

**IN THE COURT OF SH. HASAN ANZAR, ADJ-06**  
**WEST DISTRICT, TIS HAZARI COURTS**

**CS No.608641/16**

K R F Ltd  
Through its Accounts Executive  
Mr. Partho Pratim Chandra  
Regd office:  
B-7, Maya Puri,  
Phase II, New Delhi -64

.....Plaintiff

Versus

Centwin Hosiery Mills Pvt Ltd  
Through its Managing Director  
370, Kamraj Road,  
Tirupuri, Tamil Nadu

**Also at:**  
SF No. 352/2, Vigneshwara Nagar  
Tirpur-641604(Tamilnadu)

.....Defendant

**Date of institution: 18.11.2011**  
**Reserved for judgment : 25.02.2020**  
**Date of judgment : 29.05.2020**

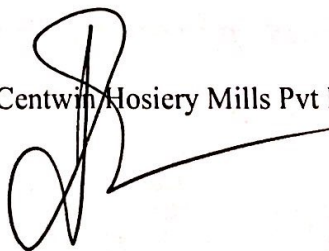
**JUDGMENT**

1. Plaintiff has filed suit for recovery of Rs 460383/- against

CS No.8641/16

KRF Ltd vs Centwin Hosiery Mills Pvt Ltd

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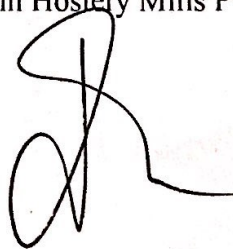


defendant alongwith interest pendentlite and future till the date of its realisation.

2. As per the facts pleaded in plaint are that plaintiff is manufacturer of Cotton Label, laces, print label, polybags, buttons etc and is marketing the garment accessories across the country. Suit has been instituted through Sh Partho Pratim Chandra S/o Late G K Chandra, pursuant to authorization issued by Board of Directors of Plaintiff Company in its meeting held on 14.09.2011 at its Registered office. Plaintiff was authorised to sign, verify and file the present suit against the defendant.

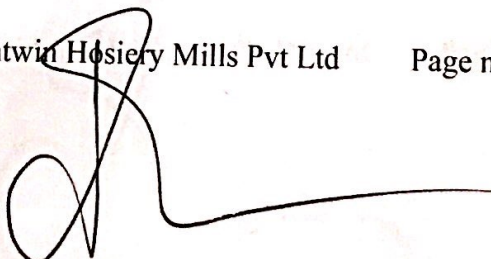
3. It is also averred that invoices were raised against the supplies made to Defendant Company by plaintiff from time to time. Payments received from Defendant Company were duly credited in the running ledger account being maintained by Plaintiff Company in its ordinary course of business with defendant.

3. It is also averred that as per the statement of account maintained by plaintiff for a sum of Rs 380482/- is outstanding against defendant upto 28.7.2010. It is also pleaded that supplies have been made from the Delhi office of plaintiff as per the terms and conditions printed in the bill. It is also pleaded that as per the terms and conditions as mentioned in Bills/invoices payments are required to be made within a



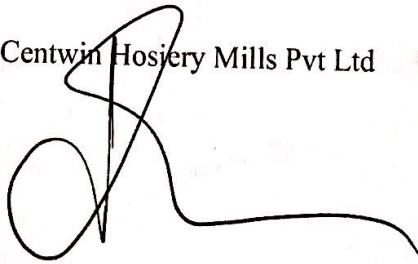
period of 15 days from receipt of bill and therefore, plaintiff is demanding payment from 28.07.2010 of Rs 380482/- upon which an interest @ 18% comes out to Rs 79901/- upto September 2011. It is also stated that plaintiff has also issued legal notice dated 08.03.2011 to defendant to make the aforesaid payment of Rs 380482/-. Plaintiff on the basis of aforesaid pleadings prayed for a decree of Rs 460383/ calculated upto September, 2011.

4. Summons of the suit were served on defendant however due to non appearance of defendant, defendant was proceeded ex parte on 05.11.2012. Later on Ex parte proceedings were set aside by the court on 16.4.2013 subject to the payment of cost of Rs 1000/- and defendant was granted an opportunity to file Written statement within a period of one week. However written statement was filed on behalf of defendant after a delay of more than two months from order dated 16.04.2013 and due to which written statement was not taken into record and defence of defendant was directed to be struck off. Thereafter, application for recall of order dated 03.07.2013 by which defence was directed to be struck off was dismissed by Court on 07.10.2013 and subsequently, vide order dated 27.11.2013 passed by Hon'ble High Court of Delhi in CM(M) No.1268/2013, Written statement filed on behalf of defendant was taken into record. It was directed that defendant shall make deposit cost of Rs 20000/- with the Prime Minister's Relief Fund.



