

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: May 11, 2011

+ **CS(OS) No. 1106/2010**

BAYER CROP SCIENCE LTD

..... Plaintiff

versus

M/S HPM INDUSTRIES LTD AND ORS

..... Defendants

Advocates who appeared in this case:

For the Plaintiff: Mr. Ali Naqvi, Mr. Abhishek Singh and Ms. Ishani, Advs.

For the Defendant: None

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J. (ORAL)

1. This is a suit for recovery of Rs. 101, 53,984.13/-. The plaintiff company used to supply the goods to the defendant no. 1 company from time to time and the time for making payment varied upto 90 days depending upon each purchase order. A sum of Rs. 10462564/- was due to the plaintiff

company from defendant no. 1 company as on 1st January, 2004. Between 14th May, 2004 to 30th August, 2004, the plaintiff company supplied goods worth Rs. 63,30,841.76/-to defendant no. 1 company, as a result of which liability of defendant no. 1 company to the plaintiff company rose to Rs. 1,67,93,405/-. Out of the aforesaid amount of Rs. 1,67,93,405/-, the defendant no. 1 made payment of Rs. 1,12,77,844/-, through various cheques, leaving a balance of Rs. 55,15,561.76/-.

2. On 14th May, 2005, the defendant company made payment of Rs. 2 lakhs thereby reducing the outstanding amount to Rs. 53,15,561/-. A criminal complaint was then filed by the plaintiff company against the defendants. During pendency of the complaint, the plaintiff company received payment of Rs. 2 lakhs from the defendant company vide two separate cheques of Rs. 1 lakh each one of which was credited on 20th March, 2007 and the other on 10th April, 2007. The liability of defendant company to the plaintiff company thereupon came down to Rs. 51,15,561/-.

3. It is also alleged that in a revision application filed by defendant nos. 2 and 3 against the order passed by the learned Metropolitan Magistrate on 24th August, 2006 in a

criminal complaint filed by the plaintiff company, the liability of Rs. 5,31,55,61.76 was admitted. Since the defendants have failed to make payment of the balance amount of Rs. 51,15,561/-, the plaintiff has claimed the aforesaid amount along with interest @ 18% per annum amounting to Rs. 50,38,422.37/-.

4. The defendants were proceeded ex parte on 21st March, 2011 since they neither appeared nor filed written statement despite service of summons on them.

5. The plaintiff company has filed an affidavit of Mr. K.K. Jain by way of ex parte evidence. In his affidavit, Mr. K.K. Jain has stated that between 14th May, 2004 to 30th August, 2004, the plaintiff company supplied goods worth of Rs. 63,30,841.76/- to defendant company vide invoices which are annexed in Exhibit P/2 (Colly). He has further stated that on account of the aforesaid supply of goods, the total amount payable to the plaintiff company increased to Rs. 1,67,93,405/-. According to him, the defendant paid a sum of Rs. 1,12,77,844/- through various cheques and one payment of Rs. 6,38,929/- was made vide cheque no. 063141. He has further stated that the defendant remitted payment of Rs. 2 lakhs to the plaintiff company vide cheque dated 14th May,

2005 thereby reducing the outstanding amount to Rs. 53,15,561/-. According to him, the plaintiff received a further sum of Rs. 2 lakhs from the defendant through two cheques of Rs. 1 lakh each, one of which was credited on 20th March, 2007 and the other on 10th April, 2007.

6. Exhibit P/8 (Colly) is the statement of account for the period from 1st January, 2004 to 31st December, 2004. A perusal of this document would show that a sum of Rs. 1,04,62,564/- was payable by the defendant no. 1 company to the plaintiff company on 1st January, 2004. The statement of account coupled with the invoices by the plaintiff company also shows supply of goods worth Rs. 63,30,841.76 between 14th May, 2004 and 30th August, 2004.

7. It would thus be seen that a principal amount of Rs. 55,15,561.76/- was due to the plaintiff company from the defendant no. 1 company before payment of Rs. 2 lakhs was received by it on 14th May, 2005. Since the plaintiff company received Rs. 2 lakhs on 14th May, 2005 and another sum of Rs. 2 lakhs during pendency of the criminal case, the principal amount payable by defendant no. 1 to the plaintiff company got reduced to Rs. 51,15,561/-, which has been claimed by way of present suit.

8. Exhibit P/7 (Colly) is the copy of the Revision Application No. 130/2008 filed by the defendant nos. 2 and 3 who are the Directors of defendant no. 1 company. In para 6(f) of the criminal revision application, the defendant nos. 2 and 3 expressly admitted that a sum of Rs. 53,15,561.76/- was payable to the plaintiff company and they were trying to clear it despite their dues having not been paid by the Government of Andhra Pradesh. It appears that while filing this revision application, the defendant nos. 2 and 3 did not take into account the payment of Rs. 2 lakhs made to the plaintiff company during the pendency of the criminal proceedings. Thus, there is an admission of liability made by the Directors of defendant no. 1, in the criminal revision application filed by them. Defendant No.1 has also admitted its liability to pay to the plaintiff, vide its letters dated 27.11.1994, 3.1.2005, 16.2.2005 & 31.3.2005, though the precise amount payable to the plaintiff company has not been indicated in these letters.

9. It has come in evidence that payment of Rs. 6,38,928/- credited to the account of the plaintiff on 16th August, 2004 was received by cheque. The payment of Rs. 2 lakhs received on 14th May, 2005 was also by cheque and so were the two payments of Rs. 1 lakh each received during the pendency of

the criminal proceedings. In view of the provisions contained in Section 19 of the Limitation Act, a fresh period of limitation starts from the date these payments were made. These part payments were made at the time when the debt had not become time barred.

The admission of liability made in the criminal revision application constitutes acknowledgment of liability within the meaning of Section 18 of the Limitation Act and a fresh period of limitation starts from the date acknowledgment was made. Though the date of filing of the criminal revision application has not been given by the plaintiff, a perusal of the copy filed by the plaintiff would show that it was drafted in September, 2007. Obviously, it would have been filed in or after September, 2007. Since part payments made on 16th August, 2004 and 14th May, 2005 had earlier extended the period of limitation, the acknowledgement in September, 2007 was also within the prescribed period of limitation. Having been filed on 28th May, 2007, if the period of limitation is computed even from 1st September, 2007, the suit is well within the prescribed period of limitation. I, therefore, hold that the plaintiff is entitled to recover the principal amount of Rs. 51,15,561.76/- from the defendant.

10. The plaintiff has claimed interest @ 18% per annum. There is no written agreement between the parties for payment of interest. No usage of trade or customs for payment of interest has been pleaded or proved. However, since this is a suit for price of goods sold and delivered, interest can be awarded to the plaintiff under Section 61(2) of the Sale of Goods Act. Considering the nature of the transactions between the parties, I am of the view that interest under Section 61(2) of the Sale of Goods Act should be awarded at the rate of 12% per annum. The amount of interest computed @ 12% comes to Rs. 33,58,948.25/-. The total amount payable by defendant no. 1 to the plaintiff company thus comes to Rs. 84,74,510.01/-.

11. The decree for recovery of Rs.84,74,510.01 with proportionate costs and pendente lite and future interest @ 12% per annum is passed in favour of the plaintiff and against defendant no. 1 only.

Since the goods were supplied to a company and defendant nos. 2 and 3 were not the guarantors for the payment to be made by the defendant no. 1, the plaintiff is not entitled, in law, to recover amount from defendant nos. 2 and 3. The suit against defendants no. 2 & 3 is therefore

dismissed without any order as to costs.

The decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

MAY 11, 2011
Sd