

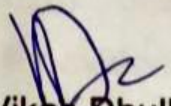
CS No. 13364/16
Sushma Rani Vs. Urmil Bakshi

05.08.2020

Since the matter was adjourned en-bloc due to pandemic covid-19 situation, therefore, the ordersheet during the lock down period is not on record.

Pr: None.

In compliance of circular/duty roaster for August, 2020 (Period 04.08.2020 to 14.08.2020) dated 31.07.2020, the present case being listed for evidence is adjourned for **24.11.2020 for purpose already fixed.**



(Vikas Dhull)
ADJ-01, West
THC, Delhi


8135/16
M/S COMET ADVERTISING Vs. M/S PRITIKA FASHIONS
PVT. LTD.

05.08.2020

Since the matter was adjourned en-bloc due to pandemic covid-19 situation, therefore, the ordersheet during the lock down period is not on record.

Pr: None.

In compliance of circular/duty roaster for August, 2020 (Period 04.08.2020 to 14.08.2020) dated 31.07.2020, the present case being listed for evidence is adjourned for **24.11.2020 for purpose already fixed.**


(Vikas Dhull)
ADJ-01, West
THC, Delhi


Civ DJ 13375/16
VIKAS AGGARWAL Vs. TRIPURARI COAL
SYNDICATE

05.08.2020

Since the matter was adjourned en-bloc due to pandemic covid-19 situation, therefore, the ordersheet during the lock down period is not on record.

Pr: None.

In compliance of circular/duty roaster for August, 2020 (Period 04.08.2020 to 14.08.2020) dated 31.07.2020, the present case being listed for evidence is adjourned for **24.11.2020 for purpose already fixed.**


(Vikas Dhull)
ADJ-01, West
THC, Delhi

RCA DJ 136/19
SURENDER SINGH Vs. DELHI URBAN SHELTER
IMPROVEMENT BOARD

Since the matter was adjourned en-bloc due to pandemic covid-19 situation, therefore, the ordersheet during the lock down period is not on record.

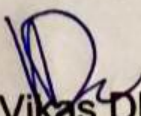
05.08.2020

Pr: None.

On telephonic inquiry by P.A of the court from Ld.counsel for appellant, Sh.C.P.Wig, he expressed his helplessness to join VC today and has sought an adjournment so that he can physically appear and make his submissions.

Sh.Amit Kumar Mittal, Ld.counsel for respondent has also on telephonic inquiry stated that he has no objection to the adjournment being sought by ld.counsel for respondent.

In the facts, put upon 05.11.2020 for purpose already fixed.


(Vikas Dhull)
ADJ-01, West
THC, Delhi

Misc.DJ 103/17
T.S.Mokha (Sr.Citizen) Vs. Ansal Properties and
Industries Ltd. and Anr.

05.08.2020


Since the matter was adjourned en-bloc due to pandemic covid-19 situation, therefore, the ordersheet during the lock down period is not on record.

Pr: **None.**

On telephonic inquiry by P.A of the court from Sh.D.D.Singh, Id.counsel for plaintiff, he expressed his helplessness to join through Video Conferencing as he is not having his file with him.

Sh.Rohit Gupta, Id.counsel for defendant has also on telephonic inquiry stated that he has no objection to the adjournment being sought by Id.counsel for plaintiff.

In the facts, put up on 03.11.2020 for purpose already fixed.


(Vikas Dhull)
ADJ-01, West

RCA DJ 135/19

HARJINDER SINGH Vs. DELHI URBAN SHELTER
IMPROVEMENT BOARD

Since the matter was adjourned en-bloc due to pandemic covid-19 situation, therefore, the ordersheet during the lock down period is not on record.

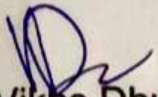
05.08.2020

Pr: None.

On telephonic inquiry by P.A of the court from Ld.counsel for appellant, Sh.C.P.Wig, he expressed his helplessness to join VC today and has sought an adjournment so that he can physically appear and make his submissions.

Sh.Amit Kumar Mittal, Ld.counsel for respondent has also on telephonic inquiry stated that he has no objection to the adjournment being sought by ld.counsel for respondent.

In the facts, put upon 05.11.2020 for purpose already fixed.


