

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

SUBJECT : CODE OF CIVIL PROCEDURE

Judgment reserved on : October 20, 2008

Judgment delivered on : December 05, 2008

RFA 786/2006

KRISHNA CHAUDHARY .....

Appellant  
Through: Mr.S.K.Paul, Advocate

VERSUS

PROMILA BAJAJ .....

Respondent  
Through: Ms.Jyotika Kalra, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE J.R. MIDHA

PRADEEP NANDRAJOG, J.

1. Ms.Promila Bajaj, carrying on business as the sole proprietor of M/s.Promila Leather Company is the protagonist. Ms.Krishan Chaudhary, carrying on business as the sole proprietor of M/s.H.K.International is the antagonist.

2. Promila Bajaj filed a suit against Krishna Chaudhary seeking a decree in sum of Rs.5,92,906.20 and prayed that pendente lite and future interest be granted to her @ 18% per annum. As per the suit her firm had supplied goods to the firm of Krishna Chaudhary between the month of August 1994 till the month of December 1995 and as per the statement of account maintained by her, Rs.4,90,006.20 was payable in respect of the outstanding bills as per the account closing December 1995. Balance suit amount was stated to be the pre-suit interest calculated @ 18% per annum on the sum of Rs.4,90,006.20.

3. Krishna Chaudhary denied any business transactions with Promila Bajaj and averred in the written statement that Rajinder Bajaj, husband of Promila Bajaj, was an agent of ITI Calcutta and that she had purchased goods from ITI Calcutta through Rajinder Bajaj and had made certain payments to him to liquidate the dues of ITI Calcutta. She stated that she had returned certain goods to him but had not received the credit adjustment thereof.

4. On the pleadings of the parties the basic issue which arose for consideration was whether Promila Bajaj is entitled to a decree as prayed for. This issue would obviously embrace the issue whether the parties had business dealings. Of course, if held entitled to money, issue of the rate of interest payable on the outstanding amount also required to be adjudicated.

5. We eschew reference to other issues framed which arose out of technical defences and in respect whereof the parties have not litigated in the appeal.

6. Promila Bajaj examined 4 witnesses, being her husband Rajinder Bajaj who appeared as PW-1. She examined one Hardev Singh, an officer from Punjab and Sind Bank, Guru Harkishan Nagar as PW-2. J.R.Mehta, Manager, Indian Bank, Defence Colony was examined as PW-3. Tajinder Singh, an officer from Punjab and Sind Bank, Guru Harkishan Nagar was examined as PW-4.

7. Krishna Chaudhary examined only one witness i.e. herself.

8. Rajinder Bajaj proved Ex.PW-1/1 the power of attorney executed by his wife in his favour to prosecute the suit, which we note was filed under the signatures of Promila Bajaj. 12 bills stated to have been raised upon M/s.H.K.International were proved as Ex.PW-1/2 to Ex.PW-1/13. The passbook issued by the banker of M/s.Promila Leather Company i.e. Punjab and Sind Bank, Guru Harkishan Nagar was proved as Ex.PW-1/14. The statement of account of M/s.Promila Leather Company, for the financial year 1994-95 was proved as Ex.PW- 1/16 and that for the financial year 1995-96 was proved as Ex.PW-1/17. The balance sheet of M/s.Promila Leather Company as on 31.3.2001 was proved as Ex.PW-1/15. A notice dated 8.7.1996 stated to have been sent to M/s.H.K.International by Regd. A.D. Post was proved as Ex.PW-1/19 and another notice dated 28.2.1997 sent under Regd. A.D. Post to M/s.H.K.International was proved as Ex.PW-1/20. The envelopes containing the two notices which were returned by the postal authorities were proved as Ex.PW-1/21 and Ex.PW-1/22.

9. At this stage we may note that we have perused the Trial Court Record but have failed to locate Ex.PW-1/21 and Ex.PW-1/22. The witness stated that the cheques which were received from the sole proprietary firm of Krishna Chaudhary were duly reflected in the statement of account maintained by M/s. Promila Leather Company and were also reflected in the passbook Ex.PW-1/14.

