

Seritec Electronics Pvt. Ltd. Vs. M/S. Computer Peripheral Solutions

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Court : Delhi

Decided On : Feb-21-2014

Judge : Valmiki J. Mehta

Appellant : Seritec Electronics Pvt. Ltd.

Respondent : M/S. Computer Peripheral Solutions

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + RSA No.121/2013 21st February, 2014 % SERITEC ELECTRONICS PVT. LTD.Appellant Through: Mr. Bibakhar Misra, Advocate. VERSUS M/S. COMPUTER PERIPHERAL SOLUTIONS Respondent Through: Mr. C.S. Parashar, Advocate. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This Regular Second Appeal has been filed impugning the judgments of the courts below by which the suit of the appellant/plaintiff for recovery of money for computer goods supplied has been dismissed.

2. The facts of the case are that the appellant/plaintiff had supplied goods to the respondent/defendant. This aspect is not disputed by either of the parties. It is also not disputed that respondent/defendant paid some amounts but an amount of Rs.1,99,355/- was due as balance. Whereas the case of the appellant was that this amount was not paid, the case of the respondent was that this amount was

paid and the receipt in cash was signed by one employee, namely Sh. Arun, of the plaintiff/company, and which receipt was exhibited as Ex.DW1/E by the respondent/defendant. On behalf of the appellant/plaintiff, Sh. Arun in his deposition denied his signatures on the document Ex.DW1/E. Trial Court on its own compared the signatures and found that admitted signatures of Sh. Arun appearing on the record were different than the signatures of Sh. Arun which were alleged to exist in the receipt/document Ex.DW1/E.

3. The following substantial questions of law are framed for disposal of this second appeal:

(i) Whether the courts below are justified in dismissing the suit on the ground that the appellant/plaintiff failed to establish the signature of the other director Ms. Avani Gupta on the resolution for filing of the suit besides also failing to prove that Ms. Avani Gupta was a director in the appellant/plaintiff company?. (ii) Whether the finding with respect to suit not being validly filed is against the provision of Order 29 Rule 1 of Code of Civil Procedure, 1908 (CPC) and the law in this regard declared by the Supreme Court as also this Court?.

4. I may note that the issue no.3 which was framed by the trial court was with respect to defence of the respondent/defendant as to whether the respondent/defendant has made the payment as claimed by him. This issue was held in favour of the appellant/plaintiff both by the trial court as also by the first appellate court. The first appellate court in fact dismissed the cross-objections of the respondent/defendant with respect to challenge laid to findings on issue no.3. No further appeal to this Court has been filed by the respondent/defendant on issue no.3, however I do not think any appeal was required by the respondent/defendant only with respect to finding on one issue and the respondent/defendant can always urge this aspect in the present appeal in view of Order 41 Rule 22 CPC.

5. In my opinion, the questions of law have to be answered in favour of the appellant/plaintiff and it is held that courts below have committed a gross perversity in holding that the suit was not validly filed merely because Ms. Avani Gupta the co-director was not proved to be the co-director and a signatory to the

resolution for filing of the suit. A similar issue has been dealt with by me in the judgment reported as Mahanagar Telephone Nigam Ltd. Vs. Smt. Suman Sharma 2011 (I) AD Delhi 331 wherein I have relied upon the judgment of the Supreme Court in the case of United Bank of India Vs. Naresh Kumar & others (1996) 6 SCC660 to hold that on technical grounds suits should not be dismissed if they are contested to the hilt i.e till last stage. I have also held in the judgment in the case of Smt. Suman Sharma (supra) that issue of authorization for filing of the suit is only relevant when there are disputes inter se shareholders i.e there are two groups of shareholders with respect to control of the company, and otherwise Order 29 Rule 1 CPC empowers any principal officer of a company to institute and continue the suit. The relevant paras of the judgment in the case of Smt. Suman Sharma (supra) read as under:

4. This aspect, with respect to the authority to sign and verify the suit by a principal officer has been dealt with by a Division Bench of this Court in the case of Kingston Computers (I) P. Ltd. Vs. State Bank of Travancore 153 (2008) DLT239(DB) and in which, it has been held that a principal officer is authorized by virtue of Order 29 Rule 1 CPC not only to sign and verify the pleadings, but also therefore to institute the suit. Paras 23 to 26 of this judgment are relevant and the same read as under: 23. This then is the short issue which needs to be considered by us exercising appellate jurisdiction.

