
(2009) 05 DEL CK 0147

In the Delhi High Court

Case No : Regular First Appeal No. 147 of 2009 and CM No. 5923 of 2009

V.K. Enterprises

APPELLANT

Vs

Shiva Steels

RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 1, Order 37 Rule 2, Order 37 Rule 3

Citation : (2009) 05 DEL CK 0147

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Harjinder Singh, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Appellant has filed this appeal challenging the judgment dated 30th September, 2008 passed by Additional District Judge, Delhi, vide which appellant's leave to defend application, was dismissed and suit of respondent, was decreed for Rs. 6,68,513/- together with costs and interest pendente lite and future @ 6% per annum.

2. Facts in brief are that respondent who is the sole proprietor of his firm, was having business transactions with the appellant. Appellant had been purchasing iron sheets on credit basis from the respondent. A sum of Rs. 4,42,724/- became due and appellant settled the accounts and acknowledged the liability of this amount. Respondent approached appellant several times and asked him to pay the amount. Appellant issued a cheque for sum of Rs. 3,50,000/- dated 11th October, 2006, towards part payment, which was signed by Sh. Pyare Lal, the sole proprietor of the appellant's firm. On presentation the same was dishonoured. A legal notice was sent. Since appellant failed to pay this amount, respondent filed the present suit under Order 37 Rules 1 & 2 of the CPC ("for short as "Code").

3. Appellant filed an application under Order 37 Rule 3 of the Code, seeking

permission to leave to defend. In the application, appellant stated that cheque for Rs. 3.5 lacs was issued towards security only and the same was issued by appellant on 11th October, 2000, but respondent forged the date of the cheque from 11th October, 2000 to 11th October, 2006, i.e. after six years and that too after altering the date of the cheque. Rest of the cheque was blank and appellant had put the date and signatures on the face of the cheque for security purpose.

4. It had been admitted by the appellant that he had been purchasing iron sheets from respondent. Last payment was made to the respondent for Rs. 25,000/- vide cheque, dated 27th September, 2004. The appellant owed only Rs. 1,18,230/- on 27th September, 2004 and the issues raised are genuine and triable.

5. It has been contended by learned Counsel for the appellant, that cheque in question was forged, since the date of the cheque has been changed and amount mentioned in the cheque was towards security only and not towards any other payment. The case of respondent is also time barred. Learned Counsel for the appellant in support of his contention cited a decision of Madras High Court, T. Kalavathy v. Veera Exports 2001 (2) JCC (HC) 37.

6. As per averments made in the application for leave to defend, appellant had business dealings with the respondent and appellant owed a sum of Rs. 1,18,230/- on 27th September, 2004. The main defence of the appellant is that the cheque in question was issued towards security only and respondent has forged the date of the cheque from 11th October, 2000 to 11th October, 2006. Rest of the cheque was blank and appellant had put date and signed on the face of the cheque for security purpose.

7. In reply to the legal notice, appellant had stated that the cheque was issued as security and only date was mentioned on it and other portion of the cheque was blank.

8. Appellant is taking contradictory stand, as on the one hand, in application for leave to contest, he states that date of the cheque was forged and rest of the cheque was blank, while in the same breath he states that he had put the date and signatures on the face of the cheque for the security purpose.

9. On the other hand, in reply to the legal notice, appellant's case is that, only date was mentioned on the cheque and other portion of cheque was blank.

10. Appellant has nowhere stated either in his leave application or in reply to the legal notice, that name of payee of cheque was also forged, nor he has stated that this cheque does not bear his signatures or his signatures has been forged. Only plea taken by the appellant is that, the date mentioned on the cheque has been altered and forged.

11. Appellant himself has placed on record, photocopy of the cheque at Page 15 of the paper book. There is no alteration, overwriting or cutting on the date of the cheque, which has been mentioned as "11th October, 2006".

12. Now coming to the plea taken up by the appellant that a sum of Rs. 3.5 lacs was given towards security. If Rs. 3.5 lacs was given towards security as earlier as on 11th October, 2000, then it is not clear as to why till date, the appellant has not asked for refund of this security amount. Interestingly, in leave application, it is nowhere mentioned as in what connection, this security amount was given. Was there any agreement to deposit security amount?

13. As per appellant's own case, he owed a sum of Rs. 1,18,230/- on 27th September, 2004. There is nothing on record to show that appellant till date has paid even this amount to the respondent.

14. Another feature in this case is that, in Para 6 of application for leave to defend, appellant had taken the stand, that he always put Roman "X" for the month of October. Para 6 of application reads as under;

That the defendant always put roman "X" for the October month and he specifically mentioned the date 11/X/2000 and the plaintiff altered/forged the date from 11/X/2000 to 11/10/2006.

15. As per the photocopy of the cheque, the date on the cheque mentioned is "11/10/2006" and not "11/X/2000".

16. The trial court also rejected this defence taken by the appellant observing;

Other than mere repudiation of the liability on the grounds of the cheque being misused by fabricating the date, no triable issue has been raised. The defendants contention that the date on the cheque has been altered from 2000 to 2006 by manipulating the "0" & "6" does not seem to be correct as the circle of "6" is smaller than the zeros in the figure of "2000". The defence of a blank cheque given by them also does not entitle them to escape their liability. The plaintiff has also relied upon the defendants own ledger extract, confirming the transactions and reflecting the balance of Rs. 4,42,724/- due to the plaintiff.

17. So, from the entire material available on record, I come to the conclusion that the defence raised by the appellant in its leave application are sham, most bogus and frivolous one. The only intention of the appellant is not to make the payment due, to the respondent. The case law cited is not at all applicable to the facts of the present case.

18. Under these circumstances, I do not find any infirmity or ambiguity in the judgment of the trial court. The appeal filed by the appellant is most bogus and frivolous one and the same is hereby dismissed with costs of Rs. 20,000/-.

19. Costs be deposited with the trial court within one month from today, failing which the trial court shall recover the same, in accordance with law.

20. Copy of this judgment be sent to trial court.

21. Trial court record be sent back.