plaintiff had not produced any other evidence to establish that the goods in question had been delivered. Although PW-1 in his testimony had stated that the goods had been collected by the employee(s) of the defendant, there was no acknowledgment by any employee of the defendant for the same. PW-1 also did not know the identity of the employee(s) who had collected the goods in question from the plaintiff's office.

28. It is difficult to accept that goods would be delivered to any person without recording an acknowledgement at the time of delivery. However, no document acknowledging the delivery were produced.

29. It is contended on behalf of the plaintiff that the invoices had been signed by the defendant and also bore the seal of M/s Gulati Enterprises and the same was an acknowledgement of the delivery of the goods. However, the defendant has denied his signatures on the invoices and has claimed that his signatures as well as the seal are forged and fabricated. In this regard, it is relevant to note that PW-1 in his cross-examination stated that the employee(s) of the defendant used to carry the invoices along with the goods. He claimed that two copies of the invoices were handed over to the employee(s) while handing over the goods. This, clearly, establishes that the defendant had not put his signatures on the invoices at the time of delivery of the goods. Further,

there is no evidence as to when the invoices signed by the defendant were returned to the plaintiff company. PW-1 had also testified that he had not seen the defendant putting his signature on the invoices or his writing. He fairly stated that he could not identify the signatures of the defendant on the invoices which were exhibited.

30. Since there was no other evidence or material on record to establish the delivery of the goods, the plaintiff's case that the goods were, in fact, delivered to the defendant remains unproved.

31. The plaintiff's case largely rested on the cheque of ₹10,00,000/- (Ex.PW1/25). PW-1 had testified in his cross-examination that the cheque was received at the counter installed at the ground floor of the premises of the plaintiff and was received about seven to eight days prior to its presentation. He also testified that the cheque was presented on 27/28.11.2021 (admittedly, incorrectly noted as 27/28.12.2021).

32. It is material to note that it was the plaintiff's case that the defendant had handed over the cheque in question, however, there is no material to establish that the defendant had handed over the cheque to the plaintiff. The plaintiff is unable to establish as to who had received the cheque in question. According to Sh. Narender Kumar (PW-1), the cheque in question was received at the counter installed at the ground floor, however, the person who has allegedly received the cheque had not been examined. The plaintiff has also not produced any Receipt Book maintained in the normal course of business evidencing receipt of the cheque at the counter or issuance of the receipt thereof.

33. Admittedly, the cheque was not signed by the defendant. Mr. Rajeev Gulati (DW-1) had deposed that the cheque in question (cheque bearing no.346762) was a part of the series of cheques that were in use in November, 2017, prior to him becoming the proprietor of M/s. Gulati Enterprises on 17.11.2017. The said deposition remained unrebutted as the plaintiff had not led any evidence to raise any doubt in respect of the same.

34. DW-1 produced a certificate dated 22.03.2022 (Ex.DW1/1) from the Union Bank of India certifying that the Cash Credit account of M/s. Gulati Enterprises (having Account No.307105040000140) was transferred from the defendant's father Sh. Arjun Dev Gulati to the defendant in the records of the bank with effect from 17.11.2017 pursuant to a request letter dated 25.07.2017. In addition, the defendant had also produced a letter dated 21.11.2020 (Ex.DW1/2) sent to the Manager, Union Bank of India requesting that all cheques except the series of cheques which were currently in use, be destroyed and the cheque in question was not amongst the series that was stated to be in use (cheques bearing numbers 566031 to 566080, 566081 to 566130 and 566131 to 566180).

35. The evidence obtaining in the present case clearly establishes the following:

(i) that M/s Gulati Enterprises is the sole proprietorship concern of the defendant;

(ii) that the cheque in question (Ex.PW-1/25) was not signed by the proprietor of M/s Gulati Enterprises;

(iii) that the series of cheques pertaining to the cheque in question were not in use after November, 2017 and;

(iv) that the delivery of the cheque in question by the defendant to the plaintiff remained unproved.

36. The plaintiff has been unable to establish that the defendant had delivered the cheque in question to the plaintiff.

37. The defendant (Sh. Rajeev Gulati, DW-1) also deposed that his father had expired on 19.11.2021. According to Sh. Narender Kumar (PW-1), the cheque was deposited on 27/28.11.2021 which was seven or eight days after receipt of the cheque in question. If the testimony of PW-1 is correct, it would mean that the cheque in question was received on 19/20.11.2021 (which was around the time of demise of Sh. Arjun Dev Gulati). However, it is averred in the plaint that the cheque in question was deposited on 30.11.2021. If the same is accepted, then the cheque was allegedly received by the plaintiff at its counter around 22/23.11.2021, which was after the demise of Sh. Arjun Dev Gulati.

38. Sh. Rajeev Gulati (DW-1) had also testified that the shop (M/s. Gulati Enterprises) remained shut for a period of four days after the demise of Mr. Arjun Dev Gulati. This raises serious doubts to the plaintiff's case that it had received the cheque during the said period.

39. DW-1 also produced a statement (Ex.DW1/10), which indicated that the cheques of the series bearing nos. 33346651, 33346701 and 33346751 – which would include the cheque in question (Ex.PW1/25)

– was issued on 08.11.2017. DW-1 was cross-examined in regard to his deposition in this respect. He was specifically asked whether he could identify the document pertaining to the issuance of the series of cheques which included the cheque bearing number 346762 (Ex.PW1/25). He referred to Ex.DW1/10 as including the relevant entry. The plaintiff has not produced any evidence to counter the defendant's testimony that the cheque leaves of the relevant series (which included the cheque in question) were issued by the Union Bank of India in November, 2017.

40. The possession of cheque (Ex.PW-1/25), which was allegedly received by the plaintiff after the person whose signature was affixed on the cheque had expired, coupled with lack of evidence establishing the receipt of the cheque from the defendant at the material time, does not establish the plaintiff's case that the supply of goods stands acknowledged by virtue of receipt of the cheque in question.

41. Apart from the plaintiff failing to establish that it had supplied the goods, there are several other aspects that warrant questioning the petitioner's case regarding delivery of the goods. It is noticed that all invoices were below a sum of ₹1,00,000/- and several invoices were raised on the same date. Illustratively, four invoices were raised on 01.11.2021 and six invoices were raised on 09.11.2021. The plaintiff had provided no explanation why multiple invoices were raised on the same date. It was contended on behalf of the defendant before the learned Commercial Court that the same was done to cover up the non-production of E-way Bills. The E-way Bills would establish the

movement of goods but no such E-way Bill was produced. It was contended that any claim for an invoice over ₹1,00,000/- could be easily questioned on account of lack of supporting E-way bill, which was mandatory for goods above the specified value. Thus, the plaintiff has issued invoices for an amount below the specified value. The learned counsel appearing for the plaintiff was unable to effectively counter the said submission. It was also admitted that prior to the transaction in question, that is, the supply of goods during the period 01.11.2021 to 15.11.2021 against twenty-one invoices, there were no prior transactions between the plaintiff and the defendant. Notwithstanding the same, the goods were allegedly supplied by the plaintiff on credit. The learned Commercial Court had raised doubts as to the supply of goods in this manner to an entity with which there were no prior dealings.

42. In view of the above, we concur with the decision of the learned Commercial Court that the plaintiff has failed to establish its case that it had delivered the goods against invoices raised and was thus, entitled to recover the consideration for the same.

43. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

AUGUST 05, 2024
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