(Vikas Dhull)
ADJ-01, West
THC, Delhi

CS No. 535/19
Amarjeet Kaur Vs. Balvinder Kaur

05.08.2020

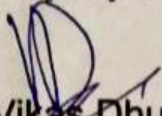
Since the matter was adjourned en-bloc due to pandemic covid-19 situation, therefore, the ordersheet during the lock down period is not on record.

Pr: None.

On telephonic inquiry by P.A of the court from Sh.B.L.Sharma, Ld.counsel for plaintiff, he expressed his helplessness to join through VC and has requested for adjournment after 31.08.2020.

Sh.S.K.Tiwari, Ld.counsel for defendant has also on telephonic inquiry stated that he has no objection to the grant of adjournment.

In the facts, put up on 04.11.2020 for purpose already fixed.


(Vikas Dhull)
ADJ-01, West
THC, Delhi


CS No. 13005/17
Rahul Attri Vs. M/s Adigear International

05.08.2020

Since the matter was adjourned en-bloc due to pandemic covid-19 situation, therefore, the ordersheet during the lock down period is not on record.

Pr: None.

In compliance of circular/duty roaster for August, 2020 (Period 04.08.2020 to 14.08.2020) dated 31.07.2020, the present case being listed for evidence is adjourned for **24.11.2020** for **purpose already fixed.**


(Vikas Dhull)
ADJ-01, West
THC, Delhi

CS No. 257/2020

Sh.Bharat Chabria Vs. Smt.Kanta Chawla and Ors.

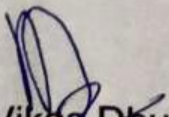
05.08.2020

Pr: None

On telephonic inquiry by P.A. of the court from Sh.Vijay Kumar Sehgal, Ld.Counsel for plaintiff, he expressed his helplessness to appear before the court through Video Conferencing and has undertaken to make compliance of Order XXXIX Rule 3 CPC qua defendants no.1 to 4 by tomorrow.

Further, on telephonic inquiry by P.A. of the court from defendant nos.1 and 3, defendant no.1 stated that she being unwell has no objection to the grant of adjournment. However, defendant no.3 stated that he does not know about the present case though defendants no.1 to 4 are family members and residing at the same address.

Further, with regard to defendant no.5, let plaintiff trace out her mobile number/ email address and as and when the same is filed with the Reader of the court, **notice be issued to defendant no.5 through the Nazarat Branch, West, Delhi returnable on 27.08.2020.**


(Vikas Dhull)
ADJ-01, West

**IN THE COURT OF VIKAS DHULL, ADDITIONAL
DISTRICT JUDGE-01,THC, WEST,DELHI**

CS No. 12870/16

In the matter of :

CIS bio International
Through its Constituted Attorney
Having its Head office at
Saclay (Essonne) -RN 306
BP 32-91192 Gif-sur-Yvette Cedex
France

... Plaintiff

Versus

1. RSL Labinstruments Inc.
Through its Proprietress
Mrs. Sushma Sinha
Having its Head Office at
106 RPS flats; E-Block Vikaspuri
New Delhi -110018 (INDIA)

... Defendant No 1

2. Mr. Rajan Sinha
Authorised Representative
of RSL Labinstruments Inc
Having its Head Office at
106 RPS flats; E-Block Vikaspuri
New Delhi-110018 (INDIA)

... Defendant no.2



Date of institution of suit : 25.11.2015
Date on which judgment reserved: 23.07.2020
Date on which judgment passed : 05.08.2020

EXPARTE JUDGMENT

1. The plaintiff had initially filed the present suit under Order XXXVII Civil Procedure Code, 1908 (hereinafter referred to as CPC) for recovery of Rs.75,46,621/- alongwith interest @ 18% per annum from the date of invoice till its payment.
2. Thereafter, on the submission made by Ld.counsel for plaintiff on 05.11.2016, the present suit was converted into an ordinary suit.
3. The brief facts which are relevant as mentioned in the plaint, are that plaintiff is a company incorporated under the laws of France and is engaged in the manufacturing and sale of radio pharmaceuticals products all over the world.
4. It was further averred in the suit that defendant no.1 is a proprietorship concern of Mrs. Sushma



Sinha and defendant no.2 happens to be her husband and is also the authorized signatory of Defendant No.1.

