

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve 9th January 2008
Date of judgment: 24th January 2008

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+ **CS(OS) No.862/1998 with Counter Claim No.426/2000**

M/s. Model Footwears Pvt. Ltd. ...Plaintiff
! Through:Mr. Rajat Arora, Advocate

Versus

\$ **M/s Mukesh Bhatia & Anr. ...Defendants**
^ Through: Nemo

* **JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether judgment should be reported in Digest ?

JUDGMENT:

1. Plaintiff filed this suit for recovery of Rs.11, 12,404.90 against the defendants. Plaintiff claimed that defendants approached the plaintiff for supply of shoes and the plaintiff supplied shoes to the defendants from time to time. The plaintiff raised bills for the supplies made by it to defendants. The plaintiff gave details of invoices numbers, challans with amount in respect of different supplies. The plaintiff's case is that defendants, in discharge of their obligation of paying price for the supplies so made, had been making payments towards the due amount from time to time. However, four of the cheques given in discharge of their liability got dishonoured, the details of which are as under:

ChequeNo.& Date	Drawn on	Amount(Rs.)
377312 5.2.97	Allahabad Bank Sadar Bazar	Rs.70,000/-
377311 5.12.1996	Allahabad Bank Sadar Bazar	Rs.1,00,000/-
386656 21.2.97	Allahabad Bank Sadar Bazar	Rs.2,91,061/-
386673 22.2.97	Allahabad Bank Sadar Bazar	Rs.2,15,487/-

2. The plaintiff submitted that the total due amount, as per the statement of account for the financial year 1996-97, against the defendants was Rs.10,38,902/-, inclusive of the above cheque amounts. The defendants failed to make payment of this amount. The plaintiff claimed this amount along with 21% interest. The instant suit was filed for

recovery of an amount of Rs.11,12,403.90.

3. In the written statement, defendants took the stand that defendant was engaged in wholesale of footwears and the plaintiff company approached him for launching and promoting the sales of its footwears, to which the defendants agreed. The plaintiff had been supplying footwear to the defendants and the defendants had also been supplying leather to the plaintiff. Defendants put in tremendous efforts for promoting the products of the plaintiff company and in giving feedback to the plaintiff. The cheques in question were issued by the defendants in favour of the plaintiff in good faith on a representation made by the plaintiff that it was in need of some money and advance cheques should be given. This amount was to be adjusted out of the supplies effected by the plaintiff. The second contention is that these cheques were to be used by the plaintiff only to arrange finances from their bankers. However, the plaintiff, contrary to the understanding, presented these cheques for encashment. So, the defendants issued instructions to their bankers for "*stop payment*". In the meantime, defendants received large rejection of the plaintiff's goods and informed the plaintiff about it. Defendants asked plaintiff to lift the same. The plaintiff company instead of settling the accounts and lifting the rejected goods, presented the post dated cheques although no amount was payable by the defendants to the plaintiff. The cheques were not issued in acknowledgment of any outstanding liability. The books of accounts of the plaintiff company were not correct nor had been maintained in accordance with the regular practice. The plaintiff prepared only the extracts to suit to its requirements. The plaintiff had not given credit of the debit notes issued by the defendants in respect of the rejected goods. Defendants denied that it was liable to make any payment rather defendants claimed that it was to recover from the plaintiff a sum of Rs. 21,70,733/-. The defendants filed counter claim of Rs.21,70,733.15.

4. In the replication, plaintiff denied the claim of the defendants and reiterated its own averments. Plaintiff denied that any supply of leather

was made to it by the defendants.

5. On the pleadings of parties, following issues were framed:

- “1. Whether the suit has been filed by the proper and duly authorized person on behalf of the plaintiff? OPP*
- 2. Whether the plaintiff is entitled to a decree of Rs.11,12,403.90? OPP*
- 3. Whether the plaintiff is entitled to interest, if so at what rate and from what period? OPP*
- 4. Whether the counter claim has been filed by the proper and duly authorized person on behalf of the defendant? OPD*
- 5. Whether the defendant is entitled to a decree of Rs.21,70,733.15? OPD*
- 6. Whether the defendant is entitled to interest, if so at what rate and from what period? OPD*
- 7. Relief.*

