

(2009) 09 DEL CK 0393

Delhi High Court

Case No: Regular First Appeal (OS) No. 93/07 and CM No's. 12155/08 and 12366/08

Oswal Chemicals and
Fertilizers Ltd.

APPELLANT

Vs

Lalit Kumar Bagla

RESPONDENT

Date of Decision: Sept. 1, 2009

Acts Referred:

- Evidence Act, 1872 - Section 114, 159, 73

Hon'ble Judges: Vikramajit Sen, J; V.K. Jain, J

Bench: Division Bench

Advocate: Rajiv Dutta, Kumar Dushyant Singh and F. Humayunisa, for the Appellant;
Arvind K. Nigam Pramit Kumar Ray and T.S. Ahuja, for the Respondent

Final Decision: Dismissed

Judgement

Vikramajit Sen, J.

The present Appeal arises out of the consolidated judgment passed by the Trial Court in the cross-suits filed by Bindal Agro Chemicals Ltd. and Mr. Lalit Kumar Bagla. CS(OS)789/1996 was a suit for permanent injunction and declaration filed by Bindal Agro Chemicals Ltd. against Mr. Lalit Kumar Bagla, a dealer in expensive cars seeking relief of declaration of ownership of a Rolls Royce car 1988 Model having Chassis No. ANH24457, Permanent Injunction restraining Mr. Lalit Kumar Bagla or his agents from taking back the possession of the car illegally or by unfair means and direction by Court to said Mr. Bagla to transfer the car in the name of Appellant Company and to handover all relevant documents of the said car.

2. In the Cross-suit, CS(OS) No. 1477/1994, filed by Mr. Bagla against Bindal Agro Chemicals Ltd. wherein Mr. Abhay Oswal, the Managing Director of the Company and his wife, Mrs. Aruna Oswal were also made parties, Mr. Bagla sought the recovery of Rupees 69,00,000 (Rupees Sixty Nine Lac Only), being the balance payment of the Rolls Royce Car.

3. Both the suits were clubbed together vide Order dated 19.1.1995 as the subject-matter in question in both the suits was the sale of the same Rolls Royce Car between the same parties.
4. The admitted position of fact in the Appeal before us is that the transaction included purchase of a green Balmoral 1986 Model Rolls Royce Car which initially was absolutely transferred to Bindal Agro Chemicals Ltd. for a consideration of Rupees 1.31 crores and stayed with them for a month. After a month, this 1986 Model Rolls Royce Car was replaced by a 1988 Model Rolls Royce. The gravamen of the dispute hinges on the question as to whether there was an oral agreement between the parties regarding an additional payment of Rupees 69,00,000, over and above Rupees 1.31 crores that was paid as full and final consideration by Bindal Agro Chemicals Ltd. for the 1986 Model.
5. The Trial Court, in the impugned Judgment, has believed the version presented by Mr. Bagla, basing his reasoning upon the probity of conduct of the parties and the testimonies of the witnesses from both sides in Court. Being an oral contract, there exists no written document to establish the same, except for a letter dated 28.10.1991 allegedly endorsed by Mr. Anil Bhalla. This letter is relied on as proof of liability of Rupees 69,00,000. Mr. Bhalla has throughout denied to have ever received this letter requesting them to make the balance payment of Rupees 69,00,000 towards the Blue Spur 1988 Model Rolls Royce Car. None of the parties have led any evidence of any handwriting expert to prove or disprove the veracity of signatures of Mr. Bhalla though an issue was specifically framed as to whether the signature of Mr. Anil Bhalla had been forged on the letter dated 28.10.1991. The Trial Court has, however, compared the signatures on the letter with those on admitted receipts and held that there appears to be no difference between the said signatures on the document. This examination by the learned Judge coupled with the inference drawn from the cross-examination of Mr. Bhalla led the learned Judge to conclude that the signatures on the said letter were, in fact, that of Mr. Bhalla which he has falsely denied.
6. The Trial Court has also drawn presumptions u/s 114 from the fact that Mr. and Mrs. Oswal who were arrayed as Defendant Nos. 2 and 3 did not appear in the Witness Box and concluded that by not stepping in the Witness Box that side has failed to prove its pleading in the Written Statement. The Trial Court has also come to the conclusion that the exchange of the two Rolls Royce of different models and of different years, would not have occurred without an additional consideration. Learned Judge has relied on the letter dated 28.10.1991 to quantify the additional consideration at Rupees 69,00,000 as claimed by Mr. Bagla.
7. The Trial Court finally concluded that there existed an oral agreement between the parties as claimed by the plaintiff, Mr. Bagla. In light of the undertaking given by the Defendant, in pursuance of Order dated 19.1.1995 the Trial Court awarded the sum of Rupees 69,00,000 along with interest at the rate of 18 per cent per annum

from 28.10.1991 and also the costs of litigation.