5. It was further averred that based on the written representations made by the Defendant no.2 on behalf of defendant no.1, plaintiff company appointed defendant No.1 as a distributor of the plaintiff under an agreement dated 03.12.2010 whereby defendant no.1 was granted an exclusive right of distribution of products of plaintiff company in South India. Under the agreement, Plaintiff used to sell to defendants the radio pharmaceuticals products and since the products of plaintiff company were of radioactive nature, they were supplied by plaintiff to defendants only against a specific purchase order issued by the defendants giving details of ultimate user/customer in India and the quantity.
6. It was further averred that agreement was effective from 01.01.2011 to 31.12.2011 and thereafter, it was to continue for successive yearly



periods but not exceeding 31.12.2014.

7. It was further averred that upon execution of aforesaid agreement and pursuant to the orders placed by the defendants, plaintiff sold and supplied to defendants radio pharmaceuticals products which were accepted by defendants without any demur.
8. It was further averred that defendants paid to plaintiff, from time to time, the dues under the invoices. However, defendant did not pay around € (Euro) 1,01,161.14 which was the amount of unpaid invoices commencing from 03.08.2012.
9. It was further averred in the suit that defendant has sent email dated 24.01.2013 whereby he had admitted his liability to pay Rs.61,83,397/-after deducting commission at the rate of 20% and expenses of Rs.11,40,600/-. The expenses of Rs.11,40,600/- were totally unjustified and contrary to contract between the parties.
10. It was further averred in the suit that thereafter, on 23.05.2013 parties mutually agreed



to terminate the Distributorship agreement. Accordingly, plaintiff has filed the present suit for recovery of Rs.75,46,621/-- being equivalent to € (Euro) 1,01,161.14 alongwith interest from the date of invoice till its payment. Cost of the suit is also prayed for.

11. Thereafter, defendants were served with the summons by way of affixation but despite service, defendants chose not to appear and accordingly, they were proceeded exparte on 21.11.2017.
12. Thereafter, the matter was posted for exparte evidence of plaintiff. Plaintiff in his exparte evidence, had examined Sh.Sumit Sharma, who was the duly authorized by plaintiff company to depose on its behalf.
13. PW1 Sh.Sumit Sharma deposed all the facts as stated in the plaint on oath and also relied upon Power of Attorney authorizing him to file the present suit and depose in the present case which has been exhibited as Ex.PW1/1, copy of agreement dated 03.12.2010 Ex.PW1/3, copy of



purchase orders placed by defendants Ex.PW1/4 (colly), the invoices raised by plaintiff Ex.PW1/5 (colly), copy of email dated 20.10.2012 sent by plaintiff to defendant Ex.PW1/6, copy of email dated 26.11.2012 sent by defendant no.2 to plaintiff Ex.PW1/7 and copy of email dated 24.01.2013 sent by defendant no.2 to plaintiff Ex.PW1/8, copy of letter dated 23.05.2013 terminating the distributorship agreement Ex.PW1/9 and the affidavit under Section 65B of the Indian Evidence Act, 1872 in support of various emails downloaded from the computer Ex.PW1/10. No other witness was examined by the plaintiff. Accordingly, the plaintiff's evidence was closed. Thereafter, the matter was posted for exparte final arguments.

14. I have heard Sh.Binay Shanker Tiwary, Ld.counsel for plaintiff through Cisco Webex Video Conferencing. I have also summoned the case file and have carefully perused the same.

15. After hearing the plaintiff, the matter was



reserved for judgment but thereafter, on careful perusal of the file, clarification was sought from plaintiff regarding clause 9.1 of the Distributorship Agreement Ex.PW1/3.

16. Ld.counsel for plaintiff had submitted regarding clause 9.1 of the Distributorship Agreement Ex.PW1/3 that 20% commission referred to in the said agreement was with regard to sale price to be offered by defendant no.1 to the Indian Customers. It was submitted that plaintiff was to get the invoice amount and as per clause 9.1 of the Distributorship Agreement Ex.PW1/3, defendant no.1 was granted liberty to charge extra 20% over the invoice amount from the Indian Customers and the said 20% was the commission of defendant no.1 to be earned from the Indian Customers and nothing was due and payable by plaintiff with regard to 20% commission to defendant no.1. Accordingly, it was submitted by ld.counsel for plaintiff that in the light of unrebutted testimony of PW1 and the



documents filed on record, plaintiff has proved its case and is entitled to a decree for recovery of money with interest as prayed for in the plaint.

