

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

+ **C.S. [OS] No.1304 /2008**

Reserved on: 23rd September, 2009

% Decided on: 12th October, 2009

Sh. Jugal Kishore ...Plaintiff
Through : Mr. J.C. Mahindru, Adv.

Versus

Haji Malik Ghulam Ahmed Shah & Anr. Defendants
Through : None

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 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 for recovery of Rs.44,69,897.92 and pendente lite and future interest @18% p.a. from the date of the suit till the realization of the amount against the defendants.

2. The plaintiff alongwith Sh. Ramnik Singh, Sh. Rohit Jaggi and Sh. Mohd. Yousuf Thokar had been dealing in sale of fruits etc. under the name and style of M/s. Delhi Pulwama Shopian Fruit Company at C-19, New Subzi Mandi, Azadpur, Delhi during the period from 1.4.2000 to 31.3.2002.

3. The case of the plaintiff is that he along with Sh. Ramnik

Singh, Sh. Rohit Jaggi and Sh. Mohd. Yousuf Thokar entered into a contract with the defendants for supplying apples to them for sale in New Azadpur Mandi, Delhi and had paid substantial amounts to the defendants for procuring apples from the farmers/apple growers.

4. Due to financial losses in the business, Sh. Ramnik Singh, Sh. Rohit Jaggi and Sh. Mohd. Yousuf Thokar backed out of the said dealing of the firm qua the defendants and thereafter the defendants became answerable only to the plaintiff. It is averred that the defendants failed to pay the amount due to the plaintiff but acknowledged a debt of Rs.21,47,897.92 due to the plaintiff on 22nd June, 2002 in the presence of one Sh. Mohd. Abdullah Naikoo and promised to pay the amount to the plaintiff within a short span of time. However, the plaintiff recovered an amount of Rs.3,000/- from the defendants on 31st May, 2005 who again acknowledged the debt due to the plaintiff by them under the signatures of defendant No.2 in the presence of Major Vikas and promised to pay the amount shortly. The plaintiff sent a representative namely Sh. Bhog Raj Sehgal to Dhanew Kandimarg to collect the payment after calling the defendants to pay the amount on 7th September, 2005 but he was thwarted and was not given any payment by the defendants. The defendants again gave an assurance to clear the aforesaid debt in October/November, 2005.

5. It is alleged that the defendant No.2 filed a false complaint against the plaintiff under Section 420 of Indian Penal Code, 1860 which was dismissed on 3rd March, 2008. The defendants also filed another complaint from Sh. Bashir Ahmed Malik who was their

Asami which was dismissed on 3rd March, 2008. The plaintiff thus filed the present suit claiming an amount of Rs.21,47,897.92 as the principal amount and interest on the above @18% p.a. which comes to Rs.23,22,000/-.

6. Summons were issued in the suit on 16th July, 2008. The defendants refused to accept service of summon sent by registered AD post and were therefore proceeded ex parte vide order dated 6th April, 2009.

7. The plaintiff has produced evidence by way of affidavit of Mr. Bhog Raj Sehgal, PW-2. He also filed his evidence appearing as PW-1. PW-2 supported the case of the plaintiff fully. The plaintiff proved on record the letter dated 22nd June, 2002 wherein the defendant No.1 acknowledged his liability to the tune of Rs.21,47,897.92 due towards the plaintiff by proving his signatures at point 'A' and defendants' signatures at point 'B'. He also proved the copy of the original acknowledgement receipt signed by defendant No.2 at point 'C' as Ex. PW-1/1 for an amount of Rs.3,000/- received by him from the defendants on 31st May, 2005 towards expenses at Dhanew Kandimarg when the defendants again acknowledged the outstanding amount due to the plaintiff.

8. It is also proved that Sh. Bhog Raj Sehgal was sent for collecting the payment on behalf of the plaintiff when the defendants sent a letter duly signed by defendant No.1 exhibited as Ex.PW1/2 and gave an assurance to pay the aforesaid debt in October or November, 2005. Telephonic communications by the plaintiff requesting the

defendants to pay the aforesaid debt were tape recorded on 3rd April, 2009 and 23rd April, 2009 and are exhibited as Ex. PW-1/6 and PW-1/7 in the form of CDs. Certain letters sent by the plaintiff to the defendants requesting and demanding the aforesaid amount are also exhibited as Ex. PW-1/3.

9. The case of the plaintiff has gone unrebutted. The defendants refused to receive summons sent to them by registered AD post. The plaintiff has proved on record the amount of Rs.21,47,897.92 due to him by the defendants. PW-2 Sh. Bhog Raj Sehgal also supported the plaintiff's case. Thus, I pass a decree in favour of the plaintiff and against the defendants for a sum of Rs.44,69,897.92 alongwith pendente lite and future interest @ 6 % from the date of suit till the realization of the amount. The plaintiff is also entitled to the costs. Decree be drawn accordingly.

MANMOHAN SINGH, J.

OCTOBER 12, 2009
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