
(2001) 09 DEL CK 0093

Delhi High Court

Case No: I.A. 2997 of 2001 and S. No. 1855/98

M/s Ganga Roller Flour
Mills Pvt. Ltd.

APPELLANT

Vs

M/s A.B. Industries
(Baba Bread)

RESPONDENT

Date of Decision: Sept. 12, 2001

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2001) 94 DLT 450 : (2002) 61 DRJ 537

Hon'ble Judges: Jiwan Dass Kapoor, J

Bench: Single Bench

Advocate: Ms Purnima Maheshwari, for the Appellant; Mr. Pradeep Gaur, for the Respondent

Final Decision: Dismissed

Judgement

J.D. Kapoor, J.

This is a suit for recovery of Rs.5,57,207.50 filed under Order 37 CPC.

2. The defendant has sought leave to contest mainly on the grounds: firstly that there was no privity of contract between the parties as to the sale of "maida"; secondly, the defendant has not received any bills whatsoever from the plaintiff and; thirdly, that the goods were being supplied to the defendant through M/s.R.S. Agency and the amount against dishonoured cheques has already been paid by the defendant to M/s.R.S.Agencies on 8.6.1998.

3. According to the plaintiff, which is a Roller Flour Mill and is engaged in the production and sale of wheat products, defendant had approached for supply of "maida" directly and not through M/s.R.S.Agencies. It is further averred that the defendant who manufactures breads, has been purchasing "maida" from the plaintiff on credit basis and the plaintiff has been supplying as per its orders and receiving payments of the outstanding bills from

time to time. The details of the orders received and supply received by the plaintiff from time to time particularly in April and May have been given to para 7 of the plaint. Admittedly, the defendant had issued 6 cheques in the name of the plaintiff for Bill Nos.189, 387, 400, 490 and 504 which when presented were dishonoured.

4. In order to controvert this plea, learned counsel for the defendant has referred to the letter dated 22.6.1998 allegedly written by the plaintiff to the defendant wherein it has been specifically mentioned that "maida" was supplied to the defendant through Sh.Tej Pal Singh of R.S.Agencies.

5. It is contended that cheques in question were issued much prior to the letter dated 22.6.1998 and had there been a direct dealing between the plaintiff and the defendant, the plaintiff would have referred to the factum of dishonouring of the cheques in the letter dated 22.6.1998 itself. The plaintiff did not do so as the defendant made the entire payment on 12.6.1998 to Mr.Raju of M/s.R.S.Agencies.

6. However, learned counsel for the plaintiff has refuted it effectively by contending that had payment against these cheques made to M/s.R.S.Agencies or even to the plaintiff, it would not have been specifically mentioned in the letter dated 22.6.1998 that defendant has agreed to clear all the bills of the plaintiff and there would have been no reference to the bills in respect of which dishonoured cheques were issued. Since defendant did not send any reply to this letter, inescapable inference is available that defendant had accepted the fact mentioned in the letter that some dues against bills in respect of which cheques were issued still remained unpaid. Mere denial by the defendant that defendant did not receive either the letter dated 22.6.1998 or the legal notice is not sufficient to controvert the contents thereof or to prove its claim of payment made to Mr.Raju of M/s.R.S.Agencies. Even otherwise the defendant has failed to produce any document in support of payment of dishonoured cheques or against the referred bills to Mr.Raju of M/s.R.S.Agencies.

7. The fact that cheques were issued in favor of the plaintiff by the defendant shows that defendant had ultimately agreed to pay the dues of the plaintiff directly to the plaintiff and not through M/s.R.S.Agencies. The contention that cheques were payable through M/s.R.S.Agencies is highly untenable and not acceptable. Merely because plaintiff has admitted that "maida" was being supplied through M/s.R.S.Agencies does not absolve the defendant of his liability from making payment of bills in respect of which cheques were directly issued in the name of the plaintiff. For this reason also the plea that since the plaintiff has not been able to show that ever in the past defendant has made any payment to the plaintiff either by way of cash or by way of cheques prima facie proves that defendant was having dealing through M/s.R.S.Agencies is of no avail.

8. According to the plaintiff in the past it has been receiving payments from the defendant and maintaining the running account and when the cheques in question got dishonoured, the defendant started negotiating the matter but when ultimately defendant did not make

payment that the letter dated 22.6.1998 was sent mentioning therein the bills against which payments were not received. It was because of failure of the negotiations and criminal complaint filed against the defendant u/s 138 of the Negotiable Instruments Act that the fact of dishonouring of the cheques was not mentioned in the said letter. However in the legal notice, these facts were specifically mentioned. Explanation appears to be plausible and hence acceptable.

9. In spite of plaintiff having warned the defendant that payment should not be made to any other person and it will do so at its own risk, still the defendant made payments through Mr.Raju of M/s.R.S.Agencies is very difficult to accept. On the contention that this warning of the plaintiff itself showed that dealings were through M/s.R.S.Agencies and not directly with the plaintiff. Even if it is presumed that "maida" was being supplied through M/s.R.S.Agencies still the fact remains that cheques were issued in favor of the plaintiff and this itself shows that the payment by way of cheques against the bills in question was intended to be made directly to the plaintiff. That is why the plaintiff has initiated criminal proceedings u/s 138 of the Negotiable Instruments Act against the defendant and not against M/s.R.S.Agencies.

9. It is a settled law that leave should not be granted as a matter of course. Unless and until there is substantial defense and pleas raised by the defendant give rise to triable issue, leave should be refused. However, it is only in those circumstances where defense can be made good if an opportunity is given to the defendant that the discretion should be exercised in favor of the defendant. In other words, if the affidavit discloses positive defense that reflects such state of facts that the defendant may succeed in establishing his defense to the plaintiff's claim, the defendant is entitled to leave to defend.

10. However, in the instant case, the defendant had issued cheques in favor of the plaintiff towards the bills against which supplies were made to the defendant. It is not understandable what made the defendant issue as many as five cheques in favor of the plaintiff without handing it over to M/s.R.S.Agencies or Mr.Raju.

11. In view of the aforesaid facts, I find that defendant has not been successful in bringing out such facts or as such defense that may entitle him to leave to contest. Application is hereby declined and dismissed.

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12. Suit is decreed with pendente lite and future interest @ 18% per annum with costs till realization.