

* **HIGH COURT OF DELHI : NEW DELHI**

+ **C.S. [OS] No.812 /2007**

Reserved on: 21st August, 2009

% Decided on: 25th August, 2009

M/s. Akums Drugs & Pharmaceuticals Ltd. ...Plaintiff
Through : Mr. P.K. Mittal, Adv.

Versus

M/s. Panjon Pharma Ltd. Defendant
Through : None

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

MANMOHAN SINGH, J.

1. The plaintiff has filed the present suit against the defendant for recovery of Rs.36,21,713/-. The case of the plaintiff, in brief is that the plaintiff is a company incorporated under the Companies Act, 1956 having its registered and corporate office at 304, Mohan Place, L.S.C., Block-C, Saraswati Vihar, Delhi-34. Mr. D.C. Jain has been duly authorized by the board of directors vide board resolution to sign, verify and file the suit on behalf of the plaintiff company.

2. The plaintiff company is engaged in the business of manufacture and distribution of a large variety of pharmaceutical formulations in the form of tablets, capsules, dry syrups, liquid orals

and its distribution network is extended to all over India. The defendant is a company incorporated under the Companies Act, 1956 having its offices at 108-1A, Kanchan Sagar, 18, Old Palasia, AB Road, Indore, M.P.-452018 and at PU-3, 15 Man House, 4th Floor, A.B. Road, Indore, M.P. and also at C/o Dehra Tizara Investment Pvt. Ltd., A/876, Shastri Nagar, Delhi-110052 where the pharmaceuticals goods were supplied by the plaintiff company to the defendant company.

3. As per the plaint, the plaintiff company entered into an agreement dated 31st January, 2006 with the defendant company for manufacturing certain pharmaceutical preparations with the name of “Panjon Pharma printed on such products as marketed by”. The defendant company had promised to make 10% advance against the purchase orders and balance 90% by way of 30 days post dated cheques payable at par at Delhi payable in favour of plaintiff company. The plaintiff company started supplying pharmaceutical goods to the plaintiff company at their Delhi address from March, 2006, as per the written as well as the oral purchase orders placed by the defendant company from time to time with the plaintiff company in their Delhi office.

4. Initially for some time, the defendant company made payments as per the terms. Thereafter the defendant company failed to make payments. It is alleged that an amount of Rs.24,32,593/- is due from the defendant company for supplies made by the plaintiff company. As per agreement dated 31st January, 2006 the defendant company were also required to bear the fees and expenses in respect

of obtaining product permission from the Licensing Authority and cost of designing, developing, output, plate making, printing cylinders, etc. The charges were payable at the rate of Rs.2000/- per product for fees and expenses and Rs.5000/- per product for cylinder making, etc.

5. As per the requests of the defendant company, the plaintiff company had taken approval for 26 products for which the defendant company is required to pay an amount of Rs.1,82,000/-. In terms of agreement dated 31st January, 2006 the cost of labels, cartons, bottles, dies, punches and other material bearing name of the defendant company is required to be borne by the defendant company. The plaintiff company, therefore, raised a debit note No. Panjon/Pack/001 dated 17.01.2007 for Rs.1,29,363 covering the cost of packing materials bearing name of the defendant company and lying in the factory of the plaintiff company for destruction.

6. It is further alleged that the defendant company had represented the plaintiff company that they are the registered dealer under Sales Tax Act vide CST No.LC/26/221860/099 and requested the plaintiff company to charge concessional rate of Sales Tax @ 1% as against full rate of 10% applicable to unregistered dealer. The defendant company further promised to issue form C for availing concessional sales tax charged in bills. However, the defendant company have failed to issue form “c” in respect of supplies made to the defendant by the plaintiff company, and, therefore, liable to pay an amount of Rs.3,25,729.

7. The plaintiff company allegedly kept on reminding the

defendant company to make payment of the over due sums through telephonic calls, e-mails, letters and notice dated 22nd January, 2007.

8. Despite receipt of all these telephonic calls, e-mails, letters/reminders issued by the plaintiff company, the defendants did not deny their liability nor raised any grievance or issue or dispute or claim and had, therefore, impliedly accepted their liability to make payment to the plaintiff company,

9. As such, the defendant company is liable to pay to the plaintiff company, an admitted amount of Rs.30,69,685/-.

10. Another legal notice dated 12.02.2007 was also sent by Mr. Arvind K. Jha, Advocate for and on behalf of the plaintiff company. Despite receipt of the said notice, neither any payment was made nor any "C" forms were submitted by defendant company to the plaintiff company.

11. Thus the plaintiff prayed that a decree of Rs.36,21,713/- along with interest @ 24% per annum from the date of suit till the date of decree and till realisation be passed in favour of the plaintiff company and against the defendant company.

12. Summons were served on the defendant through ordinary as well as registered post on 29th May, 2007. The defendant entered appearance on 17th July, 2007 and filed the application for leave to defend being I.A. No.5814/2008. However no rejoinder has been filed by the defendant company after reply was filed by the plaintiff company. the counsel Amarjit & Associates appearing on behalf of the defendant company filed I.A. No. 1886/2009 under Section 151 CPC pleading that

no instructions are being received by it from the defendant company for a considerable time and he is therefore discharged from the case vide order dated 10th February, 2009.

13. Fresh notice was issued to the defendant company by ordinary post, registered cover, approved courier and e-mail but it is returned unserved, therefore, the defendant is proceeded ex-parte vide order dated 14th July, 2009. Since there is no representation on behalf of the defendant, the application for leave to defend filed by the defendant is hereby dismissed. Under the provisions of Order XXXVII CPC, if no application for leave to defend exists, the court has the power to pronounce the judgment.

14. The plaintiff, in support of its case, has adduced the evidence by way of affidavit and has filed the affidavit of Mr. D.C. Jain, the Director of the plaintiff. Mr. D.C. Jain in his affidavit has fully supported the case of the plaintiff.

15. The plaintiff has placed on record the agreement entered with the defendant company dated 31.01.2006, purchase orders placed by the defendant company, invoices raised by the plaintiff company upon the defendant company, debit notes, notice issued by the plaintiff company on 22nd January, 2007 and the notice dated 12th February, 2007 issued by the plaintiff company through his advocate.

16. On consideration of the averments made in the plaint/the material on record and the affidavit of Mr. D.C. Jain which has gone un rebutted and unchallenged, I see no reason to disbelieve the case of the plaintiff. The case of the plaintiff can therefore be accepted on its

face value. It is supported by the documents and the amount of Rs.36,21,713/- is found due to the plaintiff from the defendant. It is established by the plaintiff that the purchase order has been placed by the defendant company for supply of pharmaceutical products and the goods were delivered by the plaintiff company to the defendant company. The defendant company however failed to make the payments due to the plaintiff company.

17. In view of the above discussion, the suit of the plaintiff is decreed with costs for Rs.36,21,713/- (Rupees Thirty six lac twenty one thousand seven hundred and thirteen only) against the defendants with interest *pendente lite* and future @ 9 % per annum. Although the plaintiff has claimed the interest @ 24% p.a., I feel that 24% p.a. is very exorbitant and I am not inclined to grant the said rate of interest as prayed. The decree sheet be drawn up accordingly.

The application as well as the suit is disposed of in the above terms with cost.

MANMOHAN SINGH, J

AUGUST 25, 2009
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