

IN THE COURT OF SH. ARUN SUKHIJA,
ADDITIONAL DISTRICT JUDGE – 07, (CENTRAL DISTRICT)
TIS HAZARI COURTS, DELHI.

SUIT NO.:- 277/2017

UNIQUE CASE ID NO.:- 1458/2017

IN THE MATTER OF :-

**M/s. Canadian Specialty Vinyls,
49, Rani Jhansi Road, New Delhi-110055.
Through: Sh. Shikhar Mahajan, Partner.**

....Plaintiff

VERSUS

**Mr. Divya Arora, Proprietor
M/s. Add Mad World,
Opp. Vishal Megamart,
Ranipur Mode, Hardwar-249407.**

....Defendant

**SUIT FOR RECOVERY FOR A SUM OF RS.12,39,700/- (RUPEES
TWELVE LAKHS THIRTY NINE THOUSAND SEVEN HUNDRED
ONLY)**

Date of institution of the Suit : 13/04/2017
Date on which Judgment was reserved : 16/03/2020
Date of Judgment : 17/06/2020

::- J U D G M E N T -::

By way of present judgment, this Court shall adjudicate upon suit for recovery for a sum of Rs.12,39,700/- (Rupees Twelve Lakhs Thirty Nine Thousand Seven Hundred Only) filed by the plaintiff against the defendant.

CASE OF THE PLAINTIFF AS PER PLAINT

Succinctly, the necessary facts for just adjudication of the present suit, as stated in the plaint, are as under:-

- (a) The plaintiff is a partnership firm, duly registered with the Registrar of Firms, engaged in manufacture of PVC Clear/flex and Pharma sheets. The Head Office of the plaintiff firm is located in Delhi at the address aforementioned and their factory is located at Kashipur, Uttrakhand. Mr. Shikhar Mahajan, Partner of the plaintiff firm is duly authorized, vide a resolution of all the partners to initiate the present legal action against the defendant
- (b) The defendant is proprietor of her firm, M/s. Addmad World, as aforementioned, and manages day to day affairs of his firm aforementioned. The defendant first approached the plaintiff his aforementioned Head Office at Delhi, and expressed interest in buying the material being produced by the plaintiff and placed an order for aforementioned material. The plaintiff executed the order emanating from the defendant, for the material produced at plaintiff's Plant at Kashipur and supplied, to the defendant, vides Invoice No.SIE000289 dated 23.06.2013.
- (c) When the defendant approached the plaintiff, at his aforesaid Head Office at Delhi and expressed her interest in buying the material produced by the plaintiff, the defendant represented to the plaintiff that the defendant was a big dealer of the live products manufactured by the plaintiff and is engaged in multinational operations and thus induced the plaintiff to extend credit facility to the defendant, for the purchase of material from the plaintiff and promised to make regular payments.
- (d) The defendant initially made some part payments for the material supplied by the plaintiff firm, but withheld a substantial portion of the outstanding

amount and thereafter, the defendant put his evil designs into action, whereby, the defendant started making excuses for not making payment and simultaneously, wanting deliveries of more material, with an eye to hoard huge stock of the plaintiff's material to be taken on credit basis.

- (e) Despite several calls, visits and letters by the representatives of the plaintiff, the defendant has been avoiding the representatives of the plaintiff and making one excuse or the other for not making the payment due to the plaintiff.
- (f) On date of filing the case, the defendant is liable to pay to the plaintiff firm a total sum of Rs.7,37,935 (Seven Lakhs Thirty Seven Thousand Nine Hundred Thirty Five only) which is unpaid for the material supplied to the defendant. In addition, the defendant is also liable to pay an interest @ 2% per month, for a period of 34 months (starting 01.06.2014 to 31.03.2017) amounting to a sum of Rs.5,01,772/- (Rupees Five Lakhs One Thousand Seven Hundred Seventy Two Only). Thus, a total sum of Rs.12,39,707/- (Rupees Twelve Lakhs Thirty Nine Thousand Seven Hundred Seven Only) is recoverable as per the statement enclosed and further interest pendent lite plus further interest that will accrue due to non-payment of money due to the plaintiff.

