

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order : 31.10.2008

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RFA 88/2002

MS. NEERU NARULA

Through:

..... Appellant
Mr.Ashok Bhasin, Sr. Adv. with
Mr.Shantanu Rastogi, Adv. and
Mr.A.K.Sham, Adv. with
Appellant in person.

versus

M/s.Dhand Enterprises

(Through Pawan Kumar Dhand, sole proprietor)..Respondent

Through: Mr.Naresh Bakshi, Adv. and

Mr.Tushar Bakshi, Adv. with
Proprietor of the respondent in person.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE S.L.BHAYANA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.** (Oral)

1. The appeal was admitted on 29.10.2002. On an application filed seeking early hearing the hearing of the appeal was expedited.
2. Trial Court record has been requisitioned.
3. Heard learned counsel for the parties.

4. The appellant was the defendant. She has lost the battle. The suit filed by the respondent, who was the plaintiff, has been decreed in sum of Rs.3,90,000/- with interest @18% per annum from 8.1.1997 till 4.1.2002 when judgment and decree was pronounced. Costs have also been awarded in favour of the respondent.

5. The respondent was maintaining a current account No.14048 with the Union Bank of India, Branch at G-237, Narayan Vihar, New Delhi-110028. Undisputedly out of the cheque book issued by the bank to the respondent cheque No.062361 was utilized for withdrawing Rs.3,90,000/- on 8.1.1997.

6. The dispute between the parties is whether the appellant withdrew the money or whether the respondent did so.

7. The cheque Ex.PW-1/1 is drawn on self and is dated 7.1.1997.

8. Case of the respondent is that he drew the cheque on self and went to the bank to withdraw the money on 7.1.1997 but since there was no money in the account he could not withdraw the requisite sum. That he knew the appellant and hence at the rear of the cheque made an endorsement: "*Please deliver this amount to Mrs.Neeru Narula. Her signatures are*

attested below."

9. Beneath the said endorsement he attested the signatures of Neeru Narula by making her sign at point 'D' at the rear of Ex.PW-1/1 and there-under penned his signatures in token of the certification. That armed with the said authority Mrs.Neeru Narula, the appellant, withdrew Rs.3,90,000/- but did not pay over the same to him and hence the suit.

10. The appellant defended the cause initiated by pleading that she was requested by the respondent to withdraw the money in cash on 7.1.1997 and that the endorsement at the reverse of the cheque were made on 7.1.1997. She went to the bank to withdraw money but there being no cash she came back and handed over the cheque to the respondent who encashed the same on 8.1.1997.

11. Needless to state, the fate of the cause before the Court would have been decided on whether the respondent proved that the appellant withdrew the money under the cheque in question; and if he did so the appellant would have failed inasmuch as it was not her case that after she withdrew the money she handed over the same to the respondent.

12. Parties examined themselves as their witnesses, and needless to state, reiterated their respective versions.

13. The Manager of the bank, Shri A.K.Budhiraja, was

examined as PW-1. He stated that he was functioning as the Manager of the bank on 8.1.1997 and that on 8.1.1997 at about 11.00 A.M. he personally handed over the money to the appellant when the cheque was presented for encashment.

14. In view of the testimony of PW-1, learned Trial Judge has held that the same establishes that the appellant was the person who received the money when the cheque was presented for encashment on 8.1.1997 and since it was not the case of the appellant that she had handed over the money to the respondent, view taken is that the suit has to be decreed.

15. Learned counsel for the appellant has drawn our attention to the cheque Ex.PW-1/1. As noted above, the cheque was drawn on self. It has an endorsement at the rear authorizing the appellant to receive the money. The endorsement attests her signatures. Just beneath the endorsement are the signatures of the appellant at the point mark 'D' and there-under are the signatures of the respondent.

16. We note that at the rear of the cheque two more signatures of the respondent are to be found. The same have been circled with a blue pencil. We do not find any other signatures of the appellant Neeru Narula at the rear of the cheque.

17. Anyone who has visited a bank and has withdrawn

money on a cheque drawn on self would be aware of the procedure to be followed. The same is that the cheque is handed over at the counter to the clerk in whose custody the ledgers are kept. The clerk hands over a token and obtains signatures at the rear of the cheque. This signature is taken so that the teller can cross check the said signatures with the signatures of the person who hands over the token when money is paid by the teller and signatures are obtained for a second time at the rear of the cheque in token of receipt of money by the token holder.

18. Mr.A.K.Budhiraja was examined on this aspect of the matter as to how the appellant received the money without there being any evidence of her presenting the cheque and receiving a token much less any evidence of her receiving the payment and acknowledging the same when token was returned and money was handed over to her. He answered: "*In case of big payment and when the parties are well known to the bank we normally oblige the party by giving the payment to the party in the cabin. No receipt of payment was received from Mrs.Neelu Narula and it was not required. It is correct that we obtain the signatures at the time of payment on the back of the bearer cheque.*"

19. We are afraid, the learned Trial Judge could not have

decreed the suit in view of the afore-noted evidence. Merely because Mr.A.K.Bhardwaj stated that he paid the money to the appellant is of little assistance to the respondent. Our reason for so stating is that the testimony of Mr.A.K.Bhardwaj is contrary to the procedures of the bank to be followed; indeed he admitted during cross-examination that the signatures of the person who receives the money on presenting a bearer cheque are obtained when payment is made. It is settled law that where the learned Trial Judge omits to consider material evidence or probablizes evidence on wrong principles of the Appellate Court is obliged to take corrective action.

20. The admission of PW-1 is fatal to his statement that without obtaining signatures of Mrs.Neeru Narula money was paid to her. His version gets further diluted when we notice two signatures of the respondent at the rear of the cheque. The explanation of the respondent that he went to receive money on 7.1.1997 and at that point of time appended his signatures at the rear of the cheque is hardly convincing, for if this was so, only one signature of the respondent would have found appended at the rear of the cheque. We also note that on the cheque there is only one stamp of the bank while acknowledging receipt of the cheque.

21. The appeal is allowed. Impugned judgment and

decree dated 4.1.2002 is set aside.

22. The suit filed by the respondent is dismissed with costs against the respondent and in favour of the appellant. The appellant would be entitled to costs in the appeal. Surety bond furnished by the appellant stands discharged.

PRADEEP NANDRAJOG, J.

S.L.BHAYANA, J.

OCTOBER 31, 2008
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