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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: February 29, 2012*

+ RFA(OS) 37/2007

M/S. USHA SHRIRAM (INDIA) Appellant
Represented by: Mr.Kewal Singh Ahuja, Advocate
and Ms.Sruti Khound, Advocate.

versus

SYNERGY MULTIBASE LTD. & ANR.Respondents
Represented by: None.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Summary suit filed by M/s Synergy Multibase Ltd. in which appellant was impleaded as defendant No.1 and M/s Paras Appliances was impleaded as defendant No.2 has been decreed due to both defendants not being granted leave to defend. Appellant's application registered as IA. No.2565/2000 which was filed under Order 37 Rule 3(5) of the Code of Civil Procedure and I.A.No.5261/2003 filed by defendant No.2 under similar provision have been dismissed vide impugned order dated February 13, 2007.

2. Suit seeking decree in sum of ₹30,52,598/- pleaded that appellant was engaged in the business of manufacturing home appliances such as coolers, room heaters etc. and defendant No.2 was a vendor of the appellant. That on November 25, 1995, the appellant desired to purchase 160 MT to 180 MT of PP Compound, used for the moulding of coolers,

and the plaintiff responded by accepting the offer at the rate quoted vide its reply dated November 27, 1995 and while so doing, made clear that the term of the payment would be a 60 days hundi and that delayed payment upto 90 days would attract interest @ of 24% p.a. and beyond that @ 36% p.a. The plaintiff further wrote that there would be a price variation if price of IPCL increased and the current price for the PP Moulding was in harmony with the current price of the IPCL. It was pleaded that on December 2, 1995, the plaintiff clarified on the term of interest with reference to its letter dated November 27, 1995 and in response, the appellant confirmed the terms of the supply and required the goods to be delivered to either defendant No.2 or M/s Premier Home Appliances as per a schedule of delivery, which the appellant would intimate. It was pleaded that on December 23, 1995, the appellant sent a schedule, as per which PP Compound was to be delivered partly to defendant No.2 and partly to M/s Premier Home Appliances and that the plaintiff sent the first consignment on January 31, 1996 followed by further two consignments which were delivered to defendant No.2 against hundis issued by defendant No.2, which hundis were not honoured by the defendant No.2 or its bank. Alleging that the appellant made payment in sum of ₹3 lacs, suit was filed on the strength of the hundis issued, being three in number. The three invoices raised when goods were delivered to defendant No.3 were also relied upon as the written document, on strength whereof maintainability of the suit under Order 37 of the Code of Civil Procedure was rested upon. Needless to state, interest was claimed on the basis of the rate recorded on the hundi.

3. The learned Single Judge has held against the appellant, holding that the communications i.e. the letters

dated November 25, 1995, November 27, 1995, December 2, 1995 and December 8, 1995 would evidence that it was the appellant who had concluded the contract and also took note of the fact that the appellant had paid ₹3 lacs to the plaintiff. As against defendant No.2, declining leave to defend, the learned Single Judge has held that by accepting the invoices and signing the hundis, defendant no.2 would also be liable. The learned Single Judge has held that in view of the admitted documents, no case was made out to grant leave to defend.

4. It is unfortunate that the pleadings of either party do not bring out the correct legal picture. This Court has often lamented at the poor quality of pleadings pertaining to commercial transactions. It must be understood by legal practitioners that people carry on business as per the need of the hour, and when a legal dispute arises, it is the duty of the legal practitioner to carefully understand the facts and the circumstances surrounding the facts under which or in which the parties transacted business and then apply the law, to see what was the final jural relationship which bonded the parties.

5. Now, whereupon an assurance or an undertaking by 'A' to 'B' that if 'B' delivers goods to 'C', 'A' would ensure payment to 'B', upon goods being delivered at the agreed price, 'C' would be liable to pay 'B' as a creditor and 'A' would be liable to pay 'B' as a surety. But, if at the asking of 'A', 'B' agrees to supply goods to 'A' and at the asking of 'A' the place where the goods are delivered is the workplace of 'C', 'A' has to make good the payment to 'B' who can recover nothing from 'C', for the reason, the law of contract and sale of goods gives an option to the parties to agree the place where the goods have to exchange hands.

6. We would have expected the legal practitioners to have understood the aforesaid legal position.

7. Keeping in view the above legal position and applying the same to the facts of the instance case, we find that the initial dialogue between the appellant and the plaintiff resulted in a contract being concluded, as per which the plaintiff had to supply PP Moulding to the appellant and upon the goods being supplied, the appellant had to make the payment and the place of delivery of the goods agreed to were the premises of defendant No.2 and M/s Premier Home Appliances. But, the transaction which was actually worked out was, that the plaintiff made delivery of the goods to defendant No.2 and did not raise any invoice in the name of the appellant; the invoice(s) was raised in the name of defendant No.2, and as against hundis being required to be signed by the appellant as per the contract, the plaintiff obtained signatures of defendant No.2 on the hundis.

8. Nothing prevents parties from novating a contract.

9. Under the circumstances, a perusal of the admitted documents would reveal a complete hiatus in the pleadings of all parties vis-à-vis the actual reality.

10. But, law requires the pleadings of the parties to be understood meaningfully and if wrong legal positions are taken by the legal practitioners, the Courts would not be rendered without a power to do justice.

11. We read the transaction, as per which the liability of defendant No.2 would be the principal liability, for the reason while implementing the agreement the parties novated the original agreement, and as against a transaction between the plaintiff and the appellant as principal to principal, the transaction executed was between the plaintiff and defendant

No.2 as principal to principal. The status of the appellant which prima facie emerges, is that of a surety.

12. While dealing with the application seeking leave to defend filed by defendant No.2, the learned Single Judge has negated the defence that it acted as the agent of the appellant and has made liable defendant No.2 on the ground that having accepted the hundis as consideration for the raw material received, defendant No.2 would be liable to pay the price of the goods to the plaintiff.

13. We agree with the submission made by learned counsel for the appellant that there cannot be two principals to a single principal and that a transaction pertaining to sale of goods has to be between one principal and another.

14. The impugned order obviously has a conflict of reasoning vis-à-vis the liability of the appellant and defendant No.2.

15. The only manner, to probably resolve the conflict, is to prima-facie read the pleadings as above.

16. In view of the above, we find that the appellant is entitled to a leave to defend being granted, but upon a condition. The condition would be that the appellant would deposit the principal sum due and not as claim i.e. would deposit ₹14,00,125/- in the suit by tendering the same in the name of the Registrar General of this Court within a period of 6 weeks from today and thus, we allow I.A.No.2565/2000 on aforesaid term and permit the appellant to contest the suit.

17. Upon the appellant depositing ₹14,100,125/- by tendering the amount by means of a cheque in the name of the Registrar General of this Court within 6 weeks from today, the suit shall stand restored vis-à-vis the appellant, and the decree against the appellant would be treated as having been

set aside. The learned Single Judge would thereafter, grant an appropriate time to the appellant to file a written statement.

18. The amount deposited by the appellant would be permitted to be received by the plaintiff without any security.

19. Since none appears for the respondents, there shall be no order as to costs in the appeal.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 29, 2012
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