

IN THE COURT OF MS. DIVYA GUPTA,  
CIVIL JUDGE-03,  
CENTRAL DISTRICT, TIS HAZARI COURT, DELHI

New Case No. 1606/2018

M/S. METALON MARKETING  
SH. PRAFUL KUMAR, PARTNER  
HAVING ITS WORKING OFFICE AT  
158/7A, FIRST FLOOR, MANOHAR MANSION,  
AJMERI GATE, DELHI-110006,  
THROUGH SPECIAL POWER OF ATTORNEY  
SH. MOHIT, EXECUTIVE EMPLOYEE  
HAVING ADDRESS AT 158/7A, FIRST FLOOR,  
MANOHAR MANSION, AJMERI GATE-110006

..... PLAINTIFF

VERSUS

MECH TECH ENGINEERING WORKS  
A-24, GALI NO. 12, PRESS ENCLAVE, PART III,  
VIKASH NAGAR, UTTAM NAGAR, NEW DELHI

..... DEFENDANT

*Divya*

Date of Institution of the suit : 28.05.2018

Date of judgment passed : 24.08.2020

SUIT FOR RECOVERY OF RS. 1, 00,095/- (RUPEES ONE LACS  
AND NINETY FIVE ONLY).

JUDGMENT

1. The present suit is a suit for recovery of Rs. 1, 00,095/- filed under Order 37 CPC by the plaintiff, M/s. Metalon Marketing against the defendants, Mech Tech Engineering Works.

2. The factual matrix of the matter, as culled out from the bare perusal of the plaint is as follows:-

"That the plaintiff, M/s. Metalon Marketing is having its office at 158/7A, First Floor, Manohar Mansion, Ajmeri Gate, Delhi-110006. The present suit has been filed through Sh. Mohit, AR of the plaintiff. As per the plaint, the defendant had placed upon the plaintiff an order sometime in the year 2016 for the supply of goods and articles for Rs. 94,327/- and the goods were supplied to the defendants on mutually agreeable terms and prices. It is alleged that appropriate bills were raised pertaining to the goods supplied. That as per the books and accounts maintained by the plaintiff, defendant(s) are liable to pay a total sum of Rs. 6, 81,910/- till date. Further, defendants were maintaining running account of the plaintiff with regard to the services rendered to the defendant. It is further stated that the goods which were sent to the defendants had been accepted by the

*Pragya*

defendants unconditionally and were utilized also in their business. It is stated that out of the total amount of Rs. 94,327/-, defendants have not paid any amount to the plaintiff. Thus, the total amount outstanding is Rs. 94,327/-. Further, for the above outstanding amount no payment has been made by the defendant till date. Despite several repeated reminders to the defendant, payments has not been received. Thereafter, a legal notice dt. 16.03.2018 was served upon the defendant demanding the payment of the outstanding dues. However, despite legal notice and several oral demands, no payment has been made by the defendant. Hence, the present suit has been filed by the plaintiff with prayer seeking recovery of Rs. 1, 00,095/- (principal amount of Rs. 94,327/- and interest on it of Rs. 5,768/-) along with interest pendent lite as well as future @ 18% p.a. from date of filing of the suit till its realization."

3. The present suit was converted into an ordinary suit vide separate recorded statement of the Ld. Counsel of plaintiff dated 29.05.2018. Notice of the suit was served upon the defendant on 29.08.2018. Thereafter, no WS was filed on behalf of defendant. Therefore, the defendants were proceeded Ex-parte by Ld. Predecessor vide order dt. 22.12.2018.

4. Matter was then listed for ex-parte evidence. The plaintiff got examined Sh. Mohit as PW-1 on 17.10.2019 by way of an affidavit of evidence which is marked as Ex. PW1/1 wherein he reiterated the contents

*Darya*

of the plaint. The same are not repeated here for the sake of brevity. He also exhibited the following documents: -

- i. Ex. PW1/A i.e. copy of SPA issued by Sh. Praful, Partner which was de-exhibited and marked as Mark A.
- ii. Ex. PW1/B i.e. copy of bills/invoices (OSR) (colly 7 pages) credit facility form.
- iii. Ex. PW1/C (colly) i.e. copy of statement of account and statement under Section 65 (B) of Indian Evidence Act.
- iv. Ex. PW1/D i.e. legal notice dt. 16.03.2018 and postal receipts (colly).