5. Matter was kept for report of compliance and defendant was granted number of opportunities to apprise the court as to whether defendant had complied the order 27.11.2013 passed by Delhi High Court while disposing of CM(M) No. 1268 of 2013. However, defendant did not appear before the court and court notice was sent to defendant on 25.11.2014, 12.01.2015, 06.02.2015 and 28.08.2015. Court notice issued to defendant was served on 29.04.2016 and 19.05.2017. There is no material by which it can be concluded that Defendant made the payment of cost as directed by Hon'ble High Court.

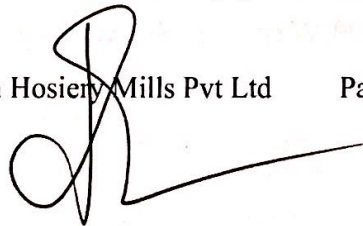
5. In the Written statement filed on behalf of defendant, it is pleaded that plaint does not disclose any cause of action as defendant has made the entire payment to the plaintiff. It is also pleaded that the supplies were made pursuant to a specific orders placed with the plaintiff. In the written statement, a plea is taken to the effect that no running ledger account is being maintained by Plaintiff Company and rather it is defendant who is maintaining the correct ledger account of bills. Defendant also took the plea that defendant company has made Payments towards the supplies made by defendant due amount for supplies made of Rs 359428/-. Defendant also took the plea that five different cheques were given by defendant towards the outstanding amount of Rs 359428/- and the said amount were duly made on



31.07.2009, 02.11.2009, 17.12.2009, 13.02.2010, 03.04.2010 and 29.07.2010. It is also stated that all dues of the plaintiff have cleared by defendant.

6. Plaintiff filed replication to the Written statement in which it is pleaded that written statement was not signed and verified by competent person. It is averred that that defendant did not make the payment as claimed by plaintiff. It is also pleaded that business dealings in between plaintiff and defendant started on 29.04.2005 and all the transactions as made in between plaintiff and Defendant Company are regularly fed into the computer managed and controlled by the plaintiff company in the ordinary course of business. It is also averred that is also taken to the effect that since defendant is trying to avoid its liability therefore, plaintiff had placed on record the entire statement of account right from the commencement of business in between plaintiff and defendant is produced/filed. Plaintiff has therefore produced the statement of account for the period from 01.04.2005 to 31.08.2011. It is also stated that payment matching for the bill filed by defendant is not of significant as payments were not made on bill to bill basis but on the basis of against the bill but were made on account statement by defendant.

7. Plaintiff also stated that the case of the plaintiff is to the effect that as per the statement of account maintained by plaintiff an amount

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of Rs 380482/- was due against defendant. Plaintiff admitted that five different cheques toward outstanding amount of Rs 359428/- was paid by defendant and same is duly reflected in the statement of account as filed on behalf of plaintiff.

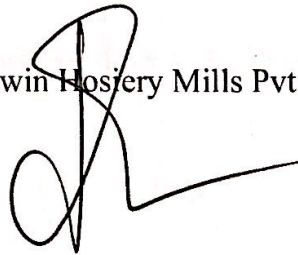
8. On the basis of pleadings of the parties, on 12.04.2016, following issues were framed.

ISSUE NO 1 :Whether defendants have made the payment of the amount claimed? OPD

ISSUE NO 2 : Whether plaintiff is entitled to the relief claimed ? OPP

ISSUE NO 3 : Relief

9. Plaintiff has examined PW1 Sh Partho Pratim Chandra and Shri Sanjay Mehta as PW-2. Plaintiff relied upon the following documents:PW1/1 is the certificate of incorporation of plaintiff company ; PW1/2 is the memorandum of association of plaintiff company ; PW1/3 is the Article of association of plaintiff company ; PW1/4 is the attested copy of extract of Minutes of meeting of Board of Directors; PW1/5 is the computer generated ledger from 01.04.2005 to 31.03.2006;PW1 /6 is the computer generated ledger from 01.04.2006 to 31.03.2007 ;PW1/7 is the computer generated ledger from 01.04.2007 to 31.03.2008 ; PW1/8 is the computer generated ledger from 01.04.2008 to 31.03.2009;PW1/9 is the



computer generated ledger from 01.04.2009 to 31.03.2010; PW1/10 is the computer generated ledger from 01.04.2010 to 31.03.2011; PW1/11 is Certificate under Section 65 B of Indian Evidence Act PW1/12 (colly) are the bills raised upon defendant company ; PW1/13 is the legal notice ; PW1/14 is the postal receipt ; PW 1/15 is the AD Card.

