

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

Through Cisco Webex Video Conferencing

Application for urgent hearing received on court email ID from the Filing Section, West, THC, Delhi and the same has been put before the undersigned by reader through email. **It be checked and registered.**

15.07.2020 (2.15 p.m. to 2.18 p.m.)

Pr: DH in person.

(Mobile No.7042700914)

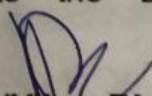
(Email ID: usadelhi@yahoo.com)

DH is directed to file hardcopy of the present application within 15 from the re-opening of courts.

Heard.

Issue notice of the said application to the judgment debtor through Nazarat Branch, West, THC, Delhi through email ID of the judgment debtor as provided by DH in the title of the application for **24.07.2020**.

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


(Vikas Dhull)
ADJ-01, West,
THC, Delhi
15.07.2020

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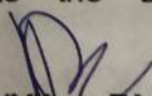
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A copy of order be sent to the DH through whatsapp/email.


(Vikas Dhull)
ADJ-01, West,
THC, Delhi
15.07.2020

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

RCA No. 60764/16

In the matter of :

M/s.Fablas Impex Private Ltd.

... Appellant

VERSUS

Hemkant Sharma

... Respondent

Date of filing of application : 24.01.2017

Date on which order reserved: 10.07.2020

Date on which order pronounced: 15.07.2020

ORDER

1. Vide this order, I shall dispose of an application filed by the appellant under Order 41 Rule 27 of Code of Civil Procedure, 1908 (**hereinafter referred to as CPC**) seeking permission of this court to lead additional evidence in the appeal.
2. The brief facts which are relevant for deciding the present



application 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 on 17.10.2012 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. During the pendency of present appeal, the present application was filed by appellant praying for leading of additional evidence.
12. Vide the present application, appellant has made a prayer that he be allowed to place on record the certified bank statement for the period from 01.04.2007 to 31.03.2008 as the said statement is a material document and the same could not be filed on record before the Ld.Trial Court despite exercise of due diligence.
13. Notice of the application was issued to respondent, who had filed a detailed reply.
14. I have heard Sh. Mahendra Singh, Ld.counsel for appellant and Sh.Sunil Mittal, Ld.counsel for respondent. I have also carefully perused the record.
15. It was submitted by Ld.counsel for appellant that statement of the bank account of appellant is a material document which will help this court in deciding the present appeal.
16. It was submitted that Sh.Nadeem Anwar AR of



appellant i.e. PW1 by mistake deposed in his cross examination regarding the encashment of two cheques given by respondent in lieu of earlier two dishonoured cheques and appellant, at the relevant time could not produce on record his bank statement to corroborate the fact that the two cheques given by respondent in lieu of dishonoured cheques were never encashed.

17. It was further submitted that bank statement of appellant will establish this fact on record that subsequent two cheques given by respondent/defendant were never honoured on presentation. Accordingly, it was submitted that certified bank statement of appellant being a documentary evidence will help this court in deciding the present appeal on merits. Accordingly, a prayer was made to allow the application.
18. On the contrary, it was submitted by Id.counsel for respondent that the present application filed by appellant is not maintainable.
19. It was submitted that there is a clear cut admission made by AR of appellant i.e. PW1 in his cross examination regarding receipt of payment of dishonoured



cheques by way of two cheques.

20. It was further submitted that based upon the admission of AR/PW1 Sh.Nadeem Anwar that payment has been received by appellant, the suit of plaintiff/appellant was dismissed by the Ld.Trial Court.
21. It was further submitted that even the criminal complaint case filed by appellant under Section 138 of the Negotiable Instruments Act, 1881 was also dismissed on the same ground of appellant having received the payment through two subsequent cheques in lieu of dishonoured cheques. Accordingly, it was submitted that bank statement sought to be produced on record is not a relevant document and even it is not explained by appellant as to how appellant despite exercise of due diligence could not produce the bank statement on record before the Ld.Trial Court. Accordingly, a prayer was made to dismiss the application.
22. In order to decide the present application and appreciate the rival contentions of respective counsels, it is relevant to reproduce Order 41 Rule 27 CPC. The same reads as under:--



“27. Production of additional evidence in Appellate

Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced, by an Appellate Court, the court shall record the reason for its admission.

23. The appellant is relying upon Order 41 Rule 27 CPC proviso (aa) to allow him to produce on record the



additional evidence in the form of certified bank statement.

24. Ld.counsel for appellant, during the course of arguments or in his application has not brought on record any justifiable ground as to why appellant could not produce the certified bank statement before the Ld.Trial Court despite exercise of due diligence.
25. The bank statement sought to be produced on record at this stage, is the bank statement of appellant and appellant could have very well produced the same before the Ld.Trial court by summoning the bank witnesses.
26. However, the trial court record reflects that no steps were taken by appellant to bring on record the aforementioned certified bank statement.
27. It is not the case of appellant that his bank statement was not within his knowledge. Therefore, appellant could have very well produced his bank statement before the Ld.Trial Court and submission made by appellant's counsel that despite exercise of due diligence, the same could not be produced, is required to be rejected.
28. Although appellant is unable to prove the



maintainability of the application under proviso (aa) of Order 41 Rule 27 CPC but as per proviso (b) of Order 41 rule 27 CPC, appellate court has been given sufficient power to get any document produced on record which the appellate court thinks fit is required for pronouncement of judgment.

