
(2012) 04 DEL CK 0328

In the Delhi High Court

Case No : Regular First Appeal No. 369-71 of 2006

Ms Lubeman Additives (P) Ltd. and Ors

APPELLANT

Vs

Ms Lubriol Worldwide Inc.

RESPONDENT

Date of Decision : 18-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 14 Rule 1, Order 14 Rule 2, 96

Citation : (2012) 192 DLT 86

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Damini Khaira, for the Appellant;

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—Mr. H.D. Talwani, Advocate appears for Mr. S.K. Chaudhary, Advocate and states that Mr. S.K. Chaudhary had appeared in this case for the respondent, however, no vakalatnama was received from the respondent. The counsel, therefore, states that neither he nor Mr. S.K. Chaudhary can appear for the respondent, inasmuch as, no instructions are received and nor is any vakalatnama filed on record. 2. The challenge by means of this Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 20.5.2006 decreeing the suit for recovery of Rs. 16,25,000/- alongwith interest @ 9% per annum. The suit has been decreed without any trial or framing of issues, by allowing an application under Order 12 Rule 6 CPC filed by the respondent/plaintiff.

2. The facts of the case are that the respondent/plaintiff filed a suit against the appellants alleging that the sum of US\$ 25,000/- was sent to the appellants with respect to a joint venture agreement which did not fructify. It was pleaded that there were disputes with respect to percentage of share holding in the joint venture company which was to be floated and, therefore, the joint venture could not take off. It was further pleaded that the appellants/defendants had admitted,

vide its letter dated 19.6.2001 the receipt of US\$ 25,000/- and, therefore, the suit for recovery should be decreed.

3. Before the trial Court, the appellants/defendants besides taking other defences on merits specifically pleaded that the amount which was sent by the respondent/plaintiff to the appellants/defendants was spent towards research and development work for the products being lubricants, oil, etc. and therefore the amount sent is not recoverable.

4. It is settled law that disputed questions of fact cannot be decided without trial. The mere fact that the appellants admit having received US\$ 25,000/- cannot mean that the suit could be straightaway decreed under Order 12 Rule 6 CPC without the defence of the appellants/defendants being considered that the amount which was received of US\$ 25,000/- could not be recovered as it was spent for research and development, and which defence the appellants/defendants should be allowed to substantiate during trial. Merely because the respondent/plaintiff may have a very strong case cannot mean that the suit can be decreed under Order 12 Rule 6 CPC. Once there are disputed questions of facts, as per Order 14 Rules 1 and 2 CPC issues have to be framed and only after leading of evidence, can the suit be decided. Since the appellants/defendants have disputed the entitlement of the respondent/plaintiff to receive US\$ 25,000/-, inasmuch as, the same is said to have been spent in research and development, this is a factual issue which requires trial.

5. The appeal is, therefore, accepted and the impugned judgment dated 20.5.2006 is set aside. Trial Court will now hear and dispose of the suit in accordance with law after allowing the parties to lead their respective evidences. Nothing contained in today's judgment is a reflection on merits of the case of either of the parties and the trial Court will hear and dispose of the suit uninfluenced by any observations as per the contentions of the parties made in this judgment. Parties to appear before the District and Sessions Judge, Delhi on 23rd May, 2012, and on which date, the District and Sessions Judge, Delhi will mark the suit for disposal to a competent Court in accordance with law. 8. Since the respondent/plaintiff is not represented in this Court, the concerned competent Court will issue notice to the respondent/plaintiff as also to its counsel before proceeding further in the matter. Trial Court record be sent back so as to be available to the District and Sessions Judge, Delhi on the date fixed before him.