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

+ CS(OS) 288/2011

M/s. Shanti Garments Plaintiff
Through: Mr.Praduman Kr. Aggarwal and
Mr.Sanjay Aggarwal.

versus

M/s. Chhabra&Ors. Defendants
Through: Nemo

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

ORDER

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17.10.2012

The plaintiff has filed the present suit against the defendants for recovery of Rs.34 lacs.

The brief facts as set out by the plaintiff in the plaint inter-alia are that the plaintiff is a partnership firm registered under the Indian Partnership Act and Mr. Ram Kumar Gupta is one of the partners in the plaintiff firm who is authorized to file the present suit on behalf of the plaintiff firm. The defendant nos. 4 to 7 had approached the plaintiff to become their franchisee for selling their Ethnic Ladies wear under the brand name of 'Chhabra'. A Memorandum of Understanding dated 12.4.2007 was entered into between the plaintiff through its partner Shri Ram Kumar Gupta and the defendant no. 5 Shri Kamal Kumar Nangia. An amount of Rs. 25 lacs was

deposited by the plaintiff with the defendants towards the security deposit through various cheques drawn on Syndicate Bank, Karnal (Haryana). The defendants failed to maintain the business relations and professional terms with the plaintiff as promised by them under the franchisee agreement and on failure to maintain the professional and business commitment, the plaintiff had approached the defendants in order to seek refund of the security amount of Rs.25 lacs. The defendants thus returned the said security amount in due discharge of their legal liability vide two separate cheques i.e. cheque no. 666391 dated 20.1.2008 for an amount of Rs. 15 lacs drawn on State Bank of India, ChandniChowk Branch, Delhi and cheque no. 728425 dated 20.1.2008 drawn on ICICI Bank, ChandniChowk, Delhi for an amount of Rs. 10 lacs. Both the cheques were returned dishonoured after they were presented by the plaintiff with their bank for encashment. The plaintiff was left with no other remedy and served two legal notices dated 31.7.2008 and 4.8.2008, thereby calling upon the defendants to pay amount of the aforesaid two cheques but despite service of the said notices the defendants failed to pay the said amount. The plaintiff has also filed two separate complaints under Section 138 of the Negotiable Instruments Act and the said complaints are pending disposal before the court of GMIC, Karnal. The defendants have however, made a part payment of Rs.5 lacs by way of two separate cheques and after giving adjustment of a sum of Rs.5 lacs, a sum of Rs.20 lacs is left to be paid by the defendants. The plaintiffs have thus claimed an amount of Rs.20 lacs

towards the principal amount and a sum of Rs.9,00,000/- towards interest calculated at 12% p.a. from the date of issuance of the cheques till the date of filing of the suit. The defendants in this matter were proceeded ex-parte. Ex-parte evidence was adduced by the plaintiffs through the affidavit filed by Shri Ram Kumar Gupta, partner of the plaintiff firm. Mr. Ram Kumar Gupta has tendered his affidavit in evidence as Ex. PW1/A. He also proved on record certified copy of Form-A issued by the Registrar of Firms, Karnal, Haryana as Ex.PW1/1 to prove the registration of the plaintiff firm . Ex. PