(2011) 03 DEL CK 0042

In the Delhi High Court

Case No : Regular First Appeal No. 529 of 1999

Foot Style (A partnership firm) APPELLANT

Vs

Bata India Ltd. RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Partnership Act, 1932 — Section 19(2)

Citation : (2011) 03 DEL CK 0042

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : D.N. Rao, for the Appellant; Raman Kapur, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this regular first appeal u/s 96 of the Code of Civil Procedure, 1908, is to the impugned judgment and decree dated 10.5.1999 whereby the suit of the Appellant/Plaintiff for recovery of Rs. 2,11,620/- on account of goods (being footwear) supplied to the Respondent/ Defendant was dismissed. The reason for dismissal of the suit was that though it was not disputed by the Respondent/Defendant that goods were received, however, what was contended by the Respondent/Defendant and accepted by the trial court was that the dues of the Respondent/Defendant towards the Appellant/ Plaintiff were to be adjusted against the dues which were payable to the Respondent/Defendant by a sister concern of the Appellant/Plaintiff, M/s Ess Cee Footwear. The partner Ramesh Chopra of the Plaintiff firm was also a partner of M/s. Ess Cee Footwear in which the other partner was Swaran Chopra-brother of Ramesh Chopra.

2. The trial court has relied upon the letter Ex.D-1 dated 14.12.1989, written by Ramesh Chopra, the partner of the Appellant/Plaintiff firm to the Respondent/ Defendant to accept the plea of adjustment. The relevant portion of this letter reads as under:

We do agree that the Ess Cee Footwear Co., has to pay the claim which has been given by M/s Bata India Limited. At present we are running one firm i.e. M/s Foot Style. In this firm also supplies do not so high that the funds can be diverted from this firm to dead firm M/s Ess Cee Footwear Co. Even than we are ready to take the liability of the claims of M/s Ess Cee Footwear Co. which will be payable in easy monthly instalments.

Still we shall again request your goodself to please look into the matter and allow our (Sick Unit) sister concern M/s Ess Cee Footwear Co., to start production and supply goods to M/s Bata India Ltd. so that it will be easy for M/s Ess Cee Footwear Co., to pay the claims in fast movement. It is our humble request once again for consideration.

3. The trial court has also noted that this aspect of adjustment was also mentioned in the letter Ex.PW1/5 dated 13.9.1991 sent by the Respondent / Defendant to the Plaintiff and which was not objected to by the Appellant/ Plaintiff. The relevant portion of this letter Ex.PW1/5 reads as under:

We find from the records that M/s Ess Cee footwear, Delhi has a debit balance of Rs. 1,01,483.01 in their ledger with us. As per your letter of authority dated 14.12.89, the above mentioned debit of Rs. 1,01,483.01 t be paid by M/s Foot Style, Delhi We find from our record that the following Hundies of M/s F. Style are lying with us.

Hundi Date Bill No. Date Amount No. 37. 9.9.90 F S 31 32 22.6.90 27,991.20 36. 8.9.90 F S 51 31.8.90 12,506.04 37. 14.10.90 52 53 27.9.90 35,938.00 38. 14.10.90 54 1.10.90 6,881.17 39. 23.10.90 55 17.10.90 10,496.70 39. 23.10.90 56 25.10.90 6,334.40 ------------ Total 1,00,237.51 ------------

Hence, the payment due for Hundis of M/s Foot Style is just at par of the debit of M/s Ess Cee Footwear to be realized by us. Considered the above four points we are not in a position to release your Hundies.

4. The trial court was, therefore, wholly justified in dismissing the suit by holding that the Respondent/Defendant was entitled to adjustment of its dues against the dues which were payable by M/s Ess Cee Footwear to the Respondent/ Defendant. The trial court has also arrived at a finding of fact that Sh. Ramesh Kumar Chopra and his brother Sh. Swaran Kumar Chopra were the partners of M/ s Ess Cee Footwear Company. The trial court has noted that the suit on behalf of M/s Ess Cee Footwear Co. against the Respondent/Defendant was filed through Mr. Ramesh Kumar Chopra, the author of Ex.D-1. The trial court has noted the statement recorded of Mr. Ramesh Kumar Chopra under Order 10 CPC where he clearly admitted that he had written the letter dated 14.12.1989 Ex.D-1. In this context, paras 12 to 14, and 17 of the impugned judgment are relevant and the same read as under:

12. The record reveals that my Ld. predecessor had recorded the statement of Shri Ramesh Chopra under Order 10 Code of Civil Procedure. Shri Ramesh

Chopra had clearly, specifically and unequivocally admitted having written letter dated 14.12.1989. He stated that he as well as his brother Swaran Chopra, who was also present in the court on that day are the partners of M/s Ess Cee Footwear Co. He explained that, although, he had written a letter to the Defendant that the letter dated 14.12.1989 written by him, on behalf of the Plaintiff, b e not given effect to , yet he had not filed any such letter on the record. It is interesting to note that the above said letter mentioned by Shri Ramesh Chopra did not see the light of the day till the eleventh hour. In absence of this letter, the value of the case of the Plaintiff enervates. It is also interesting to note that in his statement recorded as PW1, Sh. Ramesh Chopra admitted that he had made statement dated 11.9.95, in the court, and his statement is correct. He also admitted that Shri Swaran Chopra was still present in the court on that day as well. Shri Ramesh Chopra also admitted that after Ex.PW-1/5, the Defendant did not claim the amount which was recoverable from Ms. Ess Cee Footwear. He, however, explained that the question of demanding the amount of M/s. Ess Cee Footwear would not have arisen as they have filed a suit before the Hon''ble High Court for recovery of Rs. 12,00,000/- against the Defendant.