Thereafter, vide his separately recorded statement, Ex-parte PE was closed. The matter was then listed for Ex-parte final arguments.

5. Ex-parte final arguments advanced by the Ld. Counsel for the plaintiff were heard. Case filed perused.

6. In Ex-parte suits, where defendant has not filed WS or does not appear to contest the suit, the plaintiff as well as the court proceeds on the belief that there was no real opposition/defense to put forth. In such situation, where defendant has chosen to remain absent, there is no reason for this court to disbelieve plaintiff's version if the same sounds plausible.

7. Perusal of Ex. PW1/A (colly) shows that Ms. Mohit is an authorized representative of the plaintiff bank and he has been empowered

*Dingy*

via special power of attorney on behalf of plaintiff. Further, perusal of evidence on record shows that the defendant had placed upon plaintiff an order for the supply of various goods and articles for Rs. 94,327/-. There was a running account maintained by the plaintiffs in the name of defendant. In this regard Ex. PW1/B (colly) which consist of bill copies shows that plaintiff had also raised upon defendant appropriate bills pertaining to said materials supplied to the defendant. Further, Ex. PW1/C (colly) which consists of statement of account in support of payment to be received along with statement under Section 65 (B) of Indian Evidence Act shows that the total amount due against the defendant amounts to Rs. 94,327/- which has not been paid by the defendant till date.

8. Thereafter, in view of default in payment the plaintiff sent a legal notice dt. 16.03.2018 demanding the repayment of due outstanding amount which is Ex. PW1/D (colly). The service of notice is proved by postal receipts which is exhibited Ex. PW1/D.

On the other hand, despite the notice of the suit in hand, defendant has not appeared before the Court to either dispute the signatures upon the documents filed by the plaintiff or to dispute the plaintiff's case. As such, the entire evidence led by the plaintiff goes unrebutted and since defendant has chosen to remain absent, therefore, there is no reason for this court to disbelieve plaintiff's version. The plaintiff has claimed interest @ of 18% p.a. However, interest @ 18% seems to be exorbitant. Interest @ 12% p.a. from date of filing of the present suit seems to be sufficient to

*Durga*

meet the ends of justice.

9. Thereafter, written submissions of final arguments were filed on behalf of the plaintiff in which it has been submitted that out of the total recovery amount, total sum of Rs. 50,000/- was paid by the defendant to the plaintiff during the pendency of the suit. Further Ld. Counsel for plaintiff submitted, as recorded vide order dated 17.08.2020, that sum of Rs. 50,000 has been paid by the defendant to the plaintiff through NEFT.

**RELIEF**

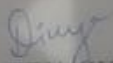
10. Hence, in view of the aforesaid discussion, the suit in hand is hereby decreed ex-parte and plaintiff is hereby held entitled to recover an amount of Rs. 50,095/- (RUPEES FIFTY THOUSAND NINETY FIVE ONLY) along with interest @ 12% p.a. (simple interest) from the date of institution of suit till its final realization, from the defendant.

Cost of the suit shall also be awarded to the plaintiff.

Decree sheet be prepared accordingly.

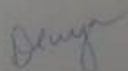
**File be consigned to Record Room after due compliance.**

Announced in the cisco webex  
today on 24.08.2020

  
(DIVYA GUPTA)

Civil Judge-03/Central  
Tis Hazari Courts, Delhi

NOTE: There are total 6 pages in this judgment. Each page has been checked and signed by me.



NO. 1606/2018

M/S. METALON MARKETING VS. MECH TECH ENGINEERING WORKS

24.08.2020

Present: None.

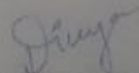
Matter is at the stage of order/clarifications.

Vide my separate judgement, announced in cisco webex, the suit in hand is hereby decreed ex-parte and plaintiff is hereby held entitled to recover an amount of Rs. 50,095/- (RUPEES FIFTY THOUSAND NINETY FIVE ONLY) along with interest @ 12% p.a. (simple interest) from the date of institution of suit till its final realization, from the defendant.

Cost of the suit shall also be awarded to the plaintiff.

Decree sheet be prepared accordingly.

**File be consigned to Record Room after due compliance.**



(DIVYA GUPTA)

CIVIL JUDGE-03(C), THC

24.08.2020