29. I have carefully perused the record and statement of account sought to be produced on record by appellant.
30. In the opinion of this court, statement of account sought to be produced on record to show the dishonourment of two subsequent cheques given in lieu of two dishonoured cheques is of no help to the case of appellant.
31. The certified statement of account reflects that two subsequent cheques given by respondent were honoured on presentation and there is no entry in the bank statement showing the same being dishonoured on account of "funds insufficient".
32. Further, appellant himself has admitted in appeal regarding encashment of two cheques given by respondent in lieu of two dishonoured cheques and therefore, PW1 Sh.Nadeem Anwar i.e. AR of appellant



never deposed any incorrect facts during the course of his cross examination. I am supported in my finding by ground (iii) of the appeal where appellant has himself admitted regarding encashment of two cheques given by respondent in lieu of earlier dishonoured cheques.

33. Therefore, since appellant has himself admitted in ground (iii) of appeal regarding encashment of two subsequent cheques, therefore, production of certified bank statement on record is going to serve no purpose for deciding the present appeal and even otherwise, certified bank statement of account of appellant do not have any entry showing dishonourment of two subsequent cheques. Therefore, the application filed by appellant is not maintainable under Order 41 Rule 27 CPC. **The same is, accordingly dismissed.**


(Vikas Dhull)
ADJ-01, West,
THC, Delhi
15.07.2020

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

RCA No. 60764/16

In the matter of :

M/s.Fablas Impex Private Ltd.

... Appellant

VERSUS

Hemkant Sharma

... Respondent

Date of filing of application : 24.01.2017

Date on which order reserved: 10.07.2020

Date on which order pronounced: 15.07.2020

ORDER

1. Vide this order, I shall dispose of an application filed by the appellant under Order 41 Rule 27 of Code of Civil Procedure, 1908 (**hereinafter referred to as CPC**) seeking permission of this court to lead additional evidence in the appeal.
2. The brief facts which are relevant for deciding the present



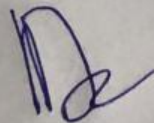
application are that appellant being plaintiff had filed a civil suit for recovery of Rs. 94,695/- alongwith interest against the defendant/respondent in present appeal.

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.
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17. It was further submitted that bank statement of appellant will establish this fact on record that subsequent two cheques given by respondent/defendant were never honoured on presentation. Accordingly, it was submitted that certified bank statement of appellant being a documentary evidence will help this court in deciding the present appeal on merits. Accordingly, a prayer was made to allow the application.
18. On the contrary, it was submitted by Id.counsel for respondent that the present application filed by appellant is not maintainable.
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cheques by way of two cheques.

20. It was further submitted that based upon the admission of AR/PW1 Sh.Nadeem Anwar that payment has been received by appellant, the suit of plaintiff/appellant was dismissed by the Ld.Trial Court.
21. It was further submitted that even the criminal complaint case filed by appellant under Section 138 of the Negotiable Instruments Act, 1881 was also dismissed on the same ground of appellant having received the payment through two subsequent cheques in lieu of dishonoured cheques. Accordingly, it was submitted that bank statement sought to be produced on record is not a relevant document and even it is not explained by appellant as to how appellant despite exercise of due diligence could not produce the bank statement on record before the Ld.Trial Court. Accordingly, a prayer was made to dismiss the application.
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27. It is not the case of appellant that his bank statement was not within his knowledge. Therefore, appellant could have very well produced his bank statement before the Ld.Trial Court and submission made by appellant's counsel that despite exercise of due diligence, the same could not be produced, is required to be rejected.
28. Although appellant is unable to prove the



maintainability of the application under proviso (aa) of Order 41 Rule 27 CPC but as per proviso (b) of Order 41 rule 27 CPC, appellate court has been given sufficient power to get any document produced on record which the appellate court thinks fit is required for pronouncement of judgment.

29. I have carefully perused the record and statement of account sought to be produced on record by appellant.
30. In the opinion of this court, statement of account sought to be produced on record to show the dishonourment of two subsequent cheques given in lieu of two dishonoured cheques is of no help to the case of appellant.
31. The certified statement of account reflects that two subsequent cheques given by respondent were honoured on presentation and there is no entry in the bank statement showing the same being dishonoured on account of "funds insufficient".
32. Further, appellant himself has admitted in appeal regarding encashment of two cheques given by respondent in lieu of two dishonoured cheques and therefore, PW1 Sh.Nadeem Anwar i.e. AR of appellant



never deposed any incorrect facts during the course of his cross examination. I am supported in my finding by ground (iii) of the appeal where appellant has himself admitted regarding encashment of two cheques given by respondent in lieu of earlier dishonoured cheques.

- 33.** Therefore, since appellant has himself admitted in ground (iii) of appeal regarding encashment of two subsequent cheques, therefore, production of certified bank statement on record is going to serve no purpose for deciding the present appeal and even otherwise, certified bank statement of account of appellant do not have any entry showing dishonourment of two subsequent cheques. Therefore, the application filed by appellant is not maintainable under Order 41 Rule 27 CPC. **The same is, accordingly dismissed.**


(Vikas Dhull)
ADJ-01, West,
THC, Delhi
15.07.2020

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

15.07.2020 (4.00 p.m.)

Pr: None.

Vide separate order passed today, the application of appellant under Order 41 Rule 27 CPC is dismissed.

Put up on 21.07.2020 for arguments on appeal.


(Vikas Dhull)
ADJ-01, West, THC
Delhi
15.07.2020

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

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