13. On the other hand, Shri B.S. Dass, DW1, explained that they have not claimed the amount which was due from M/s E Ss Cee Footwear Co. because of Ex.PW1/5. He further explained that the Plaintiff did not raise any objection or protest against the letter Ex.PW1/5. There is no evidence, worth the name, which may go to show that there is any protest, word, or syllable that the Plaintiff had objected to Ex.PW1/5. The statement made by Shri Ramesh Chopra on 11.9.95 that he had written a letter not to give effect to letter Ex.D-1, appears to have been made out of whole cloth and is not substantiated by cogent and convincing evidence. Consequently, this issue cannot be ducked in the way the Plaintiff wants. This is well known axiom of law that men may tell lies but the documents cannot.

14. In absence of any letter of protest the evidence produced by the Defendant, particularly, in Ex.D-1 gets preponderance over the rest. It must be borne in mind that nobody has called into question the authority of Shri Ramesh Chopra, in writing letter Ex.D-1. There is no evidence which may go to show that it had been withdrawn or some protest had been raised. Consequently, Ex.D-1 puts the Defendant''s case in an impregnable position. This documentary evidence of immense importance has substance and, it can do without frills.

...

17. Further-more, the more non-production of the account-books or account-books properly maintained, does not cut much ice, particularly, when Ex.D-1 and Ex.PW1/5 are available on the record. Therefore, there is hardly any necessity of the account-books. Admissions made by both the parties are available on the record, and, therefore, the production and non-production of the books of account has no relevance. It is, also interesting to note that the Plaintiff, too, has not produced its own books of accounts. For all these reasons, I find that the

story propounded by the Plaintiff does not just stack up. His claim hardly squares up with the realities which have cropped up in the evidence. As a matter of fact, the Plaintiff does not have a bone to pick with the Defendant.

5. I agree with the aforesaid findings and conclusions of the trial court as I do not find any illegality or perversity in the said findings. The counsel for the Appellant firstly contended that the Respondent/Defendant should not have been held entitled to adjustment towards the amount due from M/s Ess Cee Footwear. This contention is liable to be rejected in view of Ex.D1 which specifically allowed the adjustment and Ex.PW1/5 to which there was no objection although the factum of adjustment in terms of Ex.D1 was mentioned in Ex.PW1/5. The next argument was that the Respondent/Defendant was not entitled to adjustment because an adjustment entry was not found in the books of account of M/s Ess Cee Footwear nor any notice of adjustment was given. I do not find that there is any legal provision which disentitles the Respondent/Defendant to an adjustment although there is a document executed on behalf of the Plaintiff entitling adjustment and simply because the adjustment entry is not found in the statement of account. Adjustment entries are only consequential entries and the rights actually flow from the agreement which entitles the adjustment. In the present case, Ex.D-1 gave the entitlement of adjustment to the Respondent/ Defendant, and therefore, the trial court was justified in giving adjustment to the Respondent/Defendant for dues payable by it to the Appellant/Plaintiff against the dues payable to the Respondent/Defendant by M/s Ess Cee Footwear Co. The learned Counsel for the Appellant next contended that since there was no reply given by the Respondent/Defendant to the notice of demand given by the Appellant/Plaintiff hence no adjustment can be made. The answer to this argument is that in a civil suit there are always points and evidences for and against each party and ultimately, the entire evidence in the case, both documentary and oral, has to be considered so as to decide the case on a balance of probabilities. I do not find that non-reply to a notice of demand/ adjustment by the Respondent/Defendant is such so as to disentitle the claim of adjustment in the face of the documents Ex.PW1/5 and Ex.D1. The next argument raised by the learned Counsel for the Appellant was that the Respondent/Defendant ought to have filed a suit for recovery against M/s Ess Cee Footwear Co. I do not think that this argument is correct because once the Respondent/Defendant had a right to adjustment there was no need to file a suit for recovery.

