M.K Kamboj vs Brijesh Arya on 27 March, 2025

Author: Subramonium Prasad

Bench: Subramonium Prasad

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of decision: 27th MARCH,
IN THE MATTER OF:
+ RFA(COMM) 85/2023 & CM APPL. 23229/2023
M.K KAMBOJ .....A
Through: Mr. Rajiv Kumar Sharma, Adv.

versus

BRIJESH ARYA .....Responde
Through: Mr. Rajeev Jain and Mr. Vinay Kumar Rai, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR
JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

1. The Appellant has filed the present appeal impugning the Judgment and decree dated 30.01.2023 passed by the learned District Judge (Commercial Court)-07, Central District, Tis Hazari Courts, Delhi in CS (COMM) 295/2019 titled as Shri Brijesh Arya v. M/s Electro Control & Switchgear through its Proprietor (hereinafter referred to as "Impugned Judgment").

2. The aforementioned commercial suit was filed by the Respondent/Plaintiff herein seeking recovery of Rs.5,12,762/-, along with interest from the Appellant/Defendant.

3. The facts as raised by the Respondent before the learned Trial Court are as follows:

> (i) The Appellant used to purchase goods from the Respondent and the delivery of such goods was taken by the Appellant from the office of the Respondent s firm at Chandni Chowk, Delhi,
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> (ii) The goods were purchased through invoices received between 26.04.2013 and 28.08.2013. Records of which were maintained by the Plaintiff/Respondent herein;

(iii) It is stated that in the plaint that the Defendant/Appellant herein used to make part-payments against the invoices, however, after the last of such part payment of Rs. 1,00,000/- on 19.10.2016,

no payment was made by the Appellant despite repeated requests rendering the total outstanding of Rs. 5,07,262/- against the Appellant;

(iv) By way of a legal notice dated 24.10.2018, the Respondent made a demand of Rs. 5,07,262/- from the Appellant, however, upon the failure of the Appellant to make good on such payment, the Respondent filed a suit for recovery against the Appellant before the learned Trial Court.

4. Per contra, the case of the Defendant/Appellant herein before the Trial Court was as follows:

> (i) That the suit was barred by limitation as the last invoice was dated 20.08.2013, and the period of three years came to an end on 19.08.2016;
>
> (ii) The part payment of Rs. 1,00,000/- made by the Appellant on 19.10.2016 did not extend the period of limitation and the Respondent never acknowledged the same;

(iii) The learned Trial Court did not have the territorial jurisdiction to adjudicate upon the Respondent s suit as the delivery of goods was done at the Appellant s place of business at Ghaziabad, Uttar Pradesh;

(iv) There existed an understanding between the parties insofar as the equipment unsold by the Appellant would be returned to the Respondent and the liability of the Appellant would only be limited to the goods actually sold by it;

(v) Pursuant to the aforesaid understanding, certain unsold equipment was returned to the Respondent on 11.08.2014 from the Appellant s place of business to the property of the Respondent at 34, Gagan Vihar, Delhi and the value of goods taken back by the Respondent were worth Rs. 3,53,910/-;

(vi) While handing over the equipment at the Respondent s place, a sum of Rs. 1,00,000/- was handed over by the Appellant to the Respondent;

(vii) The Appellant filed a balance sheet along with Income Tax Return for the year 2014-15 depicted the aforesaid amount of Rs. 3,53,910/- under the head of „indirect income and consequently got sent a notice dated 16.07.2019 from the Officer of the Commissioner, Central Goods & Service Tax, Noida against which a penalty was imposed on the Appellant which was duly paid;

5. In the above background, the learned Trial Court framed the following issues:-

> "1. Whether the suit of the Plaintiff is barred by limitation? OPD
>
> 2. Whether this court is not having jurisdiction to try and entertain this suit? OPD.
>
> 3. Whether the Plaintiff is entitled to recover the suit amount from the Defendant? OPP

4. Whether the Plaintiff is entitled to any interest? If so, to what extent and for what period? OPP

5. Relief."

6. The Appellant examined himself as DW-1 and also examined his employee, i.e., Assistant Manager (Purchase) Mr. Rajesh Kumar Pal, as DW-2. On the other hand, the Respondent was examined as PW-1.