8. The Appellant before us, namely, Oswal Chemicals & Fertilizers Ltd. (erstwhile Bindal Agro Chemicals Ltd.) has launched a salvo against the impugned Judgment essentially on the finding arrived at by finding the testimony of Mr. Anil Bhalla, to be untrustworthy; and relying on the letter allegedly endorsed by Mr. Anil Bhalla. The learned Senior Counsel for the Appellant has vehemently argued that in absence of any evidence by an expert witness as to the veracity of the signatures on the letter, the Trial Court has erred in examining the signatures himself and arriving at a conclusion that the admitted signatures of Mr. Anil Bhalla on a receipt and that on the letter were the same. He has also sought to challenge the finding that Mr. Bhalla had falsely denied his signatures in the cross-examination and that he approbated and reprobated simultaneously in his cross examination. It is argued on the contrary that he was confronted with a tricky question by the counsel for the Respondents to which he got confused. It is stated that during the cross-examination, the Respondents' counsel cleverly played a trick by showing a document containing his signatures without showing the contents of the document to the witness and asked whether the signatures were his own. The witness, being a man of ordinary prudence, denied the signatures to be his own, but when the contents of the document were revealed, it turned out to be an admitted document on which the witness had earlier admitted his signatures. Thus, it is urged that the conduct of the Respondents was highly doubtful and any person of ordinary prudence would have fallen in the trap.

9. It has further been argued that Mr. Bhalla ought to have been allowed to refresh his memory by referring to any writing made by himself at the questioning and that it is settled law that where a witness has to depose to a larger number of transactions and those transactions are referred to or are mentioned in other documents, the Court examining the case should allow the deposing witness to refer to those documents while answering the question put to him in his examination as envisaged u/s 159 of Indian Evidence Act, 1872.

10. Besides the examination of Mr. Bhalla, the learned Senior counsel for the Appellant has also challenged the reasoning of the Trial Court that it is not necessary or mandatory that there has to be a written agreement in this behalf and that oral agreements are not uncommon in this trade, on the ground that where under law a document is required to be in writing, parties to such documents cannot be allowed to lead oral evidence. Learned Counsel has also challenged the presumption drawn by the Trial Court from the fact of non appearance of Mr. and Mrs. Oswal who were the defendants in that suit on the pretext that the car was purchased by the company and Mr. Anil Bhalla had made the transaction in capacity of the Director of the company and thus there was no requirement for them to be even made a party, even less being examined as witnesses. It is also being argued that such rare cars when sold in market do not have a price tag and that the older

model might fetch a better price than the later ones. It is argued that the finding of the learned Judge that it can hardly be expected that having sold a Rolls Royce car and having received the total consideration for the sale, Mr. Bagla would have exchanged the 1986 Green Balmoral Model with a two year later silver spur model for no added consideration at all.

11. These submissions of the Appellant have been vehemently contested by the learned Senior Counsel for the Respondents. Emphasis has been placed upon the uncontroverted fact that the Appellant had purchased the green Balmoral Rolls Royce of 1986 Model initially, which was replaced by a Blue Spur Rolls Royce Car of 1988 Model. This sequence of events, now admitted in the Appeal by the Appellant, was suppressed by the Appellant in his own Plaint and refuted in the Replication and denied in his Written Statement in the suit filed by the Respondents. The learned Senior Counsel for the Respondents has thus urged that the Appellant has not approached this Court with clean hands. Thus, the Appeal should be rejected at the very instance as the Appellant is now seeking to plead a different factual matrix from the one it urged in the Trial Court.

12. Secondly, the learned Senior Counsel for the Respondent has also urged that in the cross-examination of its witnesses, no suggestion was made by the Appellant that would support its contentions before us. There was no suggestion being made to plaintiff's witnesses in cross-examination to the effect that the 1988 model car was of the same price as the 1986 car, nor that the signatures of Mr. Anil Bhalla on the letter were forged. On the basis of this argument, learned Senior Counsel for the Respondent has sought to urge that the Appellant has not even tried to prove its own case before the Trial Court and no cogent evidence has been brought by it to substantiate its plea before us in this Appeal.

