
(2012) 05 DEL CK 0267

In the Delhi High Court

Case No : Regular First Appeal No. 390 of 2004

M/s Sangeeta Jewels Pvt. Ltd. and Others

APPELLANT

Vs

Sh. Ajay Kumar Jain

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Contract Act, 1872 — Section 70

Negotiable Instruments Act, 1881 (NI) — Section 118, 80

Citation : (2012) 7 AD 297 : (2012) 3 BC 184 : (2012) 189 DLT 635 : (2012) 114 SCL 395

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sudhir K. Makkar, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—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 23.1.2001 decreeing the suit of the respondent/plaintiff filed under Order 37 CPC on a dishonoured cheque by dismissing the leave to defend application. It was pleaded by the respondent/plaintiff that the dishonoured cheque of Rs. 3,00,000/- was towards the repayment of a cash loan which was granted to the appellants/defendants. The facts of the case are that the respondent/plaintiff pleaded that he gave a loan totalling to Rs. 3,00,000/- to the appellants/defendants in three parts, i.e. Rs. 1,00,000/- on 3.10.1994, Rs. 1,00,000/- on 8.10.1994 and a further sum of Rs. 1,00,000/- on 12.10.1994. The loan was given in cash, and the appellants/defendants had issued receipts for the same. It was pleaded that the receipts were given back by the respondent/plaintiff to the appellants/defendants when the defendant No. 2/appellant No. 2 issued and gave to the respondent/plaintiff a cheque for Rs. 3,00,000/- bearing No. 903586 dated 12.11.1995 in discharge of the loan. It was pleaded that in addition to giving the cheque towards the loan amount, the

defendant No. 2 also paid a sum of Rs. 5,100/- in cash towards interest. The subject cheque for Rs. 3,00,000/- was dishonoured and when the respondent/plaintiff called upon the appellants/defendants to make payment, the appellants No. 2 and 3, husband and wife, who owned the appellant No. 1/defendant No. 1-company informed the respondent/plaintiff that they were going to convert the appellant No. 1/defendant No. 1-company into a public limited company and would be collecting huge amount of money by selling of the shares of the company and at which time the loan amount would be paid back. However, neither the defendant No. 1/appellant No. 1-company was converted into public limited company nor was the amount of Rs. 3,00,000/- paid, forcing the respondent/plaintiff to serve a legal notice dated 1.11.1997 calling for payment of the amount alongwith interest at 18% per annum. No reply was given to this legal notice and therefore the subject suit was filed for recovery of the principal amount of loan alongwith interest at 18% per annum.

2. The appellants/defendants entered appearance and thereafter filed a leave to defend application which has been dismissed by the impugned judgment.

3. The appellants/defendants denied that there was any transaction of the loans between the parties. It is pleaded that the cheque was given because the respondent/plaintiff said that he would arrange the services of a corporate consultant for the appellant No. 1/defendant No. 1-company who would obtain clearances on its behalf for taking out public issue of shares in the market. Since the respondent/plaintiff failed to arrange the services of the corporate consultant as promised, the cheque had been wrongly presented.

4. Trial Court has dismissed the leave to defend application by making the following pertinent observations:

As has already been noticed hereinabove, defendant No. 2, Sh. Vipin Sehgal, has not denied that the cheque in question dated 10.12.94 was executed by him. The only explanation that he has given for his having issued the cheque is that the plaintiff held out a promise to defendant No. 1 that he would engage for it the services of some corporate consultant and obtain all clearances on its behalf to enable it to take out public issue of its shares in the market. The explanation given does not inspire confidence. The reasons are three fold. Firstly, there is nothing in writing between the parties about such dealing. Secondly, assuming the whole dealing between them was oral, it is difficult to believe that even after the plaintiff failed to arrange consultancy services the defendants made no protest to him either oral or in writing. There is no averment in the application for leave to defend that any protest whatsoever was made. Thirdly, if the defendants had really issued the cheque of Rs. 3 lacs for obtaining consultancy services, it is inconceivable that on the failure of the plaintiff to arrange for the same they accepted such lapse on his part without demur. If nothing more, the defendants could at least have written to the plaintiff to return them the cheque dated 12.11.94 or would have asked him not to present the same for encashment on account of his failure to perform his obligation. The defendants

chose to keep quiet and did not even respond to the legal notice of the plaintiff dated 1.11.97 which was sent almost three years after the cheque was issued. The silence on the part of the defendants was unbusiness like. It is only for the first time in the suit that the defendants have set up the defence that the cheque was issued without consideration. It is, too late in the day to raise any such plea. The defendants that all the opportunities and all the time at their disposal to write to the plaintiff that he had backed out from its promise to arrange consultancy services, and as such, the cheque issued by defendant No. 2 was no longer valid for payment.

(underlining added)

5. I completely agree with the reasoning given by the Trial Court, inasmuch as firstly, a cheque which is issued is always ordinarily issued for consideration and for which there is a presumption of consideration for issuing of the cheque vide Section 118(a) of the Negotiable Instruments Act, 1881. The presumption of the cheque not being issued for consideration could have been rebutted if the appellants/defendants would have shown that there was in fact an agreement whereby the respondent/plaintiff was to provide the services of a corporate consultant and which the appellants failed to do. The Trial Court has held that the defence is moonshine inasmuch as admittedly there was no written agreement qua the story of appointment of corporate consultant, and it was difficult to believe that the appellants/defendants did not protest in writing to the respondent/plaintiff even after the services of a corporate consultant were not provided. Trial Court rightly notes that if the services of the corporate consultant were not provided by the respondent/plaintiff, the least the appellants/defendants could have done was to ask for return of the cheque and which admittedly was not done. Finally, and importantly, the appellants/defendants chose to keep quite and did not even reply to the legal notice of the respondent/plaintiff dated 1.11.1997. In my opinion, therefore the defence of the appellants/defendants was moonshine and was rightly rejected by the Trial Court by dismissing the leave to defend application.

