

Bal Dev Singh Vs. Rare Fuel and Automobiles Technologies (P) Ltd.

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SooperKanoon Citation : sooperkanoon.com/693648

Court : Delhi

Decided On : Mar-24-2005

Reported in : IV(2005)BC292; 119(2005)DLT44

Judge : Mukundakam Sharma and; Rekha Sharma, JJ.

Acts : Code of Civil Procedure (CPC) - Order 37

Appeal No. : Rfa No. 194/2004

Appellant : Bal Dev Singh

Respondent : Rare Fuel and Automobiles Technologies (P) Ltd.

Advocate for Def. : Nalin Tripathi, Adv.

Advocate for Pet/Ap. : R.K. Saini, Adv

Judgement :

Rekha Sharma, J.

1. On 3rd August, 2002 the appellant-Baldev Singh issued a cheque dated 25.8.2002 in favor of the respondent M/S. Rare Rule & Automobiles, for a sum of Rs. 3,40,000/- . It was drawn on Punjab & Sind Bank, Naya Bazar, Delhi. The respondent however, sat over the cheque and chose not to present it to the Bank for encashment. The respondent woke up only after the validity period of the

cheque lapsed. It is not that thereafter the cheque was presented to the Bank. Even thereafter it did not do so. Instead it filed a suit under Order xxxv II of the Code of Civil Procedure (in short CPC) for recovery of the cheque amount and took the plea that the cheque was not presented not because it did not want to but because it was so asked by the appellant.

2. The appellant in response to the suit moved an application for leave to defend. Of course, in that application he has taken the plea that the respondent was required to perform certain acts which it did not. This, however, is a plea unrelated to the cheque. As regards the cheque, the appellant does not deny having issued the same.

3. The learned Trial Court, on consideration of the application and the pleas raised therein, came to the conclusion that no triable issue has been raised, and as a consequence, refused leave to defend the suit resulting in passing of a decree for a sum of Rs.3,40,000/- along with interest @ 12% per annum from the date of the cheque, i.e., 25th August, 2002 till realisation along with proportionate cost. Hence, this Regular First Appeal.

4. The learned counsel for the appellant pressed the appeal only on one ground. He contended that since admittedly the cheque in question which formed the basis of the suit under Order xxxv II CPC was never presented for encashment to the bank and was retained by the respondent without its having taken any steps to get the same encashed it cannot form the basis of the suit under Order xxxv II CPC and for that reason Order xxxv II CPC was not available to the respondent. As such, he was entitled for leave to defend the suit.

5. The question posed is simply this. Can a cheque which is not presented for encashment within its validity period be made the basis of a suit under Order xxxv II of CPC? We feel that the answer must go in favor of the appellant. A mere issuance of a cheque, kept dormant, in say, a drawer, would not invest the drawee with a cause of action. The cause of action in such a case would arise only when the cheque, on presentation, is dishonoured or not encashed for any fault attributable to the drawer. The drawee cannot be allowed to complain when he himself allows the validity period to lapse rendering the same invalid. What was

required of the respondent in this case was to present the cheque for encashment. However what happened is that the respondent sat over the cheque, did not present it for encashment and allowed the validity of the cheque to lapse. He has now made an issue which stems out of its masterly inactivity. Of course, the respondent has made an effort to cover its lapse. It has come up with a plea that it was only on the asking of the appellant that the cheque was never presented. We feel that even if it was on that account that the cheque was not presented still the fact remains that the basis of the suit is a cheque which remained un-presented. This, we further feel, takes away the shine from the suit and robs it of the cause of action under Order xxxv II CPC. This view that we have taken is also the view taken in two judgments emanating from this Court reported in : AIR2001 Delhi341 Goyal Tax Fab. Pvt. Ltd. v. Anil Kapoor and 24 (1983) DLT 3 Suri and Suri Private Ltd. v. Ram Swarup Arora & Co. In both these judgments it was held that for filing a suit under Order xxxv II, it is necessary to present the cheque to the Bank. We approve both the aforesaid judgments holding that it lays down the law correctly.

6. Before concluding we may mention that the plea dealt with by us above was not specifically raised in the application for leave to defend. It was raised before us during arguments and since the plea involved a question of law we heard learned counsel for the parties on the point in question.

7. For what has been recorded by us we feel that the appellant needs to be granted leave to defend the suit. Consequently, we grant leave and set aside the impugned judgment and decree passed by learned Additional District Judge, Sh. O.P. Gupta on 30.10.2003. The parties shall appear before the learned Trial Court on 18.4.2005

8. Two more things still remain to be said. First, nothing said in this order shall be taken as an expression of opinion on merits of the suit. Second, in view of the facts and circumstances delineated above, parties are left to bear their own costs.