13. On hearing counsel for both the parties and perusing the testimonies and examination of witnesses, we are of the opinion that the Appellant has failed to make even a single plausible ground to assail the impugned Judgment. The argument regarding the illegality of the manner in which Mr. Bhalla was cross-examined, viz. by showing the signatures on a document, contents of which were hidden, is unsustainable. It is commonplace that a genuine witness in such a situation would either wrongly admit the false signatures to be his own or would say that he is not sure. The stand taken by Mr. Bhalla evidences the fact that the admitted signatures were denied under a predetermination to deny the signatures on the letter dated 28.10.1991. This is the only written document on which Respondent was relying to substantiate the argument of concluded oral contract. Thus, we are in agreement with the Trial Court that the plaintiff/Respondent has succeeded in impeaching the reliability of the testimony of the said witness. The Respondent has thus proved his stand that the said letter was, in fact, received by the Appellant and acknowledged by Mr. Bhalla. The Appellant has placed reliance on [Thiruvengada Pillai Vs. Navaneethammal and Another](#), and [The State \(Delhi](#)

[Administration\) Vs. Pali Ram,](#) to argue that the Court should not have given a positive and definite finding in favour of the veracity of signatures of Mr. Bhalla in absence of an expert evidence. Reliance on both these Judgments is misplaced. Thiruvengadam was a case where thumb impression, and not signature, was in question. Their Lordships have held thus:

17. The decision in 1980 CriLJ 396 (SC) and [Lalit Popli Vs. Canara Bank and Others,](#) should not be construed as laying proposition that the court is bound to compare the disputed and admitted finger impressions and record a finding thereon, irrespective of the condition of the disputed finger impression. When there is a positive denial by the person who is said to have affixed his finger impression and where the finger impression in the disputed document is vague or smudgy or not clear, making it difficult for comparison, the court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions. Further, even in cases where the court is constrained to take up such comparison, it should make a thorough study, if necessary with the assistance of counsel, to ascertain the characteristics, similarities and dissimilarities. Necessarily, the judgment should contain the reasons for any conclusion based on comparison of the thumb impression, if it chooses to record a finding thereon. The court should avoid reaching conclusions based on a mere casual or routine glance or perusal.

Here, there is no averment of signature being vague or smudgy or not clear.

14. Pali Ram is a Judgment in a criminal case. It is trite that the standard of evidence required is of a much higher degree than in civil matters. Thus, the observations in that case are of no help to Appellant in the present case. We cannot ignore the position that Section 73 of Indian Evidence Act clearly states that -"In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person". Thus, the Trial Court was justified in comparing the signature, on document with the admitted signature and coming to its own finding. We find no perversity on the part of the Trial Court in drawing an adverse presumption regarding non-appearance of Mr. and Mrs. Oswal. Respondent has succeeded in making out a clear case that the car was purchased by Mr. and Mrs. Oswal for their personal use and that Mr. Bagla had entered into negotiations with Mr. Oswal for the sale of said car. The car was purchased in the name of the Company at their instance. In these circumstances, it was necessary for them to have entered the Witness Box and testified to the contrary.

15. We are also in agreement with the Trial Court that it is highly unbelievable that a newer car would have been exchanged by Mr. Bagla with an older model car for no added consideration. This is obviously the reason why the Appellant has tried to suppress the factum of purchase of a 1986 model Green Balmoral car and its exchange with the 1988 model Blue Spur. Moreover, as pointed out by learned Senior Counsel for the Respondent, not even a suggestion has been made to the witnesses as to whether the two cars were of the same price, whereas Mr. Bagla had clearly deposed that Blue Spur is a more expensive model than the Green Balmoral and that there was an increase of 30 per cent each year in the price of a Rolls Royce car.

16. Thus, in light of the abovementioned findings we agree with the Trial Court on the first Issue that one Rolls Royce Metallic Blue Car bearing Chassis No. ANH24457 1988 Model was sold by Mr. Lalit Kumar Bagla to Bindal Agro Chemicals Ltd. in exchange for another green Balmoral Rolls Royce car of 1986 model. On 2nd, 3rd and 6th Issues we agree with the Trial Court that in the absence of any written agreement between the parties, for payment of extra Rupees 69,00,000, the suit is maintainable as the Respondent has succeeded in proving the oral agreement in the Trial, and that there is sufficient material on record for coming to the conclusion that there was an agreement to pay a further sum of Rupees 69,00,000 to Bagla by Appellant. Issue No. 5, which concerns whether suit against Defendant No. 2 and 3 has been vexatiously filed is also held to be correctly decided against the Appellant. Issue No. 8 regarding withholding the certificates of registration, certificate of insurance, original purchase invoice, customs clearance receipts and other relevant documents of the metallic Blue Rolls Royce Car, 1988 Model is also correctly decided against the Appellant by the Trial Judge in light of the findings arrived at in the previous Issues. The learned Trial Court has correctly awarded the sum of Rupees 69,00,000 along with interest from 28.10.1991; but in the circumstance of the case the interest is reduced to 12 per cent per annum.

17. The Appeal is disposed of with this modification. Pending applications also stand dismissed. Parties to bear their respective costs.