

**IN THE COURT OF VIKAS DHULL: ADDITIONAL
DISTRICT JUDGE-01, TIS HAZARI COURTS (WEST),
DELHI**

**RCA No. 60764/16
(Suit No. 1022/09)**

In the matter of :

M/s.Fablas Impex Private Ltd.
70, Najafgarh Road, Moti Nagar
New Delhi-110015
Through its Director Sh.S.A.Siddiqui

... Appellant

Versus

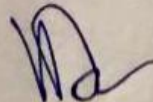
Sh.Hemkant Sharma
Proprietor
M/s.ACE Enterprises
D-892, Street No.13,Ashok Nagar
Delhi-110093

... Respondent

Date of filing of appeal : 05.12.2012
Date on which judgment reserved : 21.07.2020
Date on which judgment passed : 24.07.2020


JUDGMENT

1. Vide the present appeal, appellant/plaintiff has challenged the judgment dated 17.10.2012 of the Ld.Trial Court (**hereinafter referred to as impugned order**) vide



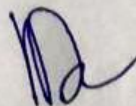
which suit of the plaintiff/appellant was dismissed.

2. The brief facts which are relevant for deciding the present appeal are that appellant being plaintiff had filed a civil suit for recovery of Rs. 94,695/- alongwith interest against the defendant/respondent in present appeal.
3. It was submitted in the suit that plaintiff/appellant is in the business of manufacturing stainless steel scrubbers and during the course of business dealings, goods were supplied to defendant/respondent for which account was maintained during the course of business.
4. It was submitted that as on 19.07.2007, a sum of Rs.65,290.15p. was due and payable against defendant/respondent.
5. It was submitted that in order to discharge the aforementioned amount, defendant/respondent had issued two cheques for Rs.26,924/- and Rs.26,513/- which on presentation were dishonoured due to "**funds insufficient/ exceeds arrangement**".
6. Thereafter, notice was issued to defendant/respondent but despite receipt of the same, payment was not made. Accordingly, the present suit was filed for recovery of



principle amount of Rs.65,290.15p. plus the contractual rate of interest of 20% per annum which comes to Rs.94,695/-.

7. The defendant/respondent on being served had filed his written statement and denied that any amount is due and payable to the appellant/plaintiff.
8. It was further submitted that in lieu of two dishonoured cheques, fresh two cheques were given to the appellant/plaintiff and therefore, nothing is due and payable and on the contrary, defendant/respondent is liable to recover Rs.11,000/- from the appellant on the basis of statement of account maintained by the appellant/plaintiff during the course of business dealings. Accordingly, a prayer was made to dismiss the suit.
9. Parties had lead the evidence after framing of issues and thereafter, the Ld.Trial court had dismissed the suit of the plaintiff/appellant vide impugned judgment on the ground that payment was received by plaintiff/appellant through two cheques which was admitted by AR of plaintiff/appellant in his cross examination and even statement of account filed on record by plaintiff/appellant



was not found to be trustworthy.

10. Aggrieved by the impugned judgment of the Ld.Trial Court dated 17.10.2012, appellant has preferred the present appeal.
11. Notice of the appeal was issued to the respondent, who chose not to file any reply.
12. I have heard Sh. Mahendra Singh, Ld.counsel for appellant and Sh.Sunil Mittal, Ld.counsel for respondent. I have also carefully perused the written submissions filed on record by the respondent. I have also summoned the trial court record and have carefully perused the same.
13. It was submitted by Id.counsel for appellant that the Ld.Trial Court failed to apply its judicial mind to the facts of the present case and wrongly passed the impugned judgment dismissing the suit of the plaintiff/appellant.
14. It was submitted that in the present case, appellant was supplying goods to the defendant/respondent for which he was maintaining running statement of account and whatever payment was being made by respondent were duly reflected in the statement of account.
15. It was further submitted that with regard to two different



transactions, respondent had issued two cheques each and only with regard to one transaction, two cheques were honoured and with regard to other transaction, both cheques were dishonoured.

16. It was further submitted that the two cheques which were dishonoured were presented twice for encashment but on both the occasions, they remained unpaid.

17. It was further submitted that the fact of dishonourment of two cheques on two occasions is duly reflected in the statement of account Ex.PW1/4 which is duly corroborated by the bank statement of appellant.

18. It was further submitted that the Ld.Trial Court wrongly held that appellant had received the payment against two dishonoured cheques through two fresh cheques issued by the respondent.

19. It was further submitted that subsequent payment received through two cheques was on account of a different transaction and there was nothing on record to show that subsequent two cheques received by appellant were in lieu of earlier two dishonoured cheques. Therefore, Ld.Trial Court had wrongly dismissed the suit



of the plaintiff/appellant and accordingly, a prayer was made to set aside the impugned judgment and to decree the suit of plaintiff/appellant.

