

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

SUIT NO.:- 193/2020

UNIQUE CASE ID NO.:- 18150/2016

IN THE MATTER OF :-

Mohd. Kalam
S/o Sh. Nizamuddin
R/o N-95/12. T. Huts, Shahzabad Bagh,
Inder Lok, Delhi.

...Plaintiff

VERSUS

Mohd. Shahabuddin
S/o Sh. Shafikuddin
R/o C-133, Gali No.13,
C-Block, Ghonda Extention, Delhi.

...Defendant

SUIT FOR RECOVERY OF RS.7,78,627/- (RUPEES SEVEN LAKHS
SEVENTY EIGHT THOUSAND SIX HUNDRED TWENTY SEVEN
ONLY)

Date of institution of the Suit : 23/03/2016
Date on which Judgment was reserved : 01/07/2020
Date of Judgment : 20/07/2020

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

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs.7,78,627/- (Rupees Seven Lakhs Seventy Eight Thousand Six Hundred Twenty Seven 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:-

- (1) The plaintiff is in business of manufacturing and trading of the window, room coolers and its materials and running his business in the name and style of M.K. Traders at the aforesaid address.
- (2) The Defendant, in the month of February 2011, approached the plaintiff and requested him to supply the coolers and material. Accordingly, the defendant placed the orders for purchasing the coolers and material the plaintiff. The plaintiff supplied the window, room coolers and its materials through invoices-cum-challans which were acknowledged by the Defendant.
- (3) The defendant used to make the payment as on account payment. However, as per invoices/ledger account of the plaintiff, an outstanding amount of Rs.4,62,780/- is due as on date. However, the plaintiff time and again demanded the defendant to pay the aforesaid due amount, but the defendant has not paid the aforesaid due amount on one pretext or the other.
- (4) Thereafter, the plaintiff approached the Delhi Govt. Mediation and Conciliation Centre, B-Wing, G.F., Vikas Bhawan-II, Civil Lines, Delhi for intervention in the matter and for initiation the conciliation proceedings into matter/dispute. However, with the efforts of the Mediator, the defendant agreed to settle the dispute as full and final settlement for Rs. 4,00,000/- (Rs. Four Lacs Only) and further agreed to pay the same in installment in two installments of Rs. 2,00,000/- (Rupees Two Lacs Only) each which shall be commenced w.e.f. 30.01.2016. Accordingly, both the parties of the

present suit entered into Mediation Settlement agreement dated 25.06.2015, but the defendant failed to make the payment till date, despite the settlement dated 25.06.2015.

- (5) The defendant has been dishonestly retaining the aforesaid due amount of the plaintiff without any plausible reason which is not only arbitrary but also unlawful.
- (6) The defendant is liable to pay the following legal amount of the plaintiff:-

a)	Principal Amount	Rs. 4,62,780/-
b)	Accrued Interest @ 18% w.e.f. 04.06.12 To 20.03.2016	Rs. 3,15,847/-
	Total	----- Rs. 7,78,627/- -----

Hence, the present suit has been filed by the plaintiff against the defendant.

CASE OF DEFENDANTS AS PER WRITTEN STATEMENT

Succinctly, the case of defendant is as under:-

- (1) The present suit filed by the plaintiff is hopelessly / highly time barred. The suit is false, wrong and frivolous and without any substance or is based concealment upon concealment of material facts. The plaintiff has not stated the material facts before this Hon'ble Court and the contrary has suppressed them.
- (2) According to the statement of accounts filed by the plaintiff, the same is not genuine and not since the date starting of the account, moreover, the amount claimed by the plaintiff in the suit is based on the statement of the account and in the plaint, the plaintiff himself admittedly there is no cause of action against the defendant.

- (3) The defendant does not know to sign in Urdu and the plaintiff shows all the documents which bear signatures of the defendant in Urdu. The defendant always signed in Hindi only and the defendant is illiterate person and used to sign in Hindi in very casual manner.
- (4) On merits, the contents of the plaint have been denied and it has been submitted that the signatures shown in the documents by the plaintiff, the signatures were done in Urdu in very expert manner. It has further been submitted that the defendant was served the notice from Ld. Mediation Centre and the defendant attended the first date and the defendant stated before the Ld. Mediation that nothing is/ was due against the defendant and the defendant also disclosed before the Mediation Centre that the defendant is not doing any business with the plaintiff, but the Ld. Mediator asked for attending one more date. On the second date of hearing before the Ld. Mediator, Ld. Mediator took the signature of the defendant on some papers because the defendant is illiterate. It is submitted that the defendant has no due payment/no liability towards the plaintiff. It has been prayed to dismiss the suit of the plaintiff.

