
(2011) 09 DEL CK 0272

In the Delhi High Court

Case No : Regular First Appeal No. 288 of 2001

Shri Roop Lal Jindal

APPELLANT

Vs

Edmond International and Others

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Partnership Act, 1932 — Section 69

Citation : (2011) 09 DEL CK 0272

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.K. Chaudhary, for the Appellant;

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—By this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 (Code of Civil Procedure) the Appellant/Plaintiff impugns the judgment and decree dated 14.3.2001, and by which judgment the suit of the Plaintiff/appellant was instead of being decreed for Rs. 2,03,03and.andand/- was only decreed for Rs. 12,2and6.25/-.

2. The facts of the case are that the Appellant/Plaintiff was the owner of two sole proprietorship concerns, namely, M/s. Deepak Handloom Industries and M/s. Sona Handlooms. The subject suit pertained to eight bills, exhibited as Ex. PW1/2 to Ex. PW1/9, which are of the period from 1.and.198and to and.9.198and, and by which the Appellant/Plaintiff through its proprietorship concern M/s. Deepak Handloom Industries supplied goods being Bukle fabrics to the Defendants. On the failure of the Defendants/respondents to pay the amounts due, the Appellant/Plaintiff had sent a legal notice dated 4.1.1988, Ex. PW1/38, and to which the Respondents/Defendants replied vide reply Ex. PW1/39. Since the Respondents/Defendants still failed to pay the amount due, the subject suit came to be filed.

3. In the written statement, the main defence of the Respondents/Defendants was that they did not have any dealing with M/s. Deepak Handloom Industries but had dealing with only M/s. Sona Handlooms which of course was admitted to be the sole proprietorship concern of the Appellant/Plaintiff. It was also simultaneously contended that goods supplied by M/s. Deepak Handloom Industries were defective and therefore no payment was due to M/s. Deepak Handloom Industries. It was also alleged that there was no privity of contract with M/s. Deepak Handloom Industries and the Respondents/Defendants only had a contract with M/s. Sona Handlooms. The Respondents/Defendants denied having received any material from M/s. Deepak Handloom Industries.

4. The Appellant/Plaintiff during the pendency of the suit amended the plaint to include besides M/s Deepak Handloom Industries, M/s. Sona Handlooms as a co-Plaintiff.

5. After pleadings were complete, the trial Court framed the following issues:

I Is the suit barred u/s 69 of the Partnership Act? OPD

II Is the suit bad for misjoinder of cause of action? OPD

III Is the suit barred by limitation? OPD

IV Is the suit maintainable in its present form?

V Was there any shortfall or defect in the supply of goods by the Plaintiffs to the Defendants? OPD

VI What amount is the Plaintiff entitled to recover against the goods supplied to the Defendants? OPP

VII Is the Plaintiff entitled to recover any interest from the Defendants? If so, at what rate? OPP

VIII Relief.

6. Issue Nos. I to V were held in favour of the Appellant/Plaintiff. Finding with respect to issue No. V is very relevant because finding on this issue showed that goods were in fact received from M/s. Deepak Handloom Industries and the Respondents/Defendants failed to prove that goods were defective or short supplied. The main issues are actually issue Nos. VI and VII with respect to entitlement of the Plaintiff/appellant to recover the suit amount.

7. While dealing with these issue numbers VI & VII, the trial Court has held that though the bills were of M/s. Deepak Handloom Industries, however, challans were of M/s. Sona Handlooms and therefore it was held that no goods were supplied by Deepak Handloom Industries. It was also found by the trial Court that it was an admitted fact that nothing was due to M/s. Sona Handlooms. The trial Court however also found that the Respondents had issued in favour of M/s. Deepak Handloom Industries a hundi and cheque, Ex. PW1/36 and Ex. PW1/31 respectively, which were with respect to bill Nos. 69, Ex. PW1/8 for a sum of Rs.

2and,060.8and/- and against which one bank draft of Rs. 20,000/- was found to have been received by the Appellant/Plaintiff. There was also a debit note of Rs. and,060.8and/- and therefore deducting Rs. 2and,060.8and/- from the amount of the hundi of Rs. 39,33and.12/- a decree for a sum of Rs. 12,2and6.25/- was passed in favour of the Appellant/Plaintiff.

