

REPORTED

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 1053/2005

DATE OF RESERVE: April 21, 2008

DATE OF DECISION: July 7, 2008

M/S. JAYPEE BROTHERS MEDICAL PUBLISHER

(P) LTD.

..... Plaintiff

Through: Mr. Avinash Chander Bhasin and Mr. Amit
Bhasin, Advocates

versus

M/S. GARG DISTRIBUTION SERVICES & ORS. Defendants

Through: Defendants are ex-parte.

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

: **REVA KHETRAPAL, J.**

1. The plaintiff M/s. Jaypee Brothers Medical Publishers (P) Ltd. is a registered company having its registered office at EMCA House, 23-23-B, Ansari Road, Darya Ganj, New Delhi – 110 002. Shri J.P. Vij is the Managing Director of the plaintiff Company, who has instituted the present suit on behalf of the plaintiff Company having been authorized vide the resolution of the Board of

Directors of the Company in the meeting held on 6th May, 2005.

2. The plaintiff Company is engaged in the publication, distribution, manufacture, purchase, sale, import and export of medical and non-medical books, audio and video cassettes, medical instruments, etc. During the course of its regular business, the defendant M/s. Garg Distribution Services had purchased from the plaintiff Company medical books on credit basis from time to time and also made part payment towards the said purchases. The plaintiff Company avers that it had opened an account of the defendant No.1 in its Books of Account and the purchases so made by the defendants from time to time were regularly debited to their account. Likewise, the payments as and when received from the defendants were credited in their account.

3. According to the plaintiff, the defendants were fully aware of the outstanding amount against them as is evidenced from their letter dated 26th June, 2002 whereby the defendants acknowledged the outstanding due and payable to the plaintiff as per the statement of account received by the defendants. A copy of the said letter has been placed on record, which reads as follows:

*“To
Mr. J.P. VIJ
Managing Director
Jaypee Brothers Medical Publishers Pvt. Ltd.
Chennai.*

*Respected Sir,
As per the latest statement I wish to inform you that I
have to pay Rs.15,95,432 as per Statements to your Company.*

Due to unavoidable circumstances I not in a position to make the payments right now. But I assure you that 75% of dues I will clear within August 15th 2002 and balance 25% payments I will clear within 10th of September, 2002. This is the final requisition made my me.

I hope this will help us to settle without of fail. Sorry for the inconvenience caused in this regard.

Thanking you,

Yours

Sd/-”

4. The defendants having failed to fulfil their commitment, the plaintiff served upon the defendants a legal notice dated 28th October, 2002 demanding the outstanding amount payable by the defendants to the tune of Rs.15,95,432/- along with interest at the rate of 24% p.a. thereon with notice charges of Rs.2,200/-.
5. This was followed by a legal notice dated 18th December, 2003, claiming the balance sum of Rs.14,12,432.00 as outstanding and payable by the defendants, as per the latest statement of account. Paragraph 8 of the said notice, which is relevant, is reproduced hereunder:

“8. That admittedly my client served you a legal notice dated 28/10/2002 demanding the outstanding amount payable by you to the tune of Rs.15,95,432/- alongwith the interest at the rate of 24% per annum thereon together with notice charges of Rs.2200/-. In spite of acknowledging the said notice you have not complied with the same and cleared the said amount. However, you have made some part payment and after adjusting the said amount, now a sum of Rs.14,12,432.00 is still outstanding due from you to my client as on 30.10.2003 in the account books of my client, which you are liable to pay to my client.”

6. Another legal notice dated 7th April, 2005 under registered A.D. cover was

given by the plaintiff to the defendants No.1 and 2 calling upon the defendants to pay the outstanding amount of Rs.14,12,432/- with interest thereon. Despite the aforesaid legal notices, the defendants have failed to tender the amount due and payable by them to the plaintiff Company, which by way of this suit claims the balance outstanding dues towards the purchase of medical books as on 28th February, 2005 in the sum of Rs.14,12,432/- with interest thereon at the rate of 24% per annum from 01.08.2003 to 09.05.2005 (21 months) in the sum of Rs.5,93,221/- along with notice charges of Rs.2,200/- totalling Rs.20,07,853/-.