6. After framing of issues, the parties were asked to lead evidence. Plaintiff examined one witness PW-1 Suresh Kumar, who was the manager of the plaintiff company. This witness was not cross examined by the defendants despite providing repeated opportunities and imposition of costs. Ultimately, this Court vide order dated 2nd March 2006 observed that adequate opportunity has been given to the defendants for cross examination and since there was no cross examination and defendant did not avail the same and cross examination was recorded as '**Nil**'. The defendant was given opportunity to examine its own witnesses. The defendant had filed affidavit of one witness but thereafter did not appear neither the witness was produced for cross examination. The plaintiff closed its evidence on 29th March 2006. Since the defendants did not examine any evidence, the evidence in the case was closed on 24th April, 2006 and the matter was listed for arguments. The defendant did not appear even at the time of arguments.

ISSUE NO.1

7. The plaintiff's witness Suresh Kumar in his affidavit dated 8th November 2005 proved that he was working as Manager in the firm of plaintiff for the last 15 years and was well conversant with the facts of this case. The plaint of the case is signed and verified by Mr. A.K. Bose. PW1

deposed that Mr. A.K. Bose was authorized by Board of Directors of the company by resolution dated 30th September 1979 to take legal actions. He has proved the resolution as Ex.PW1/1. He deposed that Mr. A.K. Bose was competent to sign on behalf of the plaintiff company. Since the evidence of plaintiff has gone unrebutted, this issue is decided in favour of plaintiff and against the defendants.

ISSUE NO.2 & 3

8. PW-1 by his testimony proved that the plaintiff has been supplying shoes to the defendants from September 1994 to July 1997. The shoes were supplied by way of 37 invoices on different dates and challans were prepared in this respect. All the challans and invoices were collectively proved as Ex.PW1/2. PW1 also deposed that the challans were duly received by Mr. Mukesh Bhatia on behalf of the defendant and delivery of the goods was received by the defendants. The defendant, in the written statement, has not denied receipt of the goods. The case of the defendant is that no credit of the rejected material was given to it. Keeping in view the fact that no cross examination of PW1 was done and there is admission in the written statement regarding supply of goods by the plaintiff to the defendant, the plea of defendant that credit was to be given is baseless. PW1 also deposed about the dishonour of four cheques amounting to Rs.6,76,548/-. There is an admission on the part of defendants to the fact, in the written statement, that these cheques were got dishonoured. Though the defendant gave an explanation for the same but the same cannot be considered in absence of evidence of defendant. All these cheques were from the period 5th December 1996 to 22nd February 1997. This suit was filed by the plaintiff in April 1998. The supplies were made by the plaintiff from 1994 to 1997. The amount due towards the defendants was in respect of the supply of goods continuously made from 1997 onwards.

9. A perusal of facts would show that each supply of goods to the defendants has been of approximately between 1.4 lac to 2.9 lac. The plaintiff have filed the suit for the recovery of the amount for the supplies

made between April 1995 and April 1998 i.e. within a period of three years. It would be seen that the supply made between April 1995 and July 1997 till the trade continued between plaintiff and defendants were more than Rs. 14 lac. The due amount towards the defendants, as per the case of the plaintiff, was Rs.10,38,902.70. There is no rebuttal to this. I consider that plaintiff is entitled to recover the due amount of Rs.10,38,902.70 with a reasonable interest. The interest claimed by the plaintiff in its claim is 21%, which I consider is on higher side. I consider that the plaintiff is not entitled to interest @ 21% and he is entitled only to a reasonable rate of interest from the date the plaintiff served notice on the defendants for payment of this amount, till realization. As per the version of plaintiff, the notice was served by the plaintiff on the defendants on 15th November 1997 for payment of this amount. I consider that plaintiff is entitled to interest over this amount only from 15th November 1997 at the rate of 10% simple interest till realization. This issue is decided accordingly.

ISSUE NO.4, 5 & 6

10. The defendant has failed to lead any evidence qua its counter claim. The onus of proving counterclaim was on the defendant. The issues are accordingly decided in favour of plaintiff and against the defendants. The counter claim of the defendants is hereby dismissed for want of evidence.

(Relief)

11. The suit of the plaintiff is decreed for a sum of Rs.10,38,902.70 with a simple interest @ 10% per annum from 15th November 1997 till realization. The plaintiff is also entitled to the cost of suit. Decree sheet be prepared accordingly.

**January 24, 2008
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SHIV NARAYAN DHINGRA J.