17. I have carefully perused the exparte evidence of PW1 Sh.Sumit Sharma and documents filed alongwith it.
18. As per clause 9.1 of the Distributorship Agreement Ex.PW1/3 dated 03.12.2010, plaintiff company was required to declare to the distributor i.e. defendant no.1, the price list of the products at the beginning of each sales period and it was specifically mentioned in clause 9.1 of the Distributorship Agreement Ex.PW1/3 that products prices are calculated in order to provide to the distributor i.e. defendant no.1 a reference net operating margin of 20%.
19. From the said clause 9.1 of the Distributorship Agreement Ex.PW1/3, it is apparent that the price fixed by plaintiff company for each pharmaceutical products were calculated in such a manner that it used to take into account



20% margin for the distributor i.e. defendant no.1. Therefore, clause 9.1 of the Distributorship Agreement Ex.PW1/3 leaves no doubt that the sale price of various products included 20% margin for defendant no.1.

20. This fact is further supported by email dated 26.11.2012 Ex.PW1/7 and email dated 24.01.2013 Ex.PW1/8 filed on record by plaintiff company sent by defendant no.2 to plaintiff and in both the emails, defendant no.2 has made a reference of 20% commission and after adjusting 20% commission, defendant admitted payment due to the plaintiff to the tune of Rs. 61,83,397/-.

21. Further, even in the evidence by way of affidavit filed on record by plaintiff of PW1, in para 8 of affidavit Ex.PW1/A, PW1 has not disputed that commission @ 20% was wrongly deducted by defendant to arrive at the liability of Rs. 61,83,397/-. However, the expenses of Rs.11,40,600/- were disputed by plaintiff to be contrary to the terms of contract and deposition



was made by PW1 in this regard in para 10 of affidavit Ex.PW1/A.

22. Therefore, the evidence which has come on record of plaintiff himself i.e. deposition of PW1, Distributorship Agreement Ex.PW1/3, various emails sent by defendant no.2 to plaintiff Ex.PW1/7 and Ex.PW1/8 and there being no denial in the entire evidence by plaintiff that defendant is not entitled to contractual rate of commission of 20% on the invoice amount, it is proved on record that defendant was entitled to 20% commission on the invoice amount as per clause 9.1 of the Distributorship agreement Ex.PW 1/3.

23. The contention of Ld.Counsel for plaintiff that 20% commission referred to in clause 9.1 of the Distributorship agreement Ex.PW1/3 refers to 20% commission which defendant no.1 could have earned by increasing the selling price offered by plaintiff by 20% margin and the said 20% commission was required to be paid by



Indian Customers is not acceptable as clause 9.1 of the Distributorship agreement Ex.PW1/3 clearly mentions that sale price being fixed by plaintiff company has been fixed in such a manner so that defendant gets 20% margin in the sale of pharmaceuticals products.

24. Further, the entire plaint and the evidence which has come on record of PW1 is totally silent regarding the fact that defendant no.1 was to earn his 20% commission by increasing the invoice amount being offered by plaintiff by margin of 20%. Therefore, this contention has been raised by Id.counsel for plaintiff at the stage of final arguments being an after thought and the same is required to be rejected.

25. Plaintiff in the present suit has claimed Rs.75,46,621/- which is the amount of unpaid invoices. If 20% amount is deducted from the said amount, as per clause 9.1 of the Distributorship Agreement Ex.PW1/3, then amount comes to Rs.60,37,296.80p. and it is



almost equivalent to admitted liability of defendant mentioned in the email dated 24.01.2013 Ex.PW 1/8. Therefore, plaintiff is only entitled to principal amount of Rs.60,37,296.80p. from the defendant.

26. Plaintiff has also claimed interest @ 18% p.a on the principal sum from the date of invoice till its payment. However, the Distributorship Agreement Ex.PW1/3 nowhere mentions that in case of delayed payment, plaintiff will be entitled to 18% interest on the principal amount. Therefore, there is no agreement on record to show that defendant has agreed to pay 18% rate of interest on the delayed payment to the plaintiff. Hence, said interest of 18% can not be granted to plaintiff. However, since the transaction in question is commercial, therefore, this court while exercising its discretion under Section 34 of CPC hereby **grants interest @ 9% p.a. (as transaction is commercial)** on the said sum of Rs. 60,37,296.80p. from the date of 03.11.2012 which is the date of last unpaid invoice till the date



of its payment.

