

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

**SUIT NO.:- 116/2020**

**UNIQUE CASE ID NO.:- 618848/2020**

**IN THE MATTER OF :-**

**M/s. Alpana Novelites Mfg. Co.,  
Through its partner Mohd. Sami,  
1544, Suiwalan, Darya Ganj,  
New Delhi 110002.**

**....Plaintiff**

**VERSUS**

**M/s. Hind Picture Concern,  
Through Sh. G.C. Chaudhary Partner,  
B-4, Jackson Lane,  
Kolkata.**

**....Defendant**

**SUIT FOR RECOVERY OF RS.21,04,484.24p (RUPEES TWENTY  
ONE LAKHS FOUR THOUSAND FOUR HUNDRED EIGHTY FOUR  
AND TWENTY FOUR PAISE ONLY)**

**Date of institution of the Suit : 06/07/2016**  
**Date on which Judgment was reserved : 24/07/2020**  
**Date of Judgment : 31/07/2020**

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

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs. 21,04,484.24p 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 registered partnership firm vide registration no. 2793 of 2007 and Mohd. Sami is one of the partner who is competent to sign, verify and file the present suit. The plaintiff is a leading manufacturer and supplier of diaries, indexes, phone book, slam books etc.
- (b) The defendant is a retailer of abovesaid diaries, indexes, phone book, slam books etc. and also having regular dealings with plaintiff for the supply of said articles. A running account is maintained by the plaintiff in respect of the dealings with defendant, wherein all the bills of purchases and payments made by defendant are entered and defendant has also been issuing post-dated cheques towards the price of purchase made by it.
- (c) The defendant placed orders with the plaintiff at Delhi for supply of diaries etc., which were supplied from Delhi to the defendant vide invoices detailed below:-

<b>Sl. No.</b>	<b>Invoice No.</b>	<b>Dated</b>	<b>Amount</b>
1.	15	17.10.2014	Rs. 1,81,478/-
2.	64	05.11.2014	Rs. 1,02,498/-
3.	73	20.11.2014	Rs. 2,22,339.60/-
4.	76	22.11.2014	Rs. 1,01,503.26/-
5.	83	25.11.2014	Rs.1,06,037.57/-
6.	97	01.12.2014	Rs. 1,58,441.08/-
7.	132	11.12.2014	Rs.4,97,005/-
8.	139	15.12.2014	Rs. 1,41,446/-

9.	178	27.12.2014	Rs. 2,23,686/-
10.	179	27.12.2014	Rs. 21,081/-

(d) The plaintiff in the aforesaid manner supplied goods worth about Rs. 18,07,148.28p including central sales tax @ 5% as well. The defendant issued various postdated cheques in discharge of his liability in favour of the plaintiff regarding the price of diaries/ goods supplied by plaintiff. The details of the cheques are as under:-

	<b>Dated</b>	<b>Cheque No.</b>	<b>Amount</b>	<b>Bank</b>
1	17.11.2014	831500	Rs. 75000/-	HDFC
2	15.02.2015	000074	Rs.75000/-	HDFC
3	20.02.2015	000075	Rs.75000/-	HDFC
4	25.02.2015	000076	Rs.75000/-	HDFC
5	04.03.2015	000078	Rs.75000/-	HDFC
6	09.03.2015	000079	Rs.75000/-	HDFC
7	12.03.2015	000080	Rs.75000/-	HDFC
8	16.03.2015	000081	Rs.75000/-	HDFC
9	18.03.2015	000082	Rs.75000/-	HDFC
10	20.03.2015	000083	Rs.75000/-	HDFC
11	22.03.2015	000084	Rs.75000/-	HDFC
12	24.03.2015	000085	Rs.75000/-	HDFC
13	26.03.2015	000086	Rs.75000/-	HDFC
14	27.03.2015	000087	Rs.75000/-	HDFC
15	28.03.2015	000088	Rs.75000/-	HDFC

16	29.03.2015	000089	Rs. 75000/-	HDFC
	30.03.2015		Rs. 75000/-	HDFC

- (e) It is submitted that out of the abovesaid amount of Rs. 18,07,148.28/-, only a sum of Rs. 2,75,000/- (Rs. 2,00,000/- through RTGS and Rs. 75000/- vide cheque no. 831500), was paid by defendant and an amount of Rs. 15,32,148.28/- remained outstanding. The cheque dated 20.02.2015 and 25.02.2015 bearing nos. 000075 and 000076 for Rs. 75000/- each were dishonored on presentation and when the matter was brought to the notice of the defendant, he said he himself has instructed the bank to stop the payment of all cheques issued by him in favour of the plaintiff and as such thereafter, the plaintiff did not present the remaining cheques for encashment. The defendant was liable to make payment of the price of goods supplied by plaintiff.
- (f) As per market practices and as agreed by the parties the defendant is also liable to pay interest @ 24% P.A. on delayed payment and a sum of Rs. 5,71,335.96p up on account of interest upto 30.04.2016 is payable by defendant besides defendant is also liable to pay a sum of Rs. 1000/- as cheques bouncing charges in respect of the two dishonored cheque nos. 000075 dated 20.02.2015 and 000076 dated 25.02.2015 for Rs. 75000/- each drawn on HDFC Bank issued by defendant towards the discharge of its liability for the payment of diaries, index etc. purchased by defendant from the plaintiff.
- (g) In this manner, a sum of Rs. 21,04,484.24/- has remained outstanding against the defendant which he failed to pay as per repeated demands and

requests and the plaintiff is entitled to recover the said amount alongwith pendent lite and future interest till realization @ 24% P.A.

