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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 04.05.2010

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CS (OS) 1490/2000

NATIONAL PANASONIC INDIA LTD.

..... Plaintiff

Through: Mr. Anil K. Kher, Sr. Advocate &
Mr. Rajesh Pandit, Advocate.

versus

DEVENDRA MALVIYA PROP.

..... Defendant

Through: None.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% The plaintiff claims a decree for Rs.43,06,445/- with *pendente lite* and future interest.

2. According to the suit averments, the plaintiff, manufacturer of consumer electronic products, entered into an arrangement, whereby, the defendant was to act as its stockiest/sales agent. The plaintiff alleges that the defendant carried on business of marketing and selling its audio, video and television sets etc. in Indore, through its partnership concern Techo Smiths. It is

submitted that the plaintiff constituted the defendant as its sales agent in the early 1990s. Plaintiff relies upon an agreement Ex-PW-1/4 for this purpose.

3. In terms of the agreement, the defendant used to purchase the products, which were given on credit, for which he (the defendant) used to deposit on account payments from time to time. The plaintiff contends that the parties maintained a running account, as far as the supplies and the payments (made by the defendants) were concerned. The material terms of such supplies and payments are contained in invoices. The plaintiff has placed on record one such invoice as Ex-PW-1/5. It is averred that on 31.03.1997, the defendant had issued a cheque for Rs.5,00,000/- but it was dishonoured. The plaintiff has placed on record the original of that cheque as well as the dishonour memo issued by the bank as Ex-PW-1/6 to Ex-PW-1/8. The plaintiff's mention about the defendant having issued 10 further cheques towards "on account payments", on 18.04.1997 the details of which are as follows:-

XXX	XXX	XXX	
S.No.	Cheque No.	Date	Amount (Rs.)
1	193856	18.4.97	1,00,000/-
2	193860	18.4.97	1,00,000/-
3	193862	18.4.97	1,00,000/-
4	193863	18.4.97	1,00,000/-
5	193864	18.4.97	1,00,000/-
6	193865	18.4.97	1,00,000/-
7	193866	18.4.97	1,00,000/-
8	193867	18.4.97	1,00,000/-
9	193868	18.4.97	1,00,000/-
10	193869	18.4.97	1,00,000/-
XXX	XXX	XXX	

4. The cheques were apparently drawn on the Transport Corporation Bank Ltd., Indore. It is submitted that the cheques too were dishonoured and the bank to whom these instruments were presented, issued a memo/invoice which has been produced as Ex-PW-1/20. The plaintiff submits that the cheques were presented again but the defendant failed to honour them. It is submitted that in these circumstances, the plaintiff issued letters dated 18.04.1997, 23.04.1997 (Ex-PW-1/21 & Ex-PW-1/22) demanding payment.

5. The Suit avers that the defendant acknowledged its liability and made on account payment of Rs.20,00,000/- on 30.05.1997 and further promised to pay the balance amount. It is alleged that thereafter till June 1997, the defendant continued to purchase goods and made another “on-account” payment of Rs.5,00,000/- on 30.06.1997. The plaintiff alleges that after this development, the defendant lost interest in marketing its products.

6. The plaintiff claims to have followed up the issue with the issue of outstanding payments with the defendant and also reminded him to clear them. A reference is made to several letters some of which have been produced and marked as exhibits. These are dated 23.12.1998 (Ex-PW-1/23), 24.02.1998 (Ex-PW-1/24), 21.04.1998 (Ex-PW-1/25), 15.09.1998 (Ex-PW-1/26), 09.11.1998 (Ex-PW-1/27) and 11.11.1998 (Ex-PW-1/29) & 02.12.1998 (Ex-PW-1/30). The plaintiff submits that to having maintained regular books of account in the course of its business and also having recorded sales duly effected and as well as the amount received towards “on-account” payment from dealers including the defendant. These books of account, say the plaintiff, reveal that after duly crediting the amounts received, the defendant owed to (the plaintiff) a sum of Rs.25,03,748.20 as on 31.03.1998. An extract of the statement of account showing the said debit balance standing against the defendant has been produced as Ex-PW-1/31.

7. It is submitted that in the circumstances, when the defendant was asked to confirm the

balance and pay up the outstanding dues, the defendant issued 8 cheques and details of which have been disclosed in the suit. They are as follows:-

XXX	XXX	XXX	
S.No.	Cheque No.	Date	Amount (Rs.)
1	193870	11.1.99	1,00,000/-
2	193871	11.1.99	1,00,000/-
3	193872	11.1.99	1,00,000/-
4	193873	11.1.99	1,00,000/-
5	193874	11.1.99	1,00,000/-
6	193875	11.1.99	1,00,000/-
7	193876	11.1.99	1,00,000/-
8	193877	11.1.99	1,00,000/-
XXX	XXX	XXX	

These cheques were also drawn on the Transport Corporation Bank Ltd., Indore and are exhibited as Ex-PW-1/31 to Ex-PW-1/39.

