

Sidharth Kumar vs.alok Kumar

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Court : Delhi

Decided On : Sep-08-2017

Appellant : Sidharth Kumar

Respondent : Alok Kumar

Advocate for Pet/Ap. : Mr. Anup Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % SIDHARTH KUMAR
ALOK KUMAR RSA No.77/2016 Reserved on:

22. d August, 2017 Pronounced on:

8. h September, 2017 Through: Mr. Aniket Jain, Advocate. versus Appellant
Through: Mr. Anup Singh, Advocate. Respondent CORAM: HONBLE MR.
JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J1 This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the first appellate court dated 31.7.2015. Trial court vide its judgment dated 27.5.2014 had decreed the suit for recovery of Rs.1,29,850/- with interest at 8% in favour of the appellant/plaintiff and against the respondent/defendant on account of the goods being computer peripherals supplied. The first appellate court by its impugned judgment has dismissed the suit and hence this RSA No.77/2016 Page 1 of 8 Regular Second Appeal under Section 100 CPC is filed by the

appellant/plaintiff.

2. The facts of the case are that the subject suit was filed by the appellant/plaintiff seeking recovery of Rs.1,87,500/- on account of the balance dues towards goods having not being paid for, the goods being computer peripherals. Out of the suit amount a sum of Rs.1,29,850/- was the principal amount and the balance was towards interest at 24% per annum. Since in spite of service of the legal notice dated 14.12.2007, the respondent/defendant failed to pay the amount due, therefore, the subject suit was filed.

3. The respondent/defendant contested the suit by filing his written statement. The respondent/defendant is Sh. Alok Kumar proprietor of M/s Suncom Technologies. It was pleaded in the written statement that the suit was barred by limitation. It was also pleaded by the respondent/defendant that the suit was filed without any basis and there was no cause of action in favour of the appellant/plaintiff and against the respondent/defendant. On merits, it was pleaded that no doubt respondent/defendant used to purchase computer peripherals from the appellant/plaintiff, however, never any item was purchased RSA No.77/2016 Page 2 of 8 on credit basis because on each occasion either payment was made in cash or through the cheque. The subject suit was therefore prayed to be dismissed.

4. The trial court after pleadings were complete framed the following issues:-

"1.

2.

3.

4. 5. Whether on the basis of plaint allegations plaintiff is entitled for a decree of recovery of Rs.1,87,500?. (OPP) Whether on the basis of the plaint allegations plaintiff is entitled for an interest on this amount if yes at what rate and for what period?. (OPP) Whether the suit is barred by law of limitation?. (OPD) Whether the plaintiff has no cause of action to file the present suit?. (OPD) Any other relief which the plaintiff may be entitled for?. (OPP). 5. As regards the relevant issue no.1 of entitlement of the appellant/plaintiff to the suit amount the trial court

decreed the suit by holding as under:-

"(i) The appellant/plaintiff had proved the statement of account as Ex.PW and the bills as Ex.PW

to Ex.PW1/16 and therefore the amount was due to the appellant/plaintiff. (ii) The respondent/defendant admitted in his cross-examination as regards his signatures appearing on point A on the Bill Ex.PW

and the signatures of Sh. Ravi Bhushan at point A on the Bill Ex.PW1/5, RSA No.77/2016 Page 3 of 8 Sh. Ravi Bhushan being the Director of M/s Suncom Technologies (P) Ltd. (iii) So far as the other bills are concerned, trial court held that there is no cross-examination of the appellant/plaintiff by the respondent/defendant that the bills were forged and fabricated. (iv) Trial court held that respondent/defendant cannot take benefit of the Section 65B of the Indian Evidence Act, 1872 and that the statement of account and the bills being computer bills have to be held to be proved. (v) The respondent/defendant did not file his statement of account, and which would have reflected the correct position, and which the respondent/defendant ought to have done inasmuch as there was admittedly dealing of a buyer and a seller between the parties.

6. The first appellate court has dismissed the suit by the impugned judgment essentially by holding that since the statement of account/bills were computer generated copies, had to be, were not supported by the necessary certificate under Section 65B of the Indian RSA No.77/2016 Page 4 of 8 Evidence Act, and hence the appellant/plaintiff has to be taken to have failed to prove his case.

7. For the purpose of disposal of this RSA the following substantial question of law is framed:-

"Whether the judgment of the first appellate court is not grossly illegal and perverse, inasmuch as, the objection under Section 65B of the Indian Evidence Act was not available to the respondent/defendant because objection was not taken before commencement of cross-examination and therefore such objection as to the mode of proof of statement of account and the bills stood waived in view of the judgment of the Supreme Court in the case of R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple and Another, (2003) 8

SCC752 8. The aforesaid question of law has to be answered in favour of the appellant/plaintiff and against the respondent/defendant, inasmuch as, it is seen that as per the ratio of the judgment of the Supreme Court in the case of R.V.E. Venkatachala Gounder (supra) the objection as to mode of proof of document can always be waived if the objection is not taken up at the relevant time. Since in the present case appellant/plaintiff had filed his affidavit by way of RSA No.77/2016 Page 5 of 8 evidence and thus proved the bills and the statement of account, the respondent/defendant had to object to the proof of the statement of account and bills before his commencement of cross-examination of PW-1, because, if this objection was taken then the appellant/plaintiff would have had an opportunity not to close his examination-in-chief and instead to lead additional evidence to prove the statement of account and the bills. Therefore, applying the ratio of the judgment of the Supreme Court in the case of R.V.E. Venkatachala Gounder (supra), it is held that the first appellate court has erred in placing reliance upon Section 65B of the Indian Evidence Act and for dismissing the suit on this sole ground.

9. I have already given in para 5 above the reasons and conclusions of the trial court, and I completely agree with and adopt the same. In fact, I would further add that besides the respondent/defendant not having filed his statement of account, it is noticed that the respondent/defendant did not file his income tax returns and if the same would have been done from the Profit and Loss Account attached to the income tax returns it could have been seen as to whether the statement of account existed in the books of the RSA No.77/2016 Page 6 of 8 appellant/plaintiff. The entry in the Profit and Loss Account of the respondent/defendant would also have shown the amount due to the appellant/plaintiff from the respondent/defendant. Adverse inference therefore under Section 114 of the Indian Evidence Act had to be drawn against the respondent/defendant for not filing not only of his statement of account, but also not filing his income tax returns.

10. It is also noted that the respondent/defendant cannot make any capital of two statements of accounts filed by the appellant/plaintiff inasmuch as both the statement of accounts filed, one initially in the suit and one later on, were bound to be different because one statement of account was with respect to the

proprietorship firm M/s Suncom Technologies of the respondent/defendant/Sh. Alok Kumar whereas the other statement of account was of M/s Suncom Technologies Private Limited and which company took over M/s Suncom Technologies as per the admitted case of the respondent/defendant. Some of the entries in the statement of account were different, and as explained by the appellant/plaintiff this was because the respondent/defendant insisted that account be made in the name of M/s Suncom Technologies Private Limited after RSA No.77/2016 Page 7 of 8 it took over the proprietorship firm of M/s Suncom Technologies resulting in difference in some of the entries on account of sale of goods to respondent/defendant even after M/s Suncom Technologies Private Limited had come to exist.

11. In view of the above discussion the impugned judgment of the first appellate court is set aside by answering the substantial question of law in favour of the appellant/plaintiff and against the respondent/defendant. The judgment of the trial court is sustained. Parties are left to bear their own costs. SEPTEMBER08 2017
ib/Ne/AK VALMIKI J.

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