8. In my opinion, the appeal deserved to succeed and the trial Court has fallen into a clear and obvious error in holding that M/s. Deepak Handloom Industries never supplied any goods to the Respondents/Defendants. Firstly, the case of the Respondents/Defendants in the trial Court was inconsistent and mutually irreconcilable because once it is admitted that goods were in fact received from M/s. Deepak Handloom Industries, and which were alleged to be defective and short supplied and consequently whereupon it was claimed that there was no liability, thereafter it did not lie in the mouth of the Respondents/Defendants to allege that there was no privity of contract with M/s. Deepak Handloom Industries. In any case, when a sole proprietor carries on business, in whatever name, the entitlement is still of the individual sole proprietor and the sole proprietor of both Deepak Handloom Industries & Sona Handloom was the Plaintiff/appellant. Once the Respondents/Defendants admitted having received goods from M/s. Deepak Handloom Industries and it failed to prove that goods were defective or short supplied, nothing further was required to establish the liability of the Respondents/Defendants. The trial Court has also erred in holding that merely because challans were of M/s. Sona Handlooms and bills were of M/s. Deepak Handloom Industries, no amount would be due to M/s. Deepak Handloom Industries. The logic employed by the trial Court is incorrect because goods may be supplied from any source, however, liability will be with respect to the entity which draws the bills and once the goods are found to be received, I really fail to understand the dispute which was raised on behalf of the Respondents/Defendants with respect to its liability to make payments for the goods received. Whatever doubt existed with respect to issue of privity of contract with M/s. Deepak Handloom Industries, and that no goods were received allegedly by the Respondents/Defendants, the same is removed by referring to the legal notice Ex. PW1/38 dated 4.1.1988 issued by the Appellant to the Defendant No. 1 partnership firm, and in which the details of the supply against different bills are mentioned in para 3 and, in reply to this notice the Respondents/Defendants vide Ex. PW1/39 only disputed the receipt of goods with respect to two bills dated 5.8.198and and and.9.198and not the six other bills. Therefore the trial Court ought to have held that with respect to six other bills there was no dispute. Also, the cheque Ex. PW1/31 dated 3.11.198and was issued by the Defendant No. 1/respondent No. 1 firm in favour of M/s. Deepak Handloom Industries once again clearly showing that there was no basis whatsoever in the defence that the Respondents did not receive any supply from M/s. Deepak Handloom Industries. Not only the cheque was issued but a hundi dated 14.8.198and Ex. PW1/36 was issued by the Appellant and accepted by the Respondent No. 1 firm towards the liability of one bill issued by M/s. Deepak

Handloom Industries and with respect to which the trial Court in any case granted the decree. Therefore, the impugned judgment and decree is clearly incongruous when it holds that the Appellant failed to prove any supply of goods for and on behalf of M/s. Deepak Handloom Industries. As already stated above, the bills were exhibited as Ex. PW1/2 to Ex. PW1/9 and the challans showing the supply of goods though in the name of M/s. Sona Handlooms, but yet showing the supply, were duly exhibited as Ex. PW1/10A to Ex. PW1/10D. An additional aspect also is that the Appellant/Plaintiff proved the receipt of the goods by the Defendant No. 3/partner on behalf of the Defendant No. 1/partnership firm and also by its employees including the driver one Mr. Tillu, however, neither the Defendant No. 3 was produced in the witness box nor was any document filed to show that the driver was not employed by the Respondents/Defendants.

9. A civil case is decided on balance of probabilities. The balance of probabilities requires that the subject suit be decreed inasmuch the bills were proved and exhibited, the challans were proved and exhibited, the legal notice and reply were proved and exhibited and one cheque and hundi issued in favour of M/s. Deepak Handloom Industries were also proved and exhibited. Therefore M/s. Deepak Handloom Industries, whose proprietor was the Appellant/Plaintiff/Sh. Roop Lal Jindal was entitled to decree for the suit amount.

10. I, therefore, hold that the suit of the Appellant/Plaintiff for recovery of Rs. 2,03,03and.andand/- is entitled to be decreed alongwith pendente lite and future interest @ 9% simple till payment and I decree to the same accordingly. The Appellant/Plaintiff will also be entitled to costs of this appeal. Appeal is accordingly allowed. Decree sheet be prepared. Trial Court record be sent back.