8. It is contended that the plaintiff presented cheques for due collection to the Citi Bank, New Delhi but they were returned back unpaid with the remark “ACCOUNT CLOSED” through memo dated 18.01.1999. The original memo received from defendant’s bankers has been produced as Ex-PW-1/40. Similarly, the plaintiff’s banker’s invoices dated 18.01.1999 intimating about dishonour are produced as Ex-PW-1/41 to Ex-PW-1/48. The suit alleges that in the wake of the above development, a letter was issued to the defendant on 30.01.1999 demanding payment which went unheeded. A copy of the letter has been produced as Ex-PW-1/49.

9. In these circumstances, the plaintiff claims to have issued a legal notice on 02.02.1999 (in terms of Section 138 of the Negotiable Instrument Act) a copy of which along with postal receipts has been produced as Ex-PW-1/50. Another notice of the same nature was issued to the

defendant on 25.02.1999 demanding an outstanding sum of Rs.25,03,748.20, a copy of that notice has been produced as Ex-PW-1/51.

10. After summons were issued, and duly served, the defendant failed to resist the proceedings. The plaintiff, therefore, submits that its claim has to be decreed. The plaintiff also presses for 24% interest p.a. contending that the invoices had clearly mentioned that such rate of interest was payable by the defendant towards the outstanding amount.

11. After summons were issued, the defendant entered appearance and filed the written statement in the year 2002. However, after some hearings, the defendant stopped being represented and was set down ex-parte on 23.09.2008. In these circumstances, the plaintiff was permitted to lead ex-parte evidence in support of the suit claim.

12. In addition to the documents produced along with the suit, the plaintiff has relied upon the affidavit deposition of Sh. Hemant Kumar Singh, Assistant Manager (Legal)-cum Company Secretary. The said witness appeared in Court and tendered the affidavit as Ex-PW-1/A. His deposition generally supports the suit averments.

13. From the above discussion, it is apparent that the plaintiff's claim is founded on a written agreement entered into with the defendant for supply of its products. The defendant was to act as its stockiest. Ex-PW-1/4 is the agreement. The agreement was effective for a period of one year but could be continued from time to time. In terms of its various conditions, the defendant was permitted to retain the goods and sell them at the prices indicated. Ex-PW-1/5 indicates that the terms on which the goods could be supplied to the defendant as well as the time within which he had to make payments. One such invoice has been produced as Ex-PW-1/5. The Affidavit deposition of the PW-1 establishes that initially, some amounts had been paid to the plaintiff by the defendant; the cheques were however dishonoured. The defendant apparently made some on-

account payment thereafter and subsequently issued a series of cheques. These too were dishonoured and the originals of such cheques have been produced as Ex-PW-1/32 to Ex-PW-1/39; they were apparently issued on 11.01.1999. The reason for their dishonour was that the defendant had closed his account at Indore. The memo received from the defendant's bankers about dishonour of the cheque as well as the plaintiff's banker's advice has been produced as Ex-PW-1/40 to Ex-PW-1/48. These documents, in the Court's opinion, establish the plaintiff's case for Rs.8,00,000/-.

14. As far as the balance amount is concerned, the plaintiff relies upon the deposition of PW-1 as well as extracts of its Statement of account, produced as Ex-PW-1/31. It pertains to the period January, 1997 to January, 1998. The account reflects that the goods supplied were to the tune of Rs.64,74,687.20/- as against which the defendant had paid or deposited (through on-account payments) a sum of Rs.39,70,939/-. The debit balance standing in the name of the defendant at that time was Rs25,03,748.20. A look at the statement of account would show that each payment made by the defendant has been duly reflected and the invoices have also been described in detail. As the deponent PW-1 has stated that these books of account are maintained in normal course of business, the Court sees no reason to doubt it.

15. In view of the above discussion, the Court is of the opinion that the plaintiff is entitled to a decree for Rs.25,03,748.20. As far as interest is concerned although, the plaintiff relies upon the terms stating that the such interest is payable, yet this Court is mindful of the fact that the condition is not incorporated in agreement but in the back of a printed invoice. The plaintiff has also not established that such interest was in fact recovered from the defendant during the currency of the agreement. In these circumstances, the Court is of the opinion that the plaintiff cannot claim interest at 24% on such outstanding amount. However, since the transaction was a

commercial one, the Court is of the considered view that the plaintiff should be entitled to reasonable interest i.e. @15% p.a.

16 In view of the above discussion, the plaintiff is entitled to succeed and the suit is accordingly decreed for a sum of Rs.25,03,748.20 with interest @15% p.a. *pendente lite* and future interest from the date of the filing of the suit till realization. The plaintiff shall also be entitled to costs; counsel's fee is fixed at Rs.75,000/-.

**S. RAVINDRA BHAT
(JUDGE)**

MAY 4, 2010
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