7. At the outset, the learned Trial Court took note of the Respondent s case that the delivery of equipment was taken by the Appellant from the office of the Respondent at Chandni Chowk, Delhi. The Trial Court upheld the version put forth by the Respondent that the Appellant failed to discharge his burden to prove his narrative of goods being delivered at Ghaziabad, Uttar Pradesh. Resultantly, the learned Trial Court held that it had jurisdiction to adjudicate upon the Respondent s suit.

8. Insofar as the issue of limitation raised by the Appellant before the learned Trial Court is concerned, it was observed that as the Appellant had made a part payment of Rs.1,00,000/- on 19.10.2016, the same would extend the limitation in view of Section 19 of the Limitation Act.

9. It was further observed by the learned Trial Court that no evidence could be lead by the Appellant to the effect that any understanding existed between the parties which would result in limiting the Appellant's liability to only those goods that were sold by the Appellant.

10. It was also the case of the Appellant that on 11.08.2014 certain goods were transported by the Respondent from the place of business of the Appellant. However, the Respondent in his evidence by way of affidavit deposed, "on 11.08.2014, the unsold goods were got transported by the defendant from the place of business of the defendant and were unloaded at the residence/godown of the plaintiff at 34, Gagan Vihar near Preet Vihar, Delhi."

11. The Trial Court observed that Defendant's witness Rajesh Kumar Pal/DW-2, had given a contrasting statement insofar as claiming that he was instructed by the Appellant to hire a vehicle and load the goods as per the list of unsold goods and deliver it at the godown of the Plaintiff along with the cheque dated 11.04.2018 for Rs. 1,00,000/-. However, the Trial Court noted that this purported list of goods was not admitted by the Plaintiff neither was there any proof of delivery of any cheque dated 11.04.2018 for Rs.1,00,000/, the driver was not examined.

12. Insofar as the amount of outstanding liability against the Appellant was concerned, the learned Trial Court observed that a mere reflection of a sum of Rs.3,53,910/- as indirect income in the balance sheet of the Appellant filed along with its Income Tax Returns and a subsequent payment of penalty on such amount, was not sufficient to hold that the said amount was the worth of return of goods of Rs.3,53,910/-.

13. In light of the issues framed, evidence produced, witnesses examined as well as the arguments advanced by the parties, the learned Trial Court decreed the suit in favour of the Defendant for the sum of Rs.5,07,262/- along with pendente lite and future interest @ 12% per annum till realization.

14. By way of the present appeal, the Appellant has challenged the impugned Judgment inter alia on the following grounds:-

> (i) That since no evidence was led by the Respondent to depict the delivery of goods taken by the Appellant from the business premises of the Respondent at Chandni Chowk, Delhi, the learned Trial Court erroneously came to the conclusion it had jurisdiction to adjudicate upon the suit filed by the Respondent;
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> (ii) That the suit filed by the Respondent was not adequately verified as per the requirements under law;
>
> (iii) The learned Trial Court overlooked the balance sheet filed along with the Income Tax Return by the Appellant for the year 2014-15 which depicted the amount of Rs. 3,53,910/- being the value of goods returned to the Respondent as „indirect income .

15. Heard the learned Counsels for the Appellant and the Respondent.

16. The thrust of the argument of the learned Counsel for the Appellant is that the goods had been returned. The Appellant has only admitted that amount of Rs.3,35,910/- is due and payable and, therefore, the decree of Rs.5,07,262/- against the Appellant herein is unsustainable in law. No other argument has been advanced by the learned Counsel for the Appellant.

17. It is not disputed that the Appellant and Respondent had entered into a business relationship, wherein the Appellant took delivery of the Respondent s electrical equipment, which were eventually sold by the Appellant itself. These goods were collected by the Appellant from the office of the Respondent at Bhagirath Palace, Chandni Chowk, Delhi and against these purchases made by the Appellant, the Respondent raised invoices.