EX-PARTE PROCEEDINGS

The defendant was duly served and vide order dated 13.11.2018, she was directed to file Written Statement within a period of two weeks, subject to cost of Rs.2500/- to be paid to the plaintiff. The matter was also referred to Mediation, but as per Report dated 23.02.2019, the proceedings before Mediation were failed. The defendant has not filed the written statement and accordingly, vide order dated 04.04.2019, the right of the defendant to file the Written Statement was

closed and defence of the defendant was struck off. On 02.11.2019, none appeared on behalf of the defendant and accordingly, the defendant was proceeded ex-parte.

EX-PARTE EVIDENCE OF THE PLAINTIFF AND DOCUMENTS RELIED UPON BY PW-1

The plaintiff, in order to prove its case, led plaintiff's evidence and got examined Sh. Shikhar Mahajan as PW-1, who has filed his evidence by way of affidavit, wherein, he reiterated and reaffirmed the contents of the plaint. PW-1 in his testimony has relied upon the following documents:-

1. Certified copy of Registration Certificate is Ex.PW-1/A (2 pages).
2. Resolution held on 28.01.17 is Ex.PW-1/B.
3. Copy of invoice no. SIE - 000289, dated 23.06.2013 is Ex.PW1/C.
4. Goods Receipt no. 66, dated 23.06.13 is Ex.PW-1/D.
5. Statement of Account w.e.f. 01.04.2013 to 31.03.2015 is Ex.PW-1/E.
6. Certificate under Section 65 - B of the Indian Evidence Act is Ex.PW-1/F.
7. Legal Notice dated 16.06.2014 is Ex.PW-1/G.
8. Postal receipt is Ex.PW-1/H.

On 16.03.2020, this Court heard ex-parte final arguments, as advanced by Ld. Counsel for the plaintiff. Ld. Proxy counsel for the defendant appeared and sought time to address final arguments. Although, the defence of the defendant was already struck off and defendant was already proceeded ex-parte, even then, the Court granted an opportunity to the defendant to file written submissions within two weeks with advance copy to Ld. Counsel for the plaintiff and simultaneously, the plaintiff was also granted an opportunity to file written submissions within two weeks with advance copy to Ld. Counsel for the defendant and the matter was fixed for Judgment. None of the parties have filed written submissions.

I have perused the material available on record.

FINDINGS AND CONCLUSIONS OF THE COURT

The defendant has not filed the Written Statement to contest the suit of the plaintiff. The opportunity was also granted to the defendant to file the Written Statement, but the defendant has failed to file the Written Statement and accordingly, vide Order dated 04.04.2019, the defence of the defendant was struck off. The perusal of the Statement of Account (Ex.PW-1/E) reveals that the defendant had paid a sum of Rs.1,00,000/- on 24.05.2014 and the present suit was filed on 13.04.2017. Accordingly, the suit was filed within prescribed period of limitation.

The said Statement of Account further reveals that payments were made through the banking transactions. The Plaintiff has clearly mentioned in the plaint and evidence by way of affidavit of PW-1 that the defendant approached the plaintiff at the head office of plaintiff at Delhi and placed the order. There is no dispute between the parties that plaintiff's office is within territorial jurisdiction of this Court.

I have profit to refer paras no.5 and 6 of the Judgment passed in ***RSA No.40/2013 titled as Satyapal Vs. Slick Auto Accessories Pvt. Ltd. decided on 5th March, 2014 by the Hon'ble High Court:-***

“5. The first appellate court has surprisingly and illegally not at all referred to even remotely the detailed analysis and reasoning which has been given by the trial court to hold that the courts at Delhi have the territorial jurisdiction. Since the trial court has written, in my opinion, a very thorough and an excellent judgment, I would like to reproduce the relevant paras of the judgment of the trial court instead of using my words. The relevant paras of the trial court are 19 to 25 and the same read as under:-

“ISSUE NO. 1:

“19. The question to be answered is as to whether this court has no territorial jurisdiction to try and entertain the present suit. The onus to prove this issue was upon the defendant.

20. The defendants have contended that the office/factory of the defendants is situated in Bhiwadi, District-Alwar, Rajasthan and the delivery of the goods was also made at Bhawadi, District-Alwar, Rajasthan at the office/factory of the defendants and therefore no part of the cause of action arose within the jurisdiction of this court. DW 1 has deposed on these lines.