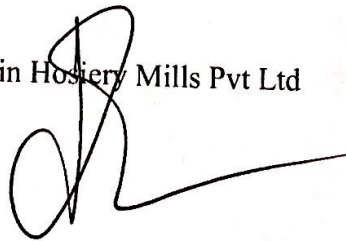
Plaintiff examined PW2 Sh Sanjay Mehta who relied upon the document which are exhibited as Ex PW1/1 to PW1/3 and PW1/5 to PW1/11. PW2 also relied upon the certificate under Sec 65B of Indian Evidence Act vide Ex PW-1/11 and also proved the statement of account as maintained by plaintiff company. Certificate under Sec 65B Indian Evidence Act was also verified and audited by the Chartered Accountant of plaintiff company. Vide separate of AR of plaintiff, PE stands closed.

Defendant was proceeded Ex Parte on 21.8.2017 and no evidence was lead on behalf of defendant.

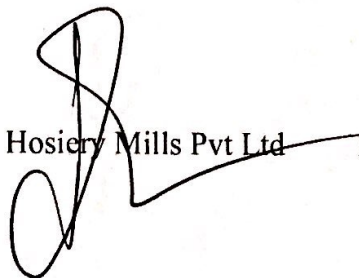
10. I have heard counsel for plaintiff and perused the material available on record. I have also perused the written submissions filed by the plaintiff.

11. My issuewise findings are here as under:

ISSUE NO 1 :Whether defendants have made the payment of the amount claimed? OPD



12. It is pertinent to mention that written statement as filed by defendant was ordered to be taken into record as per the order dated 27.11.2013 passed by Hon'ble High Court of Delhi in CM(M) No. 1268 of 2013. It was also ordered that Defendant shall make payment of cost of Rs 20000/- to be deposited with the Prime Minister's Relief Fund. Suit was kept for hearing for number of dates for reporting the compliance of direction as given by Hon'ble High Court. It is also a matter of record that repeated court notices were sent to defendant but defendant did not respond to various court notices as sent to defendant. Since technically written statement as filed by defendant cannot be taken into record for non compliance of order however, to give completeness to the judgment the written statement is perused for limited purpose. It is also relevant to mention that replication was also filed by plaintiff to written statement filed by defendant and where plea of defendant to the effect that paid an amount of Rs 359428 was admitted however, it is contended that it was not towards the payment of full and final dues. Plaintiff has admitted the aforesaid payment of Rs 359428 as made by defendant through five cheques not towards the full account of the plaintiff. Hence, **Issue No. 1** is

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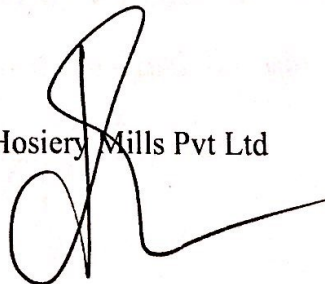


decided in favour of defendant as against the plaintiff.

ISSUE NO 2 : Whether plaintiff is entitled to the relief  
claimed ? OPP

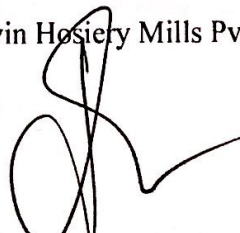
13. On behalf of Plaintiff, **PW1 Sh Partho Pratim Chandra**, AR of plaintiff company was examined. The case of plaintiff is to the effect that there is a running account in between plaintiff and defendant in respect of the business dealings in between them since 2005. In para no 5 of plaint a specific plea is taken by the plaintiff that there is a running ledger account is being maintained by plaintiff in its ordinary course of business and as per the statement of account an amount of Rs 380482/- is payable by defendant to plaintiff upto 28.07.2010.