24. Order 29 Rule 1 of the Code of Civil Procedure reads as under:

1 . Subscription and verification of pleading. In suits by or against a corporation, any pleading maybe signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

25. Discussing Order 29 Rule 1 of the Code of Civil Procedure, in the decision in United Bank of India's case (supra), in para 10, Hon'ble Supreme Court held as under:

Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of

authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorize any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure.

26. Suffice would it be to state that in law, the Secretary, Director or a Principal Officer of a company would be treated as duly authorized to institute suit on behalf of a company. This flows out from a bare reading of Order 29 Rule 1 of the Code of Civil Procedure and as further explained in the decision in UnitedBank of India's case.

5. Reference may also be made usefully to the judgment of the Supreme Court in the United Bank of India Vs. Naresh Kumar & others (1996) 6 SCC660 in which, in para 13, it is said that there is a presumption of valid institution of a suit once the same is prosecuted for a number of years. This test as laid down by the Supreme Court is also satisfied in the present case inasmuch as the suit in fact has been prosecuted for about two years by the appellant corporation for seeking an appropriate decree against the respondent by adducing evidence. I may note that the appellant is a public sector undertaking and not a private company where there would be disputes between two sets of shareholders claiming right to management and one set of shareholders are opposing another set of shareholders with respect to control and management of the company. This thus is an additional fact that there can be no dispute as to the authority of the person signing/verifying the pleadings and instituting the suit.

6. In view of the above, even assuming the appellant/plaintiff failed to prove that Ms. Avani Gupta was a co-director and was a signatory to a resolution, since the admitted fact is that the suit by the appellant/plaintiff was filed by one of the co-directors, therefore, the suit was validly instituted in terms of Order 29 Rule 1 CPC.

8. So far as the second aspect as to whether the respondent/defendant has discharged his onus of proof of payment, I have already noted above that both the

courts below have decided the issue no.3 against the respondent/defendant. The relevant observations of the trial court with regard to issue no.3 read as under:

ISSUE NO.3 7. Issue no.3 is taken firstly as burden is casted upon the defendant to prove that he has paid the amount of Rs.1,99,355/- to the plaintiff. The defendant has admitted that he has received the computer parts from the plaintiff company but he has taken the defence that he has written amount to the plaintiff. He has taken the defence in his WS as well as in document Ex.DW1/E by asserting that he has returned the amount to the plaintiff, either by cash or to the person namely Arun, employee of the plaintiff company. The document Ex.DW1/E is the reply to the notice of plaintiff dated 29.09.2007. So, it is not in dispute between the parties that an amount of Rs.1,99,355/- was due towards defendant, but the defence of the defendant is that he has returned the amount of Rs.1,99,355/-. The statement of account marked as Ex.PW1/C and Mark D-1 to mark D-20 are not admissible in evidence as the documents are not in consonance with Section 65(B) of the Indian Evidence Act, 1870 as there is no certificate attached with these documents of the person who purported to be occupying a responsible official position in relation to the operation of the relevant device for the management of the relevant activities. There is no certificate on record of the person who was in occupation of the computer from where the document has been generated. It has to be certified by the person who is in occupation and control of the device from where the document is extracted, that the document is the true and correct and not tampered with. Mere attesting the document does not amount that same will have the force of certificate. So the document is not admissible. The question whether the defendant has paid the amount of Rs.1,99,355/- to the defendant, has to be looked into the light of oral testimony of the witnesses as well as in view of the document Ex.DW1/C and Ex.DW1/D. The DW-1 Sh. Joginder Malhotra deposed in his examination in chief that he has returned the money in cash as well as by cheque. He further deposed in his examination in chief that a sum of Rs.1,20,000/- was paid to the employee of the plaintiff namely Arun on 16.08.06 and a sum of Rs.62,000/- to the same person on 24.08.06 in the presence of Mr. Amit Sethi. But when Mr. Arun Kumar has been examined as PW-2 he has refused that he has received a sum of Rs.1,20,000/- and of Rs.62,000/- as mentioned in the document Ex.DW1/C and Ex.DW1/D from