20. On the other hand, Ld.counsel for respondent had submitted that there is no illegality or infirmity in the impugned judgment of the Ld.Trial Court.
21. It was submitted that the ground being taken up by appellant, at the stage of appeal, that subsequent cheques were not issued in lieu of earlier two dishonoured cheques but were issued for a different transaction is nothing but an after thought as PW1, who happens to be the AR of the plaintiff/appellant has categorically deposed in his cross examination that the two cheques were given in lieu of earlier two dishonoured cheques and the fact of payment of two cheques stands admitted by appellant in ground (iii) of his appeal.
22. It was further submitted that the appellant had fraudulently again presented the two dishonoured cheques for encashment even though he had received the payment through two cheques.
23. It was further submitted that even the criminal



complaint case filed by appellant under Section 138 of the Negotiable Instruments Act, 1881 was dismissed on the same ground of appellant having received the payment through two subsequent cheques in lieu of dishonoured cheques.

24. It was further submitted that appellant has taken a new ground at the stage of appeal which do not find any support from the evidence lead on record before the Ld.Trial Court or from the documents filed on record. Accordingly, it was submitted that there is no merit in the appeal filed by appellant and a prayer was made to dismiss the appeal.
25. I have considered the rival submissions made by respective counsels and have carefully perused the record of the Ld.Trial Court.
26. To appreciate the contention of Ld.counsel for appellant that two subsequent cheques were issued for a different transaction and were not in lieu of earlier dishonoured cheques, I have carefully perused the evidence of PW1, who happened to be the AR of the appellant.



27. PW1 in his cross examination has specifically deposed that cheque nos.514657 and 514658 dated 28.04.2007 and 30.04.2007 respectively for Rs.26,924/- and Rs.26,513/-respectively were issued by respondent in lieu of dishonoured cheques bearing nos. 488153 and 488154.
28. Further, I have also carefully perused the statement of account filed on record by appellant Ex.PW1/4 which finds **mention** in the list of documents dated 09.09.2009 filed by appellant and in the said statement of account, it is specifically mentioned that cheque bearing no. 488154 dated 24.04.2007 was received by appellant against bill no.17 dated 03.04.2007.
29. Further, with regard to entry of cheque bearing no. 514658 dated 30.04.2007, it is specifically mentioned that said cheque has been received against bill no.17 dated 03.04.2007 and against entry dated 28.04.2007 regarding cheque no.514657 dated 28.04.2007, it is specifically mentioned that said **cheque** is against bill no.5 dated 01.04.2007. There is nothing on record to show that cheque bearing no.514657 and 488153 were not with



regard to bill no.5 dated 01.04.2007 and were with regard to different transactions.

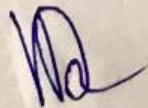
30. Further with regard to cheque bearing no.488154 and cheque given in lieu of same i.e. cheque bearing no. 514658, statement of account reflects that both have been issued against same bill no.17 dated 03.04.2007. Therefore, the statement of account of appellant clearly reflects that subsequent cheques bearing no.514657 and 514658 were not issued for different transactions but were issued in lieu of dishonoured cheques bearing no. 488154 and 488153 with regard to bill no.5 and bill no.17. Therefore, AR of appellant i.e. PW1 had deposed correctly that cheques no.514657 and 514658 were issued in lieu of earlier dishonoured cheques. Hence, the submission made by Id.counsel for appellant that subsequent cheques bearing no. 514657 and 514658 were of different transactions, is not acceptable.

31. The second reason for not accepting the contention of Id.counsel for appellant is that said plea has been taken up by appellant for the first time at the stage of arguments and even in the appeal, no ground has been put forth to



suggest that cheque bearing nos.488153 and 488154 and cheques bearing nos.514657 and 514658 pertained to different transactions. Therefore, this plea has been taken up as an after thought at the stage of arguments and deserves to be rejected as the same is contrary to the trial court record.

32. I also agree with the submission put forward by Id.counsel for respondent that appellant had fraudulently presented cheques bearing no.488153 and 488154 again on 07.07.2007 even though he had received payment against these two dishonoured cheques through fresh cheques bearing no. 514567 dated 28.04.2007 and 514658 dated 30.04.2007 respectively.
33. The statement of account Ex.PW1/4 clearly shows that cheque bearing no.488153 and 488154 were wrongly presented on 07.07.2007 to wrongly create debit entries on 14.07.2007 as payment against these two cheques was already received by appellant on 28.04.2007 and 30.04.2007 respectively.
34. Therefore, the statement of account produced on record by appellant Ex.PW1/4 do not reflect the correct



amount received from respondent and Ld.Trial Court rightly held that the same cannot be relied upon.

35. Further, the appellant has also taken up a ground in the appeal which the Ld.counsel for appellant chose not to argue but it is relevant to deal with the same as a false ground has been taken up in the appeal which is contrary to trial court record.