21. There is no doubt the material was supplied by the plaintiff to the defendants at Bhiwadi, District-Alwar, Rajasthan. The same is clear from the invoices Ex. PW1/A and Ex. PW1/B. However even if the material was delivered at Bhiwadi, District-Alwar, Rajasthan it is clear that the material was supplied from the office/factory of the plaintiff situated at Jwala Nagar, Shahdara, Delhi-32 which falls within the jurisdiction of this court.

22. It is a well established principle of law that where, under a contract no place of payment is specified, the debtor must seek his creditor and therefore a suit for recovery is maintainable at the place where the creditor resides or works for gain, because a part of the cause of action arises at that place also with the contemplation of section 20 (c) of the Code of Civil Procedure. Reference may be made to the judgments titled as “State of Punjab V. A. K. Raha” reported as AIR 1964 CALCUTTA 418 (DB), “Jose Paul v. Jose” reported as AIR 2002 KERALA 397 (DB), “Rajasthan State Electricity Board V. M/s Dayal Wood Works” reported as AIR 1998 ANDHRA PRADESH 381, “Munnisa Begum V. Noore Mohd.” Reported as AIR 1965 ANDHRA PRADESH 231 and “State of U.P. v. Raja Ram” reported as AIR 1966 ALLAHABAD 159.

23. In the judgment titled as “**State of Punjab v. A. K. Raha**” reported as AIR 1964 CALCUTTA 418 (DB) it was clearly held:-

“.....The general rule is that where no place of payment is specified in the contract either expressly or impliedly, the debtor must seek the creditor, see *The Eider* (1893) P 119 at p. 136, *Drexel v. Drexel*. (1916) 1 Ch 251 at p. 261, *North Bengal, Das Brothers Zemindary Co. Ltd V. Surendera Nath Das*, ILR (1957) 2 Cal 8. The obligation to pay the debt involves the obligation to find the creditor and to pay him at the place where he is when the money is payable. The application of the general rule is not excluded because the amount of debt is disputed....”

24. In the judgment titled as **Sreenivasa Pulvarising vs. Jal Glass & Chemicals Pvt. Ltd.** reported as AIR 1985 Cal 74 it was also held:-

“.....In a contract of the nature now under consideration performance of the contract consists not only of delivery of the goods but also of payment of the price. Therefore, cause of action for a suit on breach of such a contract would arise not only where the goods were to be delivered but also where the price would be payable on such delivery.....”

It was further held:-

“.....9. Therefore, the law continues to remain the same and in a suit arising out of a contract, a part of the cause of action arises at the place where in performance of the contract any money to which the suit relates is payable....”

Adverting to the facts of the present case office/factory of the Plaintiff is situated at Jwala nagar, Shahdara, Delhi-32. No place of payment has been specified in the contract/bills/invoices. The defendants are liable to make the payment for the goods supplied to them. No application was

made by the defendants to the plaintiffs for fixing a place of payment and Sec. 49 of the Indian Contract Act cannot apply to the facts of the case. Therefore, the payment was to be made at the office of the plaintiff. Further the purchase order was placed at Jwala Nagar, Shahdara, Delhi-32 and the goods were supplied from Jwala nagar, Shahdara, Delhi-32 Therefore a part of the cause of action definitely arises at Jawala Nagar, Shahdara, Delhi-32. Hence the present suit for recovery of the sale price can be filed before this court as the office of the plaintiff is situated within the territorial limits of the jurisdiction of the court.

25. I therefore hold that this court has the territorial jurisdiction to try and entertain the present suit. This issue is therefore decided in favour of the plaintiff and against the defendants.”

(underlining added)

“6. I completely agree with the conclusion of the trial court because it is settled law that the debtor has to seek the creditor and since no place of payment was agreed upon, payment would have been made to the seller/appellant who is residing and working for gain at New Delhi. Trial court has also rightly relied upon Section 49 of the Indian Contract Act, 1872 that it was upon the respondent no.1/defendant no. 1 to fix the place of payment and which has not been done, and therefore payment would have been made by the debtor to the creditor at the place of the creditor/plaintiff/appellant. As already stated the first appellate court has not even bothered to refer to the analysis and reasoning of the trial court for holding that the courts at Delhi have jurisdiction. Accordingly, the findings of the first appellate court are set aside and it is held that the courts at Delhi have territorial jurisdiction.”