7. The defendants on service of summons upon them, though initially engaged a counsel to contest the case, thereafter chose not to file any written statement and were eventually proceeded ex parte on 4th December, 2006.

8. On 23rd August, 2007, the plaintiff Company through Mr. J.P. Vij filed an affidavit by way of evidence and tendered the same in evidence as PW1, relying upon the documents Exhibit PW1/1 to Exhibit PW1/8 and also upon the documents Mark 'A' to Mark 'E'. Exhibit PW1/1 is the Memorandum and Articles of Association of the plaintiff Company. Exhibit PW1/2 is the resolution of its Board of Directors dated 6th May, 2005 authorising Shri Jitendar Pal Vij, the Managing Director to file the present suit and prosecute the same. Exhibit PW1/3 is the Statement of Account showing the bills outstanding in the ledger account of the defendants to be Rs.14,12,432/- as on 28.02.2005. Exhibit PW1/4 is the legal notice dated 18th December, 2003. Exhibit PW1/4A is the legal notice

dated 7th April, 2005 and Exhibits PW1/5 to PW1/8 are the postal receipts of the aforesaid legal notices.

9. PW1 Mr. J.P. Vij has led evidence to the effect that the defendants on various occasions have defaulted in making the payment in time for the purchase of the medical books from the plaintiff Company. The defendants are also aware of the fact that during the course of business they had issued various cheques from time to time and that some of the said cheques were dishonoured on presentation by the plaintiff. The plaintiff Company had also sent a letter dated 14.02.2002 to the defendants giving intimation about the dishonour of the cheques issued by the defendants and the balance payment due and payable by the defendants to the plaintiff Company. On 23rd February, 2002, with regard to the balance payment, the defendants issued new cheque leaves, but once again a cheque of the defendants was dishonoured. Thereupon, the plaintiff Company, through its letter dated 30.03.2002, informed the defendants about the said fact, and in response to the same the defendants issued a further cheque of Rs.75,000/- along with the letter dated 13th May, 2002. The defendants also promised to clear the outstanding payment. The photocopies of the letters dated 14.02.2002, 23.02.2002, 30.03.2002 and 13.05.2002 have been placed on record as Mark A to Mark D.

10. As already stated above, the defendants had also sent a letter dated 26th June, 2002 whereby they had acknowledged the outstanding due and payable

amount to the plaintiff Company as per the statement of account duly received by them from the plaintiff Company. The defendants through the said letter not only acknowledged the due amount but also undertook and assured that 75% of the due payment would be cleared by 15th August, 2002 and the remaining 25% would be cleared by 10th September, 2002. The photocopy of the said letter dated 26.06.2002 is Mark E. The defendants, however, failed to comply with the aforesaid undertaking and commitment made by them in the said letter.

11. The plaintiff Company claims that since the defendants are illegally withholding the amount due to the plaintiff Company to the tune of Rs.14,12,432/-, they are liable for the payment of interest thereon at 24% per annum, which, according to them, is the prevalent rate of interest in the market. The plaintiff Company further claims that the following amount are due and payable by the defendants to the plaintiff Company:-

(i)	Balance outstanding towards the purchase of the medical books as on 28/2/2005	Rs.14,12,432/-
(ii)	Interest on Rs.14,12,432/- @ 24% p.a. From 1/8/2003 to 9/5/2005 (21 Months)	Rs.5,93,221/-
(iii)	Notice charges	Rs.2200/-
	Total	Rs.20,07,853/-

12. On considering the evidence led by the plaintiff, which is unchallenged and unrebutted on record as well as the documents placed on record, which duly establish that the defendants are liable to pay a sum of Rs.14,12,432/- to the plaintiff Company, this Court is of the view that the plaintiff has been able to

substantiate its claim ex parte. Accordingly, an ex parte decree is passed in favour of the plaintiff and against the defendants for the recovery of Rs.14,12,432/-. The plaintiff shall also be entitled to interest at the rate of 9% per annum from 01.08.2003 till the date of realisation of the amount along with costs of the suit. The decree sheet be drawn up accordingly.

13. CS(OS) 1053/2005 stands disposed of accordingly.

REVA KHETRAPAL, J

JULY 7, 2008

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