36. In ground (iii) of the appeal, it is specifically mentioned by appellant that as per statement of account Ex.PW1/4, an amount of Rs.1,49,804.15p. was pending against respondent. However, the said ground taken up by the appellant has got no merit as the statement of account Ex.PW1/4 do not show any outstanding amount of Rs.1,49,804.15p and on the contrary, it shows a balance of Rs.65,292.15p. only.

37. Further, this ground which has been taken up in the appeal is also contrary to the plaint filed by appellant wherein it is specifically mentioned that as per statement of account, a sum of Rs.65,290.15p. was outstanding against respondent as on 19.07.2007.

38. Therefore, from where the appellant had got this

amount of Rs.1,49,804.15p. is beyond the comprehension of this court as neither the same has been reflected in the plaint, evidence of PW1 or in the statement of account Ex.PW1/4 filed by appellant.

39. In the light of aforesaid discussion, this court is of the opinion that Ld.Trial Court had rightly dismissed the suit of the plaintiff/appellant as appellant had received the payment against two dishonoured cheques and even the statement of account furnished on record by the appellant was not found to be reliable.
40. I do not find any infirmity or illegality in the impugned judgment of the Ld.Trial Court. Accordingly, **the appeal filed is dismissed. No order as to costs. Decree sheet be prepared accordingly.**
41. Trial Court Record be sent back to the Ld.Trial Court alongwith a copy of judgment.
42. Appeal file be consigned to record room.


(Vikas Dhull)

ADJ-01,West, THC, Delhi/24.07.2020

RCA No. 60764/16
M/s.Fablas Impex Private Ltd. Vs. Hemkant Sharma

24.07.2020 (4.00 p.m.)


Pr: None.

Vide separate judgment passed today, the appeal of appellant is dismissed. No order as to costs. Decree sheet be prepared accordingly.

TCR be sent back to Ld.Trial Court alongwith a copy of judgment.

Appeal file be consigned to record room.

A copy of judgment be sent to Ld.counsel for both the parties through whatsapp/email.


(Vikas Dhull)
ADJ-01, West,
THC, Delhi
24.07.2020

**Execution Petition No.137/2020
Masudul Ansari Vs. Imrana Begum**

Through Cisco Webex Video Conferencing

24.07.2020 (11.47 a.m. to 11.50 a.m.)

Pr: DH in person.


(Mobile No.7042700914)

(Email ID: usadelhi@yahoo.com)

Notice not received back from Nazarat Branch, West, THC, Delhi as per report of Naib Nazir.

Issue fresh notice of the application of DH for early hearing to the judgment debtor through Nazarat Branch, West, THC, Delhi on email ID of the judgment debtor as provided by DH in the title of his application for 30.07.2020.

A copy of order be sent to the DH through whatsapp/email.


**(Vikas Dhull)
ADJ-01, West,
THC, Delhi
24.07.2020**

**IN THE COURT OF VIKAS DHULL, ADDITIONAL
DISTRICT JUDGE-01, WEST, THC, DELHI**

Civ.DJ No.238 /2020

M/s. RITCO LOGISTICS LTD.

... Plaintiff No.1

MANMOHAN PAL SINGH CHADHA

... Plaintiff No.2

VERSUS

JASPAL SINGH ALAGH

... Defendant

THROUGH WEBEX VIDEO CONFERENCING

24.07.2020 (11.19 a.m. to 11.23 a.m.)

Pr: Sh.Rahul Malhotra, Id.counsel for plaintiffs.

(M.No. 9899218215)

(email ID: rahulssmalhotra@gmail.com)

Sh.Dinesh Priani, Ld.counsel for defendant.

(M.No.9810555946)

(email ID: dinesh_priani@yahoo.co.in)

**Today, it is submitted by Id.counsel for defendant
that he has sent the written statement on email ID of
the Filing Section, West, THC, Delhi.**

On inquiry from Ld.counsel for plaintiff, he submits



that he has not received the copy of written statement.

At this stage, plaintiffs counsel has provided his email ID to the Id.counsel for defendant and Id.counsel for defendant is directed to supply the copy of written statement on email ID of Id.counsel for plaintiffs today itself.

Now, put up on 07.09.2020 for replication to the WS of defendant.

A copy of order be sent to the Id.counsels for parties through whatsapp/email.



(Vikas Dhull)
ADJ-01,WEST
THC, DELHI
24.07.2020

At 12.50 p.m.

At this stage, it is reported by reader of the court that written statement has been received on court email ID from the Filing Section, West, THC, Delhi. Same has been placed before the undersigned and accordingly, taken on record.

Ld.counsel for defendant is directed to file hard copy of the written statement within 05 days of the reopening of courts.

A copy of order be sent to the Ld.counsel for parties through whatsapp/email.


(Vikas Dhull)
ADJ-01, WEST
THC, DELHI
24.07.2020