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

+ CS(OS) 1315/2008

Decided on: 24th November, 2011

M/S PARKAIRE ENGINEERING
CO.(P) LTD.

..... Plaintiff

Through : Mr. Ashish Aggarwal and
Ms. Noorun Nahar Firdausi,
Advs.

versus

M/S VASHMI CHEMICALS LTD.

..... Defendant

Through : Mr. Kuldeep Singh Tomar,
Proxy Counsel

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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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 |

A.K. PATHAK, J. (ORAL)

1. Plaintiff has filed this suit for recovery of ₹28,35,430.64/-
(Rupees Twenty Eight Lacs Thirty Five Thousand Four Hundred
Thirty and Sixty Four Paise Only) together with pendente lite and

future interest @ 21% per annum.

2. It is alleged that plaintiff is a private limited company incorporated under the Companies Act, 1956. Mr. Vijay Prakash Sawhney, is competent to sign, verify and institute the plaint on behalf of the plaintiff having been duly authorized in this regard. Defendant is a company incorporated under the Companies Act, 1956. Earlier, defendant was known as M/s. Vamshi Exports Pvt. Ltd., however, with effect from 14th September, 2006, its name was changed to M/s. Vamshi Chemicals Ltd.

3. Plaintiff is engaged in the business of designing and manufacturing of all types of heat exchangers, pressure vessels, L.P.G. bullets, chilling units, hot water generators, air cooled oil coolers, calorifiers, columns, reactors and other allied equipments. Defendant approached the plaintiff at Delhi and requested for supply of various goods manufactured by it. Accordingly, plaintiff supplied goods to defendant, through invoices from time to time against the purchase orders. Defendant acknowledged the receipt of goods from the plaintiff, inasmuch as issued C-Forms from time to time. Lastly C-Form was issued on 7th April, 2006 in respect of the supplies made vide invoice nos. 23 and 26 dated 13th June,

2005 and 16th June, 2005 respectively, both for ₹6,29,059/- (Rupees Six Lacs Twenty Nine Thousand Fifty Nine Only). Plaintiff had been maintaining a mutual and running account in the name of defendant in its books of accounts, wherein the supplies made and the payment received was recorded. A sum of ₹17,39,528/- (Rupees Seventeen Lacs Thirty Nine Thousand Five Hundred Twenty Eight Only) was due and outstanding against the defendant in terms of the statement of account, which defendant was liable to pay with interest @ 21% per annum. Despite repeated requests, defendant failed to make the payment. Accordingly, telegram dated 24th June, 2008 was sent to the defendant, calling upon it to make payment, but to no effect. Hence, the suit for recovery of ₹28,35,430.64/- (Rupees Twenty Eight Lacs Thirty Five Thousand Four Hundred Thirty and Sixty Four Paise Only), that is, ₹17,39,528/- + ₹10,95,902.64 towards interest @ 21% per annum.

4. After the service of summons, defendant appeared through counsel. However, written statement was not filed despite opportunities granted to the defendant, consequently, vide order dated 20th February, 2009 defendant's opportunity to file written

statement was closed.

5. Plaintiff has led evidence by way of affidavit of its Executive Director Mr. A.K. Saxena as (PW1). His affidavit is Ex. PW1/A. This witness has even been cross examined by the defendant's counsel.

6. PW1 has fully corroborated the averments made in the plaint. He has also perused documents. Certified copy of Board Resolution is Ex. PW1/1. By this Board Resolution, Mr. Vijay Prakash Sawhney, who has signed, verified and instituted the plaint, has been authorized to initiate legal proceedings on behalf of the plaintiff. Certified copies of Certificate of Incorporation/Fresh Certificate of Incorporation of defendant are Ex. PW1/2 and Ex. PW1/3. PW1 has categorically stated that defendant had approached the plaintiff at Delhi and requested for supply of goods manufactured by the plaintiff, which were supplied to the defendant from time to time through invoices. He has further deposed that the statement of account was maintained by the plaintiff in respect of the supplies and payments received. Certified copy of the statement of account for the period 1st April, 1999 to 19th June, 2007 is Ex. PW1/4. Carbon copies of the

invoices have been proved as Ex. PW1/5 to Ex. PW1/19. C-Forms issued by the defendant in respect of the invoices dated 13th June, 2005 and 16th June, 2005 for ₹6,29,059/- (Rupees Six Lacs Twenty Nine Thousand Fifty Nine Only) each have been proved as Ex. PW1/20 to Ex. PW1/24. Photocopy of telegram has been proved as Ex. PW1/25 and original receipt issued by the post office in respect of the telegram has been proved as Ex. PW1/26. PW1 has categorically deposed that defendant is liable to pay ₹28,35,430.64/- (Rupees Twenty Eight Lacs Thirty Five Thousand Four Hundred Thirty and Sixty Four Paise Only) to the plaintiff, that is, ₹17,39,528/- towards outstanding balance and ₹10,95,902.64 towards interest @ 21% per annum. Testimony of PW1 is duly supported by the documents, inasmuch as, has remained unshattered in his cross-examination.

7. Counsel for the plaintiff, to avoid any objection about the limitation, has fairly contended that he is not pressing for decree for suit amount based on the statement of account. He has pressed for recovery of amounts involved in the two bills dated 13th June, 2005 and 16th June, 2005 for ₹6,29,059/- (Rupees Six Lacs Twenty Nine Thousand Fifty Nine Only) each (Ex. PW1/18 and Ex.

PW1/19). Ex. PW1/24 is the C-Form issued by the defendant in respect of this very supply which also confirms that the goods were supplied through these two invoices. Thus, plaintiff has proved that a sum of ₹12,58,118/- (Rupees Twelve Lacs Fifty Eight Thousand One Hundred Eighteen Only) had remained due qua these two bills, which defendant has failed to pay.

8. The present plaint has been filed on 1st July, 2008 vide diary No. 926333. High Court remained closed for summer vacation from Monday, 2nd June, 2008 to Monday, 30th June, 2008 (both days inclusive) in terms of notification No.626/Estt/EI/DHC dated 26.5.2008. The limitation to file the present suit, if taken in respect of 1st invoice dated 13th June, 2005, came to expire on 12th June, 2008 and in respect of 2nd invoice dated 16th June, 2005, came to expire on 15th June, 2008. Section 4 of The Limitation Act, 1963 envisages that if prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens. Thus, this suit, filed on the reopening of the court, is well within the period of limitation.

9. As regards interest, in my view, if ordered to be paid @ 12%

per annum with effect from 16th June, 2005 till the entire amount is paid by the defendant, will suffice.

10. In the light of the above discussions, I pass a decree for ₹12,58,118/- (Rupees Twelve Lacs Fifty Eight Thousand One Hundred Eighteen Only) together with interest @ 12% per annum with effect from 16th June, 2005 till the realization of the decretal amount. Cost of the suit is also awarded to the plaintiff.

11. Decree sheet be drawn accordingly.

A.K. PATHAK, J

NOVEMBER 24, 2011

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