10. It would be relevant to note that during cross examination PW-1 stated that whenever bills were raised and goods were delivered some or the other employee of M/s.H.K.International used to sign on the office copy of the bill in token of acceptance of the bill. He deposed that the bill Ex.PW-1/3 bears the signature of one Mr. Bhatia; that the bills Ex.PW-1/4 and Ex.PW-1/5 bears the signature of one Mr. Sunny and that the bills Ex.PW-1/6 to Ex.PW-1/8 bears the signature of Mr. Singh. It would also be relevant to note that PW-1 was not cross examined with respect to the cheques shown in the passbook as being credited or returned and issued by the firm M/s. H.K.International. No

suggestion was put to him that these cheques do not pertain to the sole proprietary firm of Krishna Chaudhary.

11. PW-2 produced the bank record pertaining to the account of M/s.Promila Leather Company maintained by the bank. He also produced the cheque return register maintained by the bank. The statement of account was proved as Ex.PW-2/1 and the cheque return register for the period 31.8.1994 to 16.5.1995 was proved as Ex.PW-2/2. He affirmed that Ex.PW-1/14 was the passbook issued by the bank to M/s.Promila Leather Company being Ex.PW-1/14.

12. Relevant would it be to note that PW-2 was partially examined on 1.10.2004 Thereafter he was never summoned and hence his examination-in- chief has remained inconclusive. Obviously, PW-2 was not subjected to any cross examination.

13. It has also to be noted that the statement of account produced by PW-2 maintained by the bank pertained to current account No.79 in the name of M/s.Promila Leather Company; the same account qua which identical entries stand recorded in Ex.PW-1/14 being the passbook issued by the bank to M/s.Promila Leather Company.

14. PW-4 also produced the statement of account, being current account No.79, maintained by the bank in the name of M/s. Promila Leather Company and proved the same as Ex.PW-4/1. The cheque return register was proved by him as Ex.PW-4/2. Even he affirmed that the passbook, Ex.PW-1/14 was issued by the bank.

15. Relevant would it be to note that further examination of PW-2 was deferred as complete record pertaining to the cheque return register and the statement of account of M/s.Promila Leather Company was not produced by him and that PW-4 did the needful.

16. PW-3, J.R.Mehta produced the bank record pertaining to current account No.570 in the name of M/s. H.K.International and proved the same as Ex.PW-3/1 to Ex.PW-3/7.

17. It may be noted that on cross examination, the witness said that he could not tell whether M/s. H.K.International is a partnership firm or a proprietary firm nor did he know the names of the account holder.

18. We presume that by the later statement the witness intended to say that he did not know who were the partners of the firm, if M/s. H.K.International was a partnership firm, or did not know the name of the proprietor thereof if the firm was a sole-proprietary firm. No other meaning can be assigned to his said statement because obviously the account was in the name of M/s. H.K.International and hence it does not make any sense for him to say that he did not know the name of the account holder.

19. Krishna Chaudhary stepped into the witness box to establish her defence and in her examination-in-chief simply reiterated what she had stated in the written statement. She proved no documents. Her cross examination is relevant and hence is being noted in toto:- XXX by Sh. Anil Khosla Advocate for plaintiff. My affidavit was prepared by my

counsel under my instructions. I do not remember as to where and when same was prepared. I do not remember whether the affidavit was got attested before me or not. I do not remember as to where the affidavit was got attested. I am the proprietor of the firm M/s HK International since its inception. I know the plaintiffs attorney. It is correct that the account of my firm is duly maintained. I cannot say that whether the firm is registered with sales tax dept. or the sale tax is submitted or not. Vol. My husband was looking after the work of the firm. It is incorrect that any good was purchased by the firm from the plaintiff. It is incorrect that any goods were supplied to my firm by the plaintiff vide bills Ex.PW-1/2 to 1/3. I do not know the account number of my firm. I do not remember that my firm has any account in Indian Bank, Defence Colony Branch. It is wrong to suggest that I am intentionally not disclosing the account number of the bank. It is wrong to suggest that the account number of my firm in Defence Colony branch at Indian Bank was 570. I do not know that some cheques were issued on behalf of my firm in favour of plaintiff towards outstanding payment due against the plaintiff during the period between 1994 to 1995. I do not know about the issue of the cheque from the account of our firm in favour of plaintiff as my husband was looking after the affairs. I have no knowledge about the cheque of Rs.50248/- in favour of the plaintiff issued from account of my firm. Similar is my reply in respect of another cheque of Rs.74475/-. I also do not know that a cheque of Rs.77000/- was returned from the bank which was issued in favour of plaintiff during the year 1984 vide cheque no.411452. I do not know as to whether the accounts were maintained by my firm or not. My son used to look after the work of firm along with my husband. My husband died in 7.10.1999. It is wrong to suggest that I have intentionally and deliberately not filed the accounts book on record because there was mentioning of dealings taken place between my firm and the plaintiff. It is wrong to suggest that an amount of Rs.490006.20P was due against the firm M/s HK International/def till Dec.95. I do not remember whether any notice was sent to me by the plaintiff in the year 1996 and 1997. It is correct that my son Deepak Chaudary was doing the entire work of the firm during the lifetime of my husband with him. It is wrong to suggest that I am deposing falsely.