14. As noted earlier, plea of defendant is to the effect that he made payment of Rs 359428 and due to which entire account in between plaintiff and defendant is settled and all bills have been cleared but defendant did not specify the bills which were cleared by him and moreover the positive case of the plaintiff is to the effect that that there is a running account in between plaintiff and defendant and after making all adjustment of payment an amount of Rs 380482 is due payable.



15. The written statement filed by the plaintiff has taken inconsistent pleas and vague plea. Order VIII rule 3 CPC provides that denial to be specific and further more Order VIII rule 4 CPC provides that fact be not denied in evasive manner i.e. some kind of an explanation should come into the record on behalf of defendant and thus evasive denial would amount to an admission of facts as stated in plaint. The defendant in its written statement had also avoided to give proper denial to the assertion made in the plaint. In this context, Hon'ble Delhi High Court **Ishpinder Kochhar vs Deluxe Dentelles (P) Ltd. & Ors** in C.S No. 3075/2011 dated 24.1.2014 held that where written statement filed by the defendant is evasive, then same could be considered as an admission and same could be used for the purpose of even passing decree on the basis of admission.

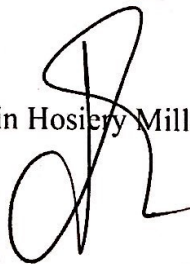
16. PW1 and PW2 were examined on behalf of plaintiff company would show that plaintiff has proved statement of account from 01.04.2005 to 01.04.2011. Perusal of statement of account for relevant years would show that there is a corresponding debit and credit entries in all statement of account as filed on behalf of plaintiff. Ex PW 1/5 would show that at the end of financial year there is a balance of Rs 220142.51/- which was carried forward for the next financial year i.e. for 01.04.2006 to 31.03.2007 and a balance of Rs 59604/- was carried out forward for the next financial year 01.04.2007 to 31.03.2008 and a balance of Rs 81623/- was carried out forward for the next financial



year 01.04.2008 to 31.03.2009 and further a balance of Rs 550190/- was carried out forward for the next financial year 01.04.2009 to 31.03.2010.

17. Perusal of statement of account, EX PW1/5 to Ex PW1/9 would reveal that numbers of payments have been made by defendant to plaintiff by way of cheques and said payments are duly reflected in the statement of account vide Ex PW-1/5 to Ex PW-1/9. The said statement of account as filed by plaintiff has not been challenged by defendant since defendant did not cross examine both the witnesses cited on behalf of plaintiff. Testimony of witnesses examined on behalf of plaintiff remained unchallenged and unrebutted. **In Sri Chand and Sivan Das Vs State 8(1985)DLT 360**, it was held that if the testimony of the witness is allowed to go unchallenged and no question is put to him with regard to the same during the cross examination, and there are no reasons to disbelieve such witness. Hence, testimony of both these witnesses can be relied upon.

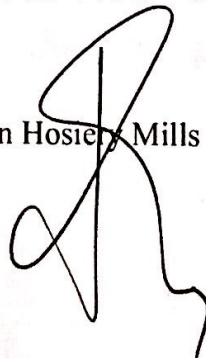
18. Defendant has filed only a copy of bank statement from 01.04.2009 to 31.03.2011 and statement of account. However, all statement of account vide Ex PW1/5 to PW1/9 were duly proved by PW2 alongwith certificate under Sec 65B of Indian Evidence Act vide Ex PW-1/11 and same was also certified by Chartered Accountant of Plaintiff.



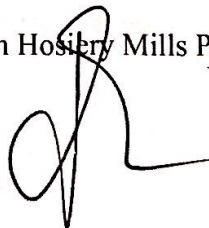
19. Defendant did not at all contradict the statement of account filed on behalf of plaintiff and also did not challenged the various payments made by defendant to the plaintiff from 2005 to 2009. Defendant has maintained complete silence in this regard and therefore abundant material on record would clearly shows that there is a running account in between plaintiff and defendant. Once running account as maintained by the plaintiff is established, plaintiff would be entitled to recover the amount.

20. Perusal of the legal notice dated 08.03.2011, Ex PW1/13 would reveal that a legal notice was sent to defendant and which remained unanswered and therefore, suit filed by plaintiff company would be within a period of limitation as per Article 113 of Limitation Act as there is running account in between the plaintiff and defendant therefore plaintiff would be entitled to recover the amount from defendant.