27. However, plaintiff shall pay appropriate court fees on the interest part from the date of last unpaid invoice i.e. 03.11.2012 till the filing of the suit as plaintiff could have easily calculated the interest part on the principal sum but plaintiff has intentionally not added the interest part in the principal sum at the time of filing the suit just to avoid payment of court fees.

28. Further, the plaintiff is entitled to claim the said principal amount and interest only from defendant no.1 and suit against defendant no.2 is not maintainable.

29. As per the admitted case of plaintiff, the Distributorship Agreement was entered into between plaintiff company and defendant no.1 vide agreement dated 03.12.2010 Ex.PW1/3.

30. Further, it is the admitted case of plaintiff that defendant no.1 is a proprietorship concern of Ms.Sushma Sinha and defendant no.2 who happens to be husband of Ms.Sushma Sinha was



acting as authorized signatory of defendant no.1. Therefore, as per admitted facts which have come on record, defendant no.2 was not the proprietor of defendant no.1 concern and he was only the authorized signatory of defendant no.1 proprietorship concern.

31. Being the authorized signatory of defendant no.1, defendant no.2 was acting as an agent of defendant no.1 concern and by entering into agreement with the plaintiff company, the act of defendant no.2 binds defendant no.1 proprietorship concern. All the acts done by defendant no.2 were done by defendant no.2 as an agent of principal i.e. defendant no.1 proprietorship concern and binds the principal. There was no personal liability of defendant no.2 to pay the amount due and payable by defendant no.1 proprietorship concern and there is nothing brought on record to show that defendant no.2 had undertaken any kind of personal liability with regard to dues payable by defendant no.1



proprietorship concern. Therefore, defendant no.2 was wrongly joined as defendant in the present case by plaintiff and he has no liability to pay the suit amount to plaintiff. **Hence, the suit qua defendant no.2 is hereby dismissed.**

32. In the light of aforesaid discussion, the suit of plaintiff is decreed only against defendant no.1 and defendant no.1 is directed to pay Rs. 60,37,296.80p. with interest @ 9% p.a. (since the transaction in question is commercial) from the date of last unpaid invoice i.e. 03.11.2012 till its payment subject to plaintiff filing appropriate court fees on the interest part from the date of last unpaid invoice i.e. 03.11.2012 till the date of filing the suit.

33. Cost of the suit is also awarded in favour of plaintiff.

34. Decree sheet be prepared accordingly.

35. File be consigned to Record Room.


(Vikas Dhull)
ADJ-01, West
THC, Delhi/05.08.2020

Civ DJ 12870/16
CIS BIO International Vs. RSL Labinstruments Inc.

05.08.2020 (2.13 p.m.to 2.17 p.m.)


File taken up again on the appearance of ld.counsel for plaintiff through VC to offer further clarification.

Pr: Sh.Binay Shanker Tiwary, Ld.counsel for plaintiff.

(M.No. 9971132266, Email ID: binay.s.tiwari@gmail.com)

Ld.counsel has further clarified with regard to clause 9.1 of the Distributorship Agreement.

Put up at 4.00 p.m. for judgment as already fixed.


(Vikas Dhull)
ADJ-01, West
THC, Delhi

4.00 p.m.

Pr: None.

Vide separate judgment passed today, the **suit qua defendant no.2 is dismissed.** However, the suit of plaintiff is decreed only against defendant no.1 and defendant no.1 is directed to pay Rs. 60,37,296.80p. with interest @ 9% p.a. (since the transaction in question is commercial) from the date of last unpaid invoice i.e. 03.11.2012 till its payment


subject to plaintiff filing appropriate

-2-

court fees on the interest part from the date of last unpaid invoice i.e. 03.11.2012 till the date of filing the suit. Cost of the suit is also awarded in favour of plaintiff.

Decree sheet be prepared accordingly.

File be consigned to Record Room.


(Vikas Dhull)
ADJ-01, West
THC, Delhi