REPLICATION AND ISSUES

The plaintiff has not filed any replication to the Written Statement of the defendant.

From the pleadings of the parties, following issues were framed vide order dated 14.03.2017:-

ISSUES

- (1) *Whether the plaintiff is entitled for the decree of Rs.7,78,627/- (Rupees Seven Lacs Seventy Eight Thousand and Six Hundred Twenty Seven Only) as claimed in prayer clause c), (wrong typed) of the plaint? OPP.*

- (2) *To what interest, if any, the plaintiff is entitled to the above amount and if so, at what rate and for what period? OPP.*
- (3) *Whether the suit is barred by Limitation? OPD.*
- (4) *Whether the plaintiff has concealed material facts before this Hon'ble Court, as claimed in the preliminary objection No.4 of the Written Submission and if so, its effect? OPD.*
- (5) *Relief.*

EVIDENCE OF THE PLAINTIFF AND DEFENDANT AND DOCUMENTS RELIED UPON BY THEM

The plaintiff, in order to prove his case, led his evidence and got examined himself 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 following documents:-

1. Original invoices cum delivery challans which are Ex.PW1/1 (Colly. 11 invoices/ pages).
2. Copy of Settlement dated 25.06.2015 before Delhi Govt. Mediation & Conciliation Centre is Ex.PW1/3 (OSR) and
3. Copy of ledger account is Mark-A.

On the other hand, the defendant examined himself as DW-1. DW-1 has filed his evidence by way of affidavit.

This Court heard final arguments, as advanced by Ld. Counsels for the parties through video conferencing. I have perused the material available on record.

ISSUE WISE FINDINGS & CONCLUSIONS

ISSUES NO.1 to 4

- (1) *Whether the plaintiff is entitled for the decree of Rs.7,78,627/- (Rupees Seven Lacs Seventy Eight Thousand and Six Hundred Twenty Seven Only) as claimed in prayer clause c), (wrong typed) of the plaint? OPP.*
- (2) *To what interest, if any, the plaintiff is entitled to the above amount and if so, at what rate and for what period? OPP.*
- (3) *Whether the suit is barred by Limitation? OPD.*
- (4) *Whether the plaintiff has concealed material facts before this Hon'ble Court, as claimed in the preliminary objection No.4 of the Written Submission and if so, its effect? OPD.*

The aforesaid issues are interrelated and interconnected with each other and accordingly, they are decided together.

FINDINGS AND CONCLUSIONS OF THE COURT

This Court will first of all adjudicate upon the issue of Limitation. The Plaintiff has claimed a sum of Rs. 4,62,780/- towards principal amount as on 4.6.2012. The present suit was filed by the Plaintiff on 23.03.2016. The Ld. Counsel for the Plaintiff has relied upon the Settlement dated 25.06.2015 before Delhi Govt. Mediation & Conciliation Centre (Ex.PW1/3) and submitted that the said document clearly provides that the defendant had agreed to pay the amount of Rs.4,00,000/- and therefore the suit of the Plaintiff is entitled to principal sum of Rs.4,62,780/-. No doubt, the defendant has admitted signatures on the said document dated 25.06.2015 (Ex.PW-1/3), however, for the purpose of extension of Limitation period the said document can't be treated as an Acknowledgment under Section 18 of the Limitation Act for the reason that the acknowledgment must be given before expiration of the Limitation period. The said document Exhibit PW-

1/3 was writing but the same was executed much after the expiration of the Limitation period and when the document was executed after the Limitation then the same cannot extend the Limitation period. The suit as far as claiming the said principal amount of Rs. 4,62,780/- is time barred and accordingly, the Plaintiff is not entitled to claim the said amount.

The Ld. Counsel for the Plaintiff has further fervently and assiduously argued that the said document Exhibit PW-1/3 even if, can't be treated as Acknowledgment but the same can be treated as promise to pay under Section 25 of the Indian Contract Act, 1872 and in terms of said provision the Plaintiff is entitled to sum of Rs.4,00,000/- and interest on the said amount from 25.06.2015.