6. After the arguments were concluded and I started dictating the judgment in Court, there were repeated interruptions by the counsel for the Appellant and therefore I decided to dictate the balance portion of the judgment in the chamber. The counsels then left, but, later on the counsel for the Appellant appeared before this Court and sought liberty to place on record judgments. This was allowed on the presumption that the judgments would be with reference to the arguments raised. However a reference to the judgments showed that the same pertained not to an argument which was advanced but to a new argument

of lack of authority in a partner to compromise in terms of Section 19(2) of the Partnership Act, 1932. This practice to quietly slip in judgments on new points is to be deprecated as the opposite counsel does not get an opportunity to rebut the same. I am however dealing with the new argument and the judgments relied upon by the counsel for the Appellant inasmuch as I find that there is mention of this argument in the impugned judgment. The contention/argument on behalf of the Appellant seems to be that one of the partners of the Appellant/ Plaintiff firm Sh. Ramesh Chopra could not bind the firm through a compromise inasmuch there was another partner Sh. Attar Chand Chopra in the partnership firm. Reliance is placed upon, in this regard, on the judgments reported as Raghavaveera Sons and Others Vs. Mrs. Padmavathi, , Chainraj Ramchand Vs. V.S. Narayanaswamy and Others, Dalichand V. Parekh Vs. Mathuradas Ravji, and Rati Lal Nanji and Others Vs. Uttam Lal Sarcar and Another, Before I deal with the judgments, I must mention that though the suit was filed through Sh. Attar Chopra, the only evidence in the suit led on behalf of the Appellant/Plaintiff was of Sh. Ramesh Chopra as PW-1. Also, Attar Chand Chopra is none else than the father of Sh. Ramesh Chopra. Even the present appeal has been filed through Ramesh Chopra and who has sworn the affidavit in support of the appeal. In my opinion, the defence of Section 19(2) of the Partnership Act, 1932 would not be available to the Appellant/Plaintiff because the said provision is meant to protect other partners of the partnership firm who would not like their claims to be reduced on account of one of the partners giving up or compromising the claim of the partnership firm. This principle will not apply when this argument is used as the ruse to avoid a liability, more so, when no other partner has ever objected to the compromise of the dues of the Appellant/Plaintiff as against the dues of M/ s. Ess Cee Footwear company. I have already stated that the suit and the appeal have been prosecuted by Sh. Ramesh Chopra and therefore it is Ramesh Chopra who is trying to play fast and loose at the same time because on the one hand Mr. Ramesh Chopra claims that he as one partner cannot compromise the claim on behalf of the partnership firm/Appellant/Plaintiff and yet again the same Ramesh Chopra cannot claim that the firm should be given the benefit of Section 19(2) of the Partnership Act, 1932. The defence of Section 19(2), if at all available, ought to have been on behalf of the other partner Attar Chopra and who has not taken this defence. So far as Ramesh Chopra is concerned he is stopped from taking this defence as he is the signatory to Ex.D-1 dated 14.12.1989. The principal underlining Section 19(2) cannot and ought not to be applied to defraud the third person when raised by the partner who himself has compromised. The beneficial principal of Section 19(2) of the Partnership Act, 1932 is meant to protect the other genuine partners of the partnership firm whose entitlement may be reduced by a reckless, fraudulent or illegal act of a partner. However, that principal cannot be applied in the facts of the present case where Ramesh Chopra is the be all and end all so far as the partnership firm is concerned. Further the so called act of a person in violation of Section 19(2) can always be either expressly or impliedly, ratified by the firm. In my opinion there is quite clearly a ratification by the firm of the action of Ramesh Chopra in executing Ex.D1 because no reply was sent to the letter Ex.PW1/5 of the Respondent/Defendant. The decision in the case of Raghavaveera Sons (supra) only lays down that partner of a non-trading firm cannot bind other partners for a hundi drawn on account of trading transaction. Importantly, however, the said decision lays down the principle that the provision of Section 19(2) will not apply when the firm is otherwise doing business and the act of a partner of the firm is part and parcel of his doing the business as a partner of the firm. Thus, the principle of Section 19(2) of the Partnership Act, 1932 is not applicable where the act of the partner is done in usual course of business. In the facts of the present case, the letter Ex.D1 dated 14.12.1989 is also in the ordinary course of business because there was a near identity of both the Appellant/Plaintiff firm and M/s. Ess Cee Footwear company as it was Ramesh Chopra who was dealing with the Respondent/Defendant on behalf of both the firms and it was Ramesh Chopra who was the only witness who appeared on behalf of the Appellant/ Plaintiff and also filed and prosecuted the present appeal. The decision in the case of Raghavaveera Sons (supra), therefore, would not apply in the facts of the present case, and in fact, the principal therein laid down by reference to lindley on partnership will go against the Appellant/Plaintiff. The decision in the case of Chainraj Ramchand (supra) also can be distinguished on the basis of the same reasoning whereby the decision in the case of Raghavaveera Sons (supra) has been distinguished. The decisions in the case of Rati Lal (supra) has no application because all that is stated in the said judgment is that representation by one partner will not bind the other partner of the firm. However, as already stated above, in a business partnership, the general rule is otherwise and representation by one partner will also bind the other partner of the firm. In any case, the said judgment has no application as the facts of the said case were totally different from the facts of the present case. The decision in the case of Dalichand (supra) would also not apply because it deals with the position where one partner sought to set off his own separate debt against the debt due to the firm.

In view of the above, the principle enshrined in Section 19(2) of the Partnership Act, 1932 cannot come to the aid of the Appellant/Plaintiff and which argument of the Appellant/Plaintiff is accordingly rejected.

7. In view of the above, I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by this Court in appeal. The appeal is, therefore, dismissed leaving the parties to bear their own costs. Trial court record be sent back.