20. The statement of account of M/s.Promila Leather Company maintained by the Punjab and Sind Bank pertaining to current account No.79, Ex.PW-4/1, the statement of account maintained by Promila Bajaj, Ex.PW-1/16 and Ex.PW-1/17 as also the statement of account of M/s.H.K.International being CA No.570 maintained by the Indian Bank, Ex.PW-3/1 to Ex.PW-3/7, revealed two very relevant entries pertaining to two cheques issued from the account of M/s.H.K.International maintained by Indian Bank, in sum of Rs.50,428/- on 2.11.1994, and a cheque issued on 8.9.1994 in sum of Rs.75,475/- from the said account, which were duly credited in the account of M/s.Promila Leather Company.

21. Decreeing the suit and granting interest @ 12% per annum on the sum of Rs.4,90,006.20 with effect from 1.1.1996 till realization, two principal reasons have been given by the learned Trial Judge. Firstly that Krishna Chaudhary did not produce her account books pertaining to the alleged transactions with ITI Calcutta and failed to establish that the cheques which she had issued were handed over to the husband of Promila Bajaj and the beneficiary of the cheques was ITI Calcutta. For non-production of

the account books an adverse inference has been drawn against Krishna Chaudhary. The other reason, which appears to be a more weighty reason, is that the two cheques in sum of Rs.50,428/- and Rs.75,475/- shown credited in the account of M/s.Promila Leather Company and debited in the account of M/s. H.K.International, the debit and credit entries being recorded in the respective statement of accounts maintained by the banker of M/s. Promila Leather Company and the banker of M/s. H.K.International, were conclusive evidence of business transactions between the two firms. With reference to the cheque return register of Punjab and Sind Bank, the learned Trial Judge has noted that certain cheques issued from the account of M/s.H.K.International maintained with Indian Bank were returned dishonoured and that the cheques were drawn in the name of M/s. Promila Leather Company. The conclusion drawn is that the defence stood falsified from the said documentary evidence.

22. Learned counsel for the appellant urged that the claim of Promila Bajaj is false, evidenced by the fact that the statement of account produced by Promila Bajaj evidenced that by 1st August, 1994, Rs.90,930/- was due and payable but a cheque in sum of Rs.70,470/- was received. Counsel urged that it was unexplainable as to why a cheque in a lesser amount was received by Promila Bajaj. Counsel further urged that the cheque in question was obviously presented for the first time on 18.7.1994 and was returned dishonoured on 19.7.1994 as evidenced from the cheque return register. Inference sought to be drawn was that the cheque was indeed towards advance payment. Counsel urged that a pay order in sum of Rs.1,00,000/- was admittedly received by Promila Bajaj on 27.8.1994 and credited in the account maintained by her firm pertaining to M/s.H.K.International. Counsel wondered why not for Rs.90,930/-, the amount outstanding as on 1.8.1994. Pertaining to the cheque in sum of Rs.75,475/- which stands duly credited in the account of M/s.Promila Leather Company and debited in the account of M/s.H.K.International, counsel urged that the statement of account Ex.PW-1/16 and Ex.PW-1/17 revealed that in the month of September 1994 goods worth Rs.75,475/- were supplied evidenced by the bill, Ex.PW-1/4 and the bill Ex.PW-1/5; the total thereof is Rs.75,475/-. Counsel urged that it was obvious that the cheque in question was towards payment of the said two bills. Counsel urged that if the earlier bills i.e. the bill Ex.PW-1/2 and Ex.PW-1/3 were totalled along with the amount shown payable under the bills Ex.PW-1/4 and Ex.PW-1/5, total amount payable comes to Rs.1,75,475/-. Counsel urged that it becomes clear that the payment of Rs.1,00,000/- by means of the pay order and Rs.75,475/- by means of a cheque total amount payable under the said four bills stood squared up.