The Ld. Counsel for the defendant has argued that the defendant was served the notice from Ld. Mediation Centre and the defendant attended the first date and the defendant stated before the Ld. Mediation that nothing is/ was due against the defendant and the defendant also disclosed before the Mediation Centre that the defendant is not doing any business with the plaintiff, but the Ld. Mediator asked for attending one more date. On the second date of hearing before the Ld. Mediator, Ld. Mediator took the signature of the defendant on some papers because the defendant is illiterate.

The defendant has not pleaded the entire/complete particulars, as per the mandate of Order 6 Rule 4 CPC read with Order 8 Rule 2 CPC. It is apt to refer the Judgment passed in **Bishundeo Narain & Anr. v. Seogeni Rai & Jagernath**, AIR 1951 SC 280, while dealing with the issue, the Hon'ble Apex Court held:

“...in cases of fraud, ‘undue influence’ and coercion, the parties pleading it must set forth full particulars and the

case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion.”

[Portions bolded in order to highlight]

The provisions of Order 6 Rule 4 and Order 8 Rule 2 CPC are reproduced herein for apposite understanding:-

“ORDER VI
Pleadings generally

.....

“4. Particulars to be given where necessary.—In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

“ORDER VIII
[Written statement, set-off and counter-claim]

.....

“2. New facts must be specially pleaded.—The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.”

In nutshell, it is allegation of the defendant that, the signatures on the said settlement dated 25.06.2015 (Exhibit PW-1/3) was taken by fraud upon the defendant. There is serious allegation upon the Mediator of Delhi Govt. Mediation & Conciliation Centre. However, in terms of aforesaid Hon’ble Apex Court

Judgment and provisions under Order 6 Rule 4 read with Order 8 Rule 2 CPC, it is the mandatory duty of the defendants to provide the complete particulars regarding the fraud. The defendant was not only required to plead but also required to prove any extraneous circumstances which exist in the mind of the Mediator to take the signatures of the defendant on the said settlement dated 25.06.2015 by exercising fraud. The defendant has neither pleaded nor proved the same.

The defendant during cross examination has categorically admitted that the Notice was received by him from Mediation Centre. It is also admitted by defendant that he has not lodged any complaint case against the Mediator or against the plaintiff for playing the fraud upon the defendant in recording the settlement dated 25.06.2015(Ex.PW-1/3). The defendant, after knowing the fact that in the settlement dated 25.06.2015(Ex.PW-1/3), wherein, he had categorically agreed to pay a sum of Rs.4,00,000/-, ought to have jumped on his chair and have lodged the complaint based upon the alleged fraud, however, the defendant has not taken any steps in this respect. In terms of Section 102 of Indian Evidence Act,1872 the entire burden was upon the defendant, however, in my considered opinion the defendant has failed to discharge the said burden. The defendant, except, giving his self-serving evidence by way of affidavit, has not brought anything on the record that the alleged fraud was played upon the defendant while executing the settlement dated 25.06.2015(Ex.PW-1/3). Furthermore, the defendant has, nowhere, alleged that he has not received the copy of settlement dated 25.06.2015(Ex.PW-1/3) from the Mediation Centre at the time of execution of the said document.

The said document Ex.PW-1/3 clearly provides that defendant had promised to pay a sum of Rs.4,00,000/- and I am completely in agreement with the argument of the Ld. Counsel for the Plaintiff that the said document was executed on his own volition and falls within the precincts and parameters of provision of Section 25 of the Indian Contract Act, 1872 and accordingly, the plaintiff is entitled to sum of Rs.4,00,000/- and the defendant is liable to pay the said amount in view of the said document.

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 25.06.2015 till the filing of this 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 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.

Accordingly, the issues no.1 to 4 are decided in the aforesaid terms, in favour of the plaintiff and against defendant.

RELIEF

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

FINAL ORDER

- a. A decree of Rs.4,00,000/- is passed in favour of the plaintiff and against the defendant along-with simple rate of interest @ 9% p.a. from 25.06.2015 till

filing of this 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 20th day of July, 2020.**

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

CS No. 193/20 (ID no. 18150/16)
Mohd. Kalam Vs. Mohd. Shahbuddin

20.07.2020

The Judgment has been pronounced through cisco webex video conferencing.

Present: Ms. Meenakshi Agarwal, Ld. Counsel for the Plaintiff.
Ms. M.S. Afshan, Ld. Counsel for the Defendant

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)
ADJ-07/Central/Tis Hazari Courts,
Delhi/20.07.2020