(Portions bolded in order to highlight)

The plaintiff was/is carrying on the business in Delhi and since no place of payment was fixed by the defendant, therefore, payment by the defendant/debtor

was required to be made to the creditor/plaintiff at the place of the creditor/plaintiff. This Court has territorial jurisdiction to entertain and decide this suit as the part of cause of action arises in Delhi and further plaintiff's office is situated within the territorial limits of the jurisdiction of this court.

The defence of the defendant was struck off and further the defendant has not cross-examined PW-1 to contradict or disprove the case of the plaintiff. When the case of the plaintiff has gone un-challenged, uncontroverted, un-rebutted and duly corroborated by the documents, this Court has no reason to disbelieve the version of the plaintiff qua the principal amount of Rs.7,37,935/-.

The Plaintiff has claimed interest @ 2% per month for a period of 34 months i.e. starting from 1.06.2014 to 31.03.2017. The Hon'ble Division Bench of Hon'ble High Court of Delhi in the case of ***Pt. Munshi Ram & Associates (P) Ltd. V. DDA, 2010 SCC Online Del 2444*** has held that higher rates of interest, which are against public policy, can be struck down by the Court by finding such rates of interest to be against the public policy. Any Contract, which is against the public policy, is void under Section 23 of the Indian Contract Act, 1872. The said Judgment was also relied upon by the Hon'ble Single Bench of the Hon'ble High Court in the case bearing ***R.F.A. No.823 of 2004 titled as Shri Sanjay Mittal Versus Sunil Jain decided on 07.12.2018***. The Hon'ble Single Bench has granted 9% p.a. interest instead of 24% per annum i.e. 2% per month.

The interest of 2% per month is not only unreasonable, but the same is also excessive and in terms of the aforesaid dictums of Hon'ble High Court, the same is against the public policy and void under Section 23 of the Indian Contract Act, 1872. In my considered view, the interest of justice would be served if the plaintiff is granted simple interest @ 9% p.a. from 01.06.2014 till filing of the case.

Section-34 CPC postulates and envisages the pendent-elite interest at any rate, not exceeding 6% and future interest at any rate, not exceeding the rate, at which nationalized banks advance loan. Keeping in mind the mandate of the said proposition, the interest of justice would be served if plaintiff is granted pendent-lite simple rate of interest @ 6% per annum and future rate of interest @ 9% per annum till its realization.

Applying priori and posteriori reasoning, this Court is satisfied that plaintiff has been able to prove its case against the defendant for the aforesaid amount.

RELIEF

From the discussions, as adumbrated hereinabove, I hereby pass the following

FINAL ORDER

- a. A decree of Rs.7,37,935/- is passed in favour of the plaintiff and against the defendant along-with simple interest @ 9% p.a. from 01.06.2014 till filing of the case. The plaintiff is also granted pendent-lite simple rate of interest @ 6% per annum and future simple rate of interest @ 9% per annum till its realization and the same is also payable by the defendant.
- b. The cost of the suit is also awarded in favour of the plaintiff and against the defendant.

Decree-sheet be prepared accordingly.

File be consigned to Record Room after due compliance.

**Announced through video conferencing on
this 17th day of June, 2020.**

ARUN
SUKHIJA
(ARUN SUKHIJA)
ADJ-07 (Central)
Tis Hazari Courts, Delhi

Digitally signed
by ARUN SUKHIJA
Date: 2020.06.17
12:46:20 +05'30'

Suit No. 277/2017 (ID No.:- 1458/2017)

M/s. Canadian Specialty Vinyls

Vs.

Divya Arora

17.06.2020

The matter has been kept for pronouncement through cisco webex video conferencing.

Present: None for the plaintiff
None for Defendant (Although Defendant is already ex-parte)

The meeting ID was sent by the Ahlmad to the Ld. counsel for plaintiff as well as defendant but no one has joined Video Conferencing. Vide Separate Judgment the suit of the Plaintiff is decreed in terms of the Judgment. Decree Sheet be prepared accordingly.

File be consigned to record room after due-compliance.

ARUN
SUKHIJA

Digitally signed by
ARUN SUKHIJA
Date: 2020.06.17
12:47:14 +05'30'

(Arun Sukhija)

ADJ-07/Central/Tis Hazari Courts,
Delhi/17.06.2020