23. Similarly pertaining to a cheque issued by Krishna Chaudhary in sum of Rs.1,38,216/- on 15.9.1994 counsel urged: why was the cheque for a specific figure and not a round figure. Similarly, same issue was predicated qua cheque in sum of Rs.74,285.76, a cheque in sum of Rs.1,26,352/-, a cheque in sum of Rs.75,000/-, a cheque in sum of Rs.77,000/-, a cheque in sum of Rs.1,55,000/- and another cheque in sum of Rs.40,000/-, all of which were returned dishonoured.

24. In sum and substance, contention of learned counsel for Krishna Chaudhary was that Promila Bajaj did not explain the said cheques.

25. The argument of learned counsel for Krishna Chaudhary has to be noted and rejected for the simple reason, any argument which is speculative in nature cannot form the foundation of a submission. We have gone through the testimony of the witnesses of Promila Bajaj and in particular her attorney Rajinder Bajaj. Krishna Chaudhary never subjected any witness and in particular Rajinder Bajaj to any cross examination pertaining to why said cheques were received by Promila Bajaj. Had she done so the witnesses would have responded to the questions. It is settled law that if an adverse inference has been drawn with respect to the evidence of a witness, in cross examination, the witness concerned has to be questioned on a matter of fact. May be, satisfactory answers are given. If not, only then would the Court be justified in drawing an adverse inference against the witness or his testimony.

26. Obviously, in view of the defence taken by Krishna Chaudhary of a total denial of any dealing, consistent with the said defence (which is proved to be obviously false), she chose not to cross examine any of the witness of Promila Bajaj with respect to the cheques issued from the account of M/s.H.K.International, which were duly honoured as also the cheques which were returned dishonoured. Thus, learned counsel for the appellants cannot succeed on the strength of the arguments as noted above.

27. It would not be out of place to record that on being cross examined, Krishna Chaudhary denied knowledge of the banker with whom she was maintaining an account in the name of her sole proprietary firm. It is also relevant to note that in her examination-in-chief, Krishna Chaudhary never put up a case, with respect to the cheques in question, as was sought to be argued in appeal. Indeed, an adverse inference has to be drawn against Krishna Chaudhary for not producing her account books and not producing her banker if there was any other than Indian Bank Branch at Defence Colony.

28. It is true that PW-3, the Manager of Indian Bank who produced the statement of account of M/s.H.K.International failed to disclose the name of the sole proprietor of the firm M/s.H.K.International, but that does not detract from the fact that the said account was indeed pertaining to the sole proprietary firm of Krishna Chaudhary, evidenced by the fact that PW-1 was not cross examined, much less his testimony challenged, with respect to the entries in the statement of account maintained by M/s.Promila Leather Company pertaining to M/s.H.K.International, being Ex.PW-1/16 and Ex.PW-1/17 which record credit entries on payment being received from M/s.H.K.International, the sole proprietary firm of Krishna Chaudhary. The witness categorically deposed that the cheques were drawn on the account of M/s.H.K.International, the sole proprietary firm of Krishna Chaudhary. No suggestion was put to the witness that the firm M/s.H.K.International referred to by him was not the sole proprietary firm of Krishna Chaudhary.

29. As noted by us, PW-1 gave the names of three employees of the firm M/s.H.K.International who received some of the bills. We note that Krishna Chaudhary, in her examination-in-chief never disclaimed that the said three persons namely Mr.Bhatia, Mr.Sunny and Mr. Singh were not her employees. 30. We concur with the

view taken by the learned Trial Judge that the evidence on record establishes business transactions between the parties. We concur with the view taken by the learned Trial Judge that Krishna Chaudhary failed to prove any dealings between her firm and ITI Calcutta much less entrusting any cheques to Rajinder Bajaj beneficiary whereof was ITI Calcutta, much less the fact that any cheque was misused.

31. On the issue of interest the learned Trial Judge has granted interest @12% per annum on the sum of Rs.4,90,006.20 which we find is fair and reasonable.

32. We find no merit in the appeal.

33. The same is dismissed with costs.

Sd./-  
PRADEEP NANDRAJOG, J.

Sd./-  
J.R. MIDHA, J.

December 05, 2008