21. It is pertinent to mention that plaintiff has relied upon statement of account, EX.PW1/9 for the period of 01.04.2009 to 31.03.2010. As per the said statement of account balance of Rs 550190.73/- was carried forward from the previous year and as per the statement of account there is a total sale of Rs 594411/- to defendant and in the



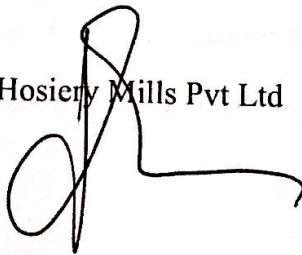
statement of account it is mentioned that defendant paid an amount of Rs 726903. It is pertinent to mention that payment as reflected in statement of account made by defendant to plaintiff are by way of cheques and same shows that there is a total payment of Rs 726903/- made by defendant whereas stand of defendant in his Written statement more specifically in para no. 6 in response to para no 8 of plaint is that "it is submitted that defendant has made due payment for the supplied made for which the total bill amounted to Rs 359428/-" i.e. just double the amount of the payment made by defendant during the year 2009-2010. This stand exposes the falsity of claim of defendant if only Rs 359428/- is payable there could be no reason to pay the double amount Rs 726903 and rather same establishes to the hilt that that there is a running account in between plaintiff and defendant which is duly reflected in Ex PW-1/5 to Ex PW-1/9 and said statement of account as relied by plaintiff remained unrebutted and unchallenged. Defendant did not question the statement of accounts as relied by the plaintiff during the trial. Defendant only seeks to rely on selective bills and only refers to few payments of Rs 359428 in support of its case. Defendant merely filed bank statement for a short period and statement of accounts as filed are neither stamped nor signed by an official of defendant. Statement of account was not even proved by defendant as none has appeared on behalf of defendant. Written Statement as mentioned is evasive and did not refer to the statement of accounts and bills filed by plaintiff has not been



challenged by defendant.

22. Plaintiff has also placed on record the legal notice, ExPW1/13 and the same was not at all responded in which plea has been taken that there is a running account in between plaintiff and defendant and defendant has failed to clear the outstanding amount. It is pertinent to mention that said notice was duly received by defendant with acknowledgement. Defendant has maintained total silence in this regard. It would be profitable to rely upon the the observations of Hon'ble High Court in **Santosh Mittal vs Sudha Dayal Criminal Appeal No. 1262 of 2013 dated 2.9.2014** of in the context of legal notice, it was observed "Admittedly, no reply to the legal notice was sent by her thereby rebutting the allegations made by the complainant. As far back in the year 1980, in *Kaluram v. Sita Ram*, 1980 RCR Note 44, it was held by this Court that when serious allegations are made in a notice and defendant failed to send any reply, then the allegations are deemed to have been admitted."

23. Furthermore, defendant has not entered into the witness box to establish its claim that no amount was due payable by defendant and the account has been settled in between them. **In Vidhyadhar Vs Manik Rao(1999)3 SCC**, it was held that if a party abstains from

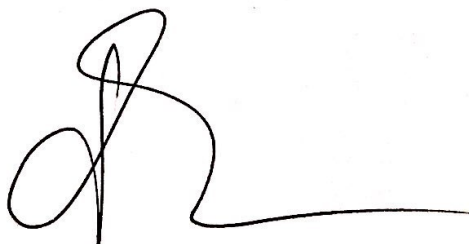


against him. Where a party to the suit does not appear in the witness box and state on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct and defendant failed to prove their case.

24. In view of the above discussion, the amount of Rs 359428 mentioned in written statement is only qua the total liability of plaintiff which was duly adjusted by plaintiff in the statement of account although issue no. 1 has been decided in in favour of the plaintiff and hence plaintiff would be entitled to recover the amount claimed in the present suit.

Plaintiff has claimed interest an interest @ 18 percent annum, but rate of interest as claimed is on higher side, considering the fact rate of interest has considerable lowered in recent years, it would be fair and just to award interest at the rate of 8 percent annum.

Hence, **issue No. 2** is decided in favour of the plaintiff as against defendant.

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## 25. Relief

In view of the above discussion and findings as recorded in issue No.2, the plaintiff is entitled for a decree of Rs **460383/-** along with interest @ 8% p.a. against defendant from the date of institution of suit till its realization with costs. Decree sheet be prepared accordingly.

File be consigned to record room after due compliance.

Announced in the Open Court  
Via Video Conferencing.  
on 29.05.2020



(Hasan Anzar)

Additional District Judge-06/West District, THC  
29.05.2020