6. Learned counsel for the appellants/defendants contended that the respondent/plaintiff had filed another suit for recovery of Rs. 1,72,000/-, an aspect which is mentioned by the Trial Court in the impugned judgment, however, though the cheque which was the subject matter of the present suit was already dishonoured when the other suit was filed, no mention was made in the said suit with respect to the present dishonoured cheque of Rs. 3,00,000/- and therefore, it is urged that no amount was due under the dishonoured cheque. I frankly fail to understand this argument inasmuch as there is no requirement of law that if a suit is filed for recovery of an amount due on a dishonoured cheque, and which is thus based on a specific/particular cause of action, yet the respondent/plaintiff in the said suit must necessarily mention each and every other cause of action of other dishonoured cheques between the parties. Surely, this is not the legal position and therefore I do not find any legal force in argument as urged on

behalf of the appellant.

7. The other issue which was urged on behalf of the appellants/defendants was that the appellants No. 2 and 3 could not be made liable for the dues of the appellant No. 1/defendant No. 1 who had issued a cheque.

In this regard the Trial Court has observed that the appellant No. 1/defendant No. 1-company is an alter ego of the appellants No. 2 and 3/defendants No. 2 and 3, and on the corporate veil being lifted, it would become clear that the corporate entity was used to defraud people and not encourage trade and commerce. Trial Court has relied upon the judgment of the Supreme Court in the case of Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another, and made the following pertinent observations on this particular issue:

The objection of the defendant that the suit is bad for mis-joinder of parties also has no basis. A perusal of the memo of parties shows that Sh. Vipin Sehgal who issued the cheque on behalf of defendant No. 1 is none other than the husband of Smt. Sangeeta Sehgal who is defendant No. 3 and in whose name defendant No. 1 namely M/s Sangeeta Jewels Pvt. Ltd. is being run. It is apparent from this that the defendant No. 1 company is a household-affair of defendants No. 2 & 3 and that defendant No. 2 has been shown as Director of Defendant No. 1 for name-sake only. In this context it will be appropriate to refer to a judgment of the Apex Court reported in Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another,

It has been held in the aforementioned judgment that the concept of a corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.

It follows from the above judgment that a court is competent to pierce through the veil of a Private Limited Company to find out the true entities of the persons constituting the same. I have no manner of doubt that defendants No. 2 & 3 who are husband and wife formed defendant No. 1 company to run the same as a joint venture. Hence, I hold that all the three defendants are liable to pay the cheque amount of Rs. 3 lacs jointly and severally.

(underlining added)

8. Though in law liability of a shareholder is different from liability of a company, however, considering the facts of the present case where the Trial Court has held that the appellant No. 1/defendant No. 1-company is basically consisting only of the shareholders being appellants No. 2 and 3/defendants No. 2 and 3, I do not find that the conclusion of the Trial Court needs to be interfered with inasmuch

as even in this appeal, the appellants/defendants have not filed any details of the shareholding of the appellant No. 1/defendant No. 1-company so as to dislodge the conclusion of the Trial Court made in this regard.

9. To the conclusion of the Trial Court of lifting of the corporate veil in the peculiar facts of the present case I may add that as per Section 70 of the Contract Act, 1872, and which provision deals with quasi contract i.e. where there is no contract, it is provided that anyone who receives benefits of monies, in fact must repay back those monies. Since the shareholding pattern of the appellant No. 1/defendant No. 1 has not even been filed before this Court, it is obvious that the cheque was issued by the appellant No. 1/defendant No. 1, and, the benefit of the loan for which this cheque was issued was in fact taken through the appellant No. 1/defendant No. 1 by the appellants No. 2 and 3/defendants No. 2 and 3. In the facts of the present case therefore I do not find any need to interfere with the findings of the Trial Court, inasmuch as, if I allow such a plea, it would amount to using the corporate veil to defraud the creditors.

10. Finally, I put it to the counsel for the appellants/defendants as to what was the result of the suit which was filed by the respondent/plaintiff for recovery of Rs. 1,72,000/- and which was at the relevant time pending before the Court of Smt. Manju Goel, ADJ, Delhi, and to which query of the Court counsel for the appellants/defendants states that he has no details at this time. In my opinion, this aspect is another aspect which should go against the appellants/defendants and show their malafides inasmuch as the impugned judgment has been passed almost 12 years back on 23.1.2001, and still the appellants/defendants have not filed the result of the proceedings of the suit for Rs. 1,72,000/- filed by the respondent/plaintiff against the appellants/defendants. My nagging doubt is really that the said suit may have possibly been decreed against the appellants/defendants and possibly, for that reason till date on the record there is nothing to show what was the result of the said legal proceedings.

11. I may note that the Trial Court has been in fact unduly liberal to the appellants/defendants who have done away with the monies of the respondent/plaintiff by awarding interest only at 12% per annum pendente lite and simple although as per the statutory mandate of Section 80 of the Negotiable Instruments Act, 1881 once a cheque is dishonoured, interest at 18% per annum has to be granted on the amount of the dishonoured cheque. In any case, I need not dilate on this aspect any further inasmuch as the respondent/plaintiff has not filed any cross appeal in this regard. In view of the above, I do not find any merit in the appeal which is accordingly dismissed. Parties are left to bear their own costs.