defendant. Even Arun Kumar has denied the signature on these documents as same has been put by him. The another witness to the execution of document Ex.DW1/C and DW1/D, namely Sh. Amit Sethi has not been examined by the defendant, reason best known to the defendant. The Ld. Counsel for the defendant argued that it was the duty of the plaintiff to get compared the signature of Arun Kumar on document Ex.DW1/C and Ex.DW1/D, which has not been done by the plaintiff. But, this court is of the opinion that the defendant has to prove the signature of Arun Kumar on document Ex.DW1/C and Ex.DW1/D and get expert opinion on the document, whether the signature of Arun Kumar is on these documents or not. Because, initial burden is upon the defendant to prove that he has paid the money to Arun Kumar. Even otherwise, Arun Kumar has appeared in the witness box and denied the receiving of the amount of Rs.1,99,355/-. In his cross examination, Arun Kumar has flatly refused the signature on document Ex.DW1/C and Ex.DW1/D and even denied that he has seen the office of the defendant company. The suggestion has also been put to the DW-1 Sh. Joginder Singh. He admitted in his cross examination that usually, payment against the purchase was made to the plaintiff at the plaintiffs office and usually payment was made through cheques. The witness DW-1 further admitted in his cross examination that the payments for the dates 11.09.06, 12.09.06, 13.09.06 and 14.09.06 were given in the office of the plaintiff. The DW-1 is unable to explain in his examination in chief and in his WS that what were the compelling circumstances which compelled him to pay the money to Mr. Arun Kumar. While, he usually used to pay payment against the purchase from the plaintiff at the plaintiffs office. There is another aspect in the present suit with respect to the comparison of signatures of Arun on document Ex.DW1/C and Ex.DW1/D with admitted signatures which has been put by Arun Kumar on the affidavit filed in his examination in chief as well as the signatures put by him before the Court. Though it is the established law that court should hesitate to base its findings in respect of specimen/admitted writing where specimen/admitted writing is not of high standard. The question arises whether the admitted signature or disputed signature are not of high standard in the present suit. I have perused the signature on document Ex.DW1/C and Ex.DW1/D and on affidavit of Arun Kumar exhibited as Ex.PW2 at Point A & B as well as the signatures put by him on the cross

examination held before the court. The formation of word r on the document Ex.DW1/C and Ex.DW1/D is totally different from the word r written in the admitted signatures. Which can be seen clearly by naked eyes. The formation of word a on document Ex.DW1/C and on document affidavit Ex.PW-1 at Point A & B and signature during the cross examination before court are also different. While on document Ex.DW1/C and Ex.DW1/D, the word A is written in capital and the word A is in the pointed form. While, the formation of word A in the admitted signature is round. No suggestion has been put to the witness PW-2 Arun Kumar by the defendant that he has put signature on the affidavit Ex.PW-2 at point A & B and before this court on cross examination in a different form than which has been put by him on document Ex.DW1/C and Ex.DW1/D. So, I am of the opinion that this court can give opinion on the signatures of Arun Kumar because the signature can be compared with naked eyes. In view of the discussions above, I am of the view that the signature on the document Ex.DW1/C and Ex.DW1/D are not of Arun Kumar. The defendant has not got compared the signature and it was initial burden to discharge. He has not examined the material witness Amit Sethi, who has witnessed the execution of documents Ex.DW1/C and Ex.DW1/D, the best reason known to him. He has withheld the material piece of evidence. Inference can be drawn against the defendant. The PW-2 has refused the signature on documents Ex.DW1/C and Ex.DW1/D. The defendant has further unable to disclose the circumstances which compelled him to pay the money to Arun Kumar while, usually he used to pay money to the plaintiff at its office. I am of the view that defendant has not written the amount of Rs.1,99,355/- to the plaintiff. This issue is disposed of accordingly by holding that defendant had not returned the money of Rs.1,99,355/- to the plaintiff.

(underlining added) 9. This finding has been upheld by the first appellate court by dismissing the cross objections of the respondent/defendant and since I am in complete agreement with the findings and conclusions of the courts below with respect to the non-payment of the due amount by the respondent/defendant to the appellant/plaintiff, the finding on issue no.3 in favour of the appellant/plaintiff by the courts below is upheld. I may note that the trial court has noted important aspects including of admission of the witness of the respondent/defendant that cash was not a regular method of payment and cheque was a regular method of payment,

and signatures of the employee Mr. Arun were not found to be the signatures of the said employee Sh. Arun even on comparison by the courts in exercise of powers under Section 73 of the Evidence Act, 1872.

10. In view of the above, the appeal is allowed. The suit of the appellant/plaintiff for recovery of Rs.1,99,355/- is decreed against the respondent/defendant alongwith interest @ 9% per annum simple from the date of filing of the suit and till realization. Parties are left to bear their own costs. FEBRUARY21 2014 Ne RSA No.121/2013

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