- (h) The defendant failed to make the aforesaid payment to the plaintiff and defendant was served with legal notice dated 27.05.2016 calling upon the defendant to make the payment of the amount of the articles purchased by the defendant from the plaintiff within seven days of the receipt of the notice but even inspite of the service of notice the defendant failed to make payment.

### **EX-PARTE PROCEEDINGS**

The defendant had appeared in the court on 12.08.2016 and the defendant was directed to file the written statement within four weeks with advance copy to the plaintiff and matter was kept for 13.10.2016.

On 13.10.2016, no one had appeared on behalf of defendant nor defendant filed written statement and predecessor of this Court was pleased to close the right of the defendant to file WS and matter was adjourned for ex-parte evidence for 17.01.2017.

On 20.05.2017, the defendant had appeared before the court and filed two applications: one under Order 7 Rule 11 CPC and second under Order 9 Rule 7 CPC for recalling of order dated 13.10.2016, whereby, the defendant was proceeded ex-parte. The Ld. Predecessor of this Court vide order dated 20.05.2017, had dismissed the application under Order 7 Rule 11 CPC, however, recalled the order dated 13.10.2016 and defendant was given one more opportunity to file the written statement within two weeks subject to cost of Rs.5,000/- and matter was adjourned for 29.07.2017.

On 29.07.2017, the defendant sought one more opportunity to file the same but the said request was declined by the predecessor of this court and application under Order 7 Rule 14 CPC filed by the plaintiff on the said date for taking on record legal notice and postal receipts was allowed.

On 23.09.2017, the defendant had filed an application for recalling of order dated 29.07.2017 but, considering the previous conduct of the defendant, the said application was dismissed. Thereafter, none has appeared on behalf of the defendant.

**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. Mohd. Sami as PW-1. PW-1 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 documents Ex.PW1/1 to Ex.PW1/35.

The plaintiff, in order to prove receipt nos. 133003 dated 06.11.2014, 33630 dated 22.11.2014, 134974 dated 27.12.2014, 134367 dated 11.12.2014, 134505 dated 15.12.2014, 133546 dated 20.11.2014, 133710 dated 25.11.2014 and 133957 dated 01.12.2014 got examined summoned witness Sh. Tilak Raj, Manager, Super East Carriers (Delhi) Fleet Owners and Contractors, 7219, Aram Nagar, Nabi Karim, Delhi 110055 as PW-2. The said receipts could not be traced by the said witness being old record. He identified the said receipts and same were exhibited as Ex.PW2/1 (Colly).

This Court heard ex-parte final arguments, as advanced by Ld. Counsel for the plaintiff through video conferencing. I have perused the material available on record.

**FINDINGS AND CONCLUSIONS OF THE COURT**

The defendant was proceeded ex-parte, despite this fact, the plaintiff has to prove its case on merits and satisfy the Court that the plaintiff is entitled for the recovery of the suit amount from the defendant. The suit of the plaintiff is well within the period of limitation. The PW-1 and PW-2 has proved on record the documents, as mentioned in their testimony, showing the liability of the defendant. The defendant has not filed the Written Statement to contest the present suit of the plaintiff. The defendant has also not cross-examined the PW-1 and PW-2 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. The plaintiff has been able to prove its case. Hence, the plaintiff is entitled for the recovery of amount of Rs. 15,32,148.28/- say Rs.15,32,148/- from the defendant alongwith interest.

The Plaintiff has sought the interest @ 24% per annum. However, in view of the facts and circumstances of the present case, the interest of justice would be served, if the plaintiff is granted simple rate of interest @ 9% p.a. from 27.12.2014 (i.e. last date of invoice) till the filing of this case.

Section-34 CPC postulates and envisages the pendent-lite 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 the plaintiff is granted pendent-lite simple rate of interest @ 6% per annum and future simple 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.15,32,148/- is passed in favour of the plaintiff and against the defendant alongwith simple rate of interest @ 6% per annum from 27.12.2014 till decision of the suit and future simple rate of interest @ 9% per annum till its realization. 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 31<sup>st</sup> day of July, 2020.**

**ARUN**  
**SUKHIJA**  
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by ARUN  
SUKHIJA  
Date: 2020.07.31  
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**(ARUN SUKHIJA)**  
**ADJ-07 (Central)**  
**Tis Hazari Courts, Delhi**



CS No. (ID No. 18848/16)  
Alpana Novelties Mfg. Co.  
Vs.  
M/s. Hind Picture Concern

31/07/2020

The Judgment has been pronounced through cisco webex video conferencing.

Present: Shri Alok Sharma, Ld. Counsel for the plaintiff.  
Defendant is already exparte.

Vide Separate Judgment announced through video conference 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

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by ARUN SUKHIJA  
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**(Arun Sukhija)**

ADJ-07/Central/Tis Hazari Courts,  
Delhi/31.07.2020