(2011) 01 DEL CK 0346

In the Delhi High Court

Case No : Regular First Appeal No. 84 of 2000

A.K. Investments APPELLANT

Vs

Sh. Milan Dhar RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0346

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Rajeshwar K. Gupta and Sumati Sharma, for the Appellant; None, for the Respondent

Judgement

Valmiki J Mehta, J.—This case is on the "regular board" of this Court since 3.01.2011 and is effective item No. 1 on the "regular board" today but no one has appeared on behalf of the Respondent although it is 3.30 pm. I have therefore heard the learned Counsel for the Appellant and am proceeding to hear and dispose of the appeal.

2. The challenge by means of the present appeal is to the impugned judgment and decree dated 27.9.1999 of the trial court whereby the suit of the Respondent/Plaintiff has been decreed for Rs. 3,39,937.77 p. along with interest. The suit has been decreed on the basis of the balance appearing in the foot of the account on account of the relationship between the parties whereby the Appellant was the main broker and the Respondent/Plaintiff was the sub-broker of the Appellant.

3. The case of the Respondent/Plaintiff in the trial court was that there were dues to him on account of certain bad deliveries of shares and also value of certain shares which were sent to the Appellant for rectification and which were not received back. Claim was also made for an amount of Rs. 1,50,000/- towards cheques issued by the Appellant and which were dishonoured and for refund of the security deposit of Rs. 70,000/-.

4. The trial court has, in substance, relied basically upon the statement of account of the Appellant in the books of Respondent/Plaintiff for decreeing the suit. The suit was filed for recovery of Rs. 4,39,937.77 p and it has been decreed for Rs. 3,39,937.77 i.e., Rs. 1 lac less. This adjustment of Rs. 1 lac was given because the Respondent/Plaintiff admitted in his cross examination that after dishonor of the cheques issued by the Appellant of Rs. 1,50,000/-, he has received an amount of Rs. 1 lac in cash from the Appellant. I may note that in the plaint as also in the statement of account, this amount of Rs. 1 lac was shown to be payable i.e., the Respondent/Plaintiff had denied having received this amount of Rs. 1 lac.

5. As per Section 34 of the Indian Evidence Act, 1872 a mere statement of account is not sufficient to fasten a person with liability. This principle of law is, because there must be shown to be proper documents and vouchers of the transactions to backup the entries in the statement of account. The principle is that if simple entries in the statement of account are made, anyone can make entry in the statement of account and can fasten liability upon the other party. Of course, the exception of this rule is that if it is shown that the statement of account is maintained in the normal course of business and the said statement evokes credibility and acceptance, then, the suit on the basis of statement of account along with deposition in support of the said statement of account regularly and properly maintained in due course of business is sufficient to fasten the opposite party with liability.

6. I may note in the present case, admittedly, there are no documents and vouchers of the transactions with respect to the debit entries made by the Respondent/Plaintiff in the statement of account of the Appellant which was maintained by the Respondent/Plaintiff in his books of account. Further, in my opinion, the statement of account filed by the Respondent/Plaintiff is such that the same does not inspire confidence because various entries which are of earlier date are found at a later date such as for bad delivery of shares. Since the statement of account is the basis of the decree passed by the trial court, and as I have said that the statement of account does not inspire credibility and confidence I may refer to the ending portion of the statement of account which has been argued by learned Counsel for the Appellant to challenge the authenticity, validity and credibility of the said statement of account. The last page of the statement of account is therefore reproduced as under:

Month & Date

PARTICULARS

FOLIO

DEBIT Rs. P.

CREDIT Rs.

P.

Dr. or Cr.

Balance Rs. P

xxxxx

xxxx

xxxxxx

xxxxx

xxxx

xxxx

xxx

xxxx

Xxxx

177

22.4.95

5 ICICI

5936

60

25.4.95

50 PREMIER VINYAL

1986

00

15

13.5.95

50 PREMIER VINYAL

1986

00

13.5.95

By Cash

25,000.00

1.5.95

Cash Received

1,00,000

00

1

26.5.95

100 RELIANCE INDUSTRIES

25060

40

1

27.5.95

100 VIDEOCON INTL.

13136

50

2

1.7.95

600 RELIANCE PETRO

11796

00

3762

5.7.95

400 RELIANCE PETRO

7982

95

3762

5.7.95

100 ITC LTD.

24757

25

3762

5.7.95

100 SCICI

7174

55

2,22731.06

1,73,000.00

25981

16

16.5.95

Cheque Recover 014140

1,00,000

00

18.5.95

Cheque recover by Bank

1,00,000.00

18.5.95

Recover cheque No. 0141141

50,000

00

20.5.95

Cheque Return by Bank

50,000.00

2,22731.06

June 95

Bad Delivery Given in June 95

12,000.00

21.5.94

Security Deposit Given on 21.5.94 Divident on Bad Delivery share Bad

70,000.00 5,000.00 43000.00 87,20671

Delivery share 95 to 27.with us Interest 16.5. 5.96

4,39,937.77

Certified that the total amount outstanding covered as per accounts maintained in the normal course of business.

7. A reference to the aforesaid entries shows that the entry of May, 1995 is after the entry of July, 1995. Further, the entry of June, 1995 is also after the entry of July, 1995 and there is an entry of May, 1994 appearing right at the very end. Clearly, the statement of account is not such which can be said to have been regularly maintained in the ordinary course of business because statement of accounts which are maintained in the regular and ordinary course of business would not contain jumbled up entries. The counsel for the Appellant has also correctly argued that the last entry of interest is on the basis that the complete dues are payable as stated in the statement of account, however, the trial court has decreed the suit for this entire amount of interest of Rs. 87,206.71 although the said amount had to be proportionately reduced considering that the suit decreed was for Rs. 1 lac less than what was prayed in the suit and the total amount prayed to be decreed was inclusive of the interest of Rs. 87,206.71.

8. The net conclusion of the above is that the statement of account as relied upon by the Respondent/Plaintiff is not credible and cannot be relied upon to fasten liability. However, I cannot but fail to note that the Appellant/Defendant has not filed though it could have filed its statement of account because after all there were running transactions over a long period between the two parties and surely, a broker such as the Appellant would have in fact been maintaining the statement of account of the Respondent/Plaintiff in its books of account. Also, it is not disputed by the Appellant that it had received a security deposit of Rs. 70,000/- from the Respondent.

Accordingly, since, there is an undisputed amount of Rs. 70,000/- lying with the Appellant on account of the said amount having been furnished as a security to the Appellant by the Respondent, the suit is therefore entitled to be decreed for the said sum of Rs. 70,000/- without anything more.

9. The impugned judgment and decree is therefore set aside. The suit will therefore stand decreed for a sum of Rs. 70,000/- with pendente lite and future interest till realization at 12% per annum. Decree sheet be drawn up accordingly. The appeal is therefore disposed of as partly allowed. Parties are left to bear their own costs. Trial court record be sent back.