



2024:DHC:7464-DB



\$~59

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 25.09.2024***

+ RFA(COMM) 407/2024
RAVI BAJAJ DESIGNS PVT. LTD.APPELLANT
Through: Mr.Vineet Mehta, Adv.

versus

ARUN AGGARWALRESPONDENT
Through: None.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (ORAL)****CM APPL. 56617/2024 (Exemption)**

1. Allowed, subject to all just exceptions.

RFA(COMM) 407/2024 & CM APPL. 56616/2024

2. This appeal has been filed challenging the Judgment and Decree dated 06.07.2024 passed by the learned District Judge, Commercial Courts-09, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as 'Trial Court') in CS(COMM) 2248/2022 titled ***Arun Aggarwal v. Ravi Bajaj Designs Private Limited***, decreeing the suit in favour of the respondent for a sum of Rs.4,90,215/- along with interest at the rate of 10% per annum on the decretal amount from the date of filing of the suit, that is, 26.09.2022, till the realisation, along with cost.

3. The above suit was filed by the respondent *inter alia* claiming that it has supplied various varieties of fabric, especially suit and cloth



fabric, on credit basis to the appellant from January, 2017. The appellant had made part payments against the invoices raised by the respondent, leaving a balance of Rs.4,90,215/-.

4. In spite of service of Legal Notice dated 28.12.2019, as the appellant failed to pay the suit amount, the respondent first initiated pre-litigation mediation, which also failed, and, thereafter, filed the abovementioned suit praying for a decree of Rs.5,30,215/- along with *pendente lite* and future interest at the rate of 21% per annum.

5. The appellant contested the above suit by stating that though it had received goods worth Rs.8,25,090/- in accordance with invoices relied upon by the respondent, it made a payment of Rs.3,34,873/- to one Mr.Gaurav of Bansal Textiles, who was the actual supplier of the fabric material to the appellant. The appellant further claimed that it has returned the fabric material worth Rs.4,90,215/- to Mr.Gaurav *vide* challan no.218 book no.5 dated 14.05.2019 as it was defective and of sub-standard quality.

6. The appellant further contended that the respondent had issued a Debit Note No.7 dated 14.05.2019 for a sum of Rs.4,90,215/- towards the fabric material returned by the appellant, therefore, there was no liability outstanding from the appellant to the respondent.

7. The respondent examined himself as PW1 and reiterated the contents of the plaint. For the appellant, the appellant examined Sh.Sarvar Neer as DW1, who also reiterated the contents of the defence.

8. The learned District Judge by the Impugned Judgment and Decree, has decreed the suit observing therein that the appellant has



failed to prove the return of the goods to the respondent and, therefore, is liable to pay for the said goods as per the invoices raised by the respondent.

9. The learned counsel for the appellant submits that the learned District Judge has failed to appreciate that the goods were supplied to the appellant by Mr.Gaurav, who unfortunately was not traceable at the relevant time. He submits that the appellant has now discovered the address of the said Mr.Gaurav and, therefore, another opportunity should be given to the appellant to lead further evidence to prove its case.

10. He submits that there was no privity of contract between the appellant and the respondent and, therefore, the appellant cannot be made liable for the amount claimed by the respondent.

11. The learned counsel for the appellant further submits that the Debit Note dated 14.05.2019 was accepted by the learned District Judge only for the reason that the appellant had failed to file the original thereof on record. He submits that now the original of that document has also been recovered and, therefore, the appellant should be granted an opportunity to prove the same.

12. We have considered the submissions made by the learned counsel for the appellant, however, find no merit in the same.

13. It must be remembered that this appeal arises from a commercial suit raising a commercial dispute. There are special procedures prescribed for such suits so as to expedite their adjudication process. The object and intent of the Commercial Courts Act, 2015 would be defeated if the unsuccessful party in such suit is



allowed to reopen the whole trial at an appellate stage by contending that the evidence, which it should have led before the learned Trial Court, be now allowed to be led before an Appellate Court.

14. In the present case, it is not denied by the appellant that the payments against the invoices, though in part, were made by the appellant in the name of the respondent. It claims that these dealings were through one Mr.Gaurav, however, this gentleman was not produced before the learned Trial Court. It is only now that the appellant states that it has re-discovered the whereabouts of Mr.Gaurav, but why these efforts were not made before the learned Trial Court is not explained.

15. The appellant does not deny that it has received the goods from the respondent against the invoices raised by the respondent. It has also made payments to the respondent, though it claims that these cheques were handed over to Mr. Gaurav Bansal. Therefore, the plea of the appellant that there was no privity of contract between the appellant and the respondent also cannot be accepted.

16. As far as the defence of the respondent that it had returned the goods worth Rs.4,90,215/- to Mr.Gaurav and ultimately to the respondent against a Debit Note dated 14.05.2019 is concerned, the same was not proved by the appellant. Only a photocopy of this alleged Debit Note was placed on record before the learned Trial Court. No effort was made by the appellant to seek permission of the Court to lead secondary evidence in case the original of that document was not available with it. In fact, as is now contended by the learned counsel for the appellant, the original of this document was available



with the appellant. Therefore, even otherwise, the appellant was not entitled to lead secondary evidence on the same and could only have proved the said document by producing it in original, as provided in Sections 59 and 60 of the Bhartiya Sakshya Adhiniyam, 2023. It is now too late in the day for the appellant to contend that the original of the said document has been recovered and the trial must be reopened for the same. Not only the appellant has not filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 for seeking leave to produce additional evidence, but even otherwise, has not been able to satisfy the conditions on basis of which such leave can be granted.

17. In view of the above, we find that as the appellant has admitted the receipt of the goods on the basis of the invoices raised by the respondent, and as the appellant has failed to prove its case of return of the goods, no fault can be found in the decree passed against the appellant.

18. Accordingly, the appeal alongwith the pending application is dismissed.

19. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

SEPTEMBER 25, 2024/ns/DG

Click here to check corrigendum, if any