18. The case set up by the Appellant before the learned Trial Court as well as before this Court, is that the Appellant s liability against the invoices raised by the Respondent was reduced when equipment worth Rs. 3,53,910/- were taken back by the Respondent on 11.08.2014, using a vehicle bearing no. DL 01 KQ 1334 driven by one Rameshwar.

19. It was also the Appellant s plea that a post-dated cheque of Rs.

1,00,000/- dated 10.05.2015 was given to the Respondent while the equipment were being handed over. Though, according to the Appellant, this cheque was never encashed by the Respondent as there was an understanding between the parties that the Respondent would return this cheque and the Appellant would be clearing the dues by way of cash.

20. From the material on record, it is not discernible whether any cheque was handed over by the Appellant to the Respondent and if the same was returned back. If the cheque was returned to the Appellant, the same not being produced on record as evidence before the Trial Court. The Plaintiff/Respondent herein produced the ledger account. The Defendant/Appellant herein has not been able to demonstrate that the ledger account is faulty or that the amount was not due and payable.

21. Reliance placed by the learned Counsel for the Defendant/Appellant herein on the deposition of DW-2 to establish that the goods had been returned back and, therefore, the Trial Court has erred in decreeing a sum of Rs.5,07,262/- against the Appellant herein, does not cut any ice. Though DW-2 has deposed that the goods had been returned but the statement is not backed by any receipt demonstrating actual return of goods. The inference drawn by the Trial Court that sans any receipt it cannot be accepted that the goods had been returned, does not warrant interference by this Court. This Court is in agreement with the Trial Court that had the goods been returned, a receipt of the same would have been taken by the employee demonstrating return of the goods. Further the driver was not examined. Had the driver, being a third party, been examined, it would have lend credence to the statement given by the employee, who is an interested witness.

22. Right after the equipment was handed back to the Respondent, the Appellant had proceeded to file his Income Tax Return for the year 2014-15.

In the balance sheet submitted along with the ITR, the Appellant had reflected the price of returned goods, i.e., Rs. 3,53,910/- under the head of „indirect income and also paid a penalty of Rs. 66,006/- on the said amount to the GST Department. There is nothing on record to show that the goods were defective. There is no communication between the parties to show that the goods were defective. The mere ipse dixit of the Appellant that the goods were defective or that they were returned back cannot substitute the necessity of proof. Even though the first Appellate Court can come to a different conclusion on appreciation of facts, this Court feels that the facts have been correctly appreciated by the Trial Court not warranting any interference as the Appellant has not been able to establish that the Trial Court has committed a grave error in appreciating the facts in correct perspective.

23. The Appellant has not been able to render a cogent narrative as to whether any unsold goods were returned to the Respondent, which ultimately renders the question of reduction of Appellant s liability nugatory. As such, without any documentary proof in the form of any receipt or challan regarding the alleged handing over of the equipment on 11.08.2014, this Court is unable to find error in the findings of the learned Trial Court that the entire plea raised by the Appellant regarding the return of unsold goods on 11.08.2014 was fabricated.

24. Again, the ITR filed by the Appellant has been rightly held by the learned Trial Court to have no correlation to the value of goods returned to the Respondent, if any.

25. This Court is unable to find a lacuna in the findings of the learned Trial Court which have been arrived at on the basis of the evidences produced before it, witness statements and by a sound

application of mind.

Resultantly, this Court does not deem it fit to substitute its own conclusion for the one arrived at by the learned Trial Court, which in any event, stand on its own legs.

26. Though, learned Counsel for the Appellant has not advanced any arguments regarding limitation, this Court is of the opinion that it was an open and running account between the Plaintiff and the Defendant. Payments were being made periodically. There is no evidence to show that payments were being made invoice wise. Nor has it been argued that payments were made invoice wise. No question has been put to the Plaintiff to discredit the ledger and payment of Rs.1 lakh has been made in October, 2016. This Court is, therefore, of the opinion that the finding of limitation does not warrant any interference.

27. Conclusively, this Court is of the view that there is no error in the Impugned Judgment passed by the learned Trial Court.

28. For the above reasons, the present appeal is dismissed, and the judgment and decree of the learned Trial Court is affirmed and upheld. Pending applications, if any, are also dismissed.

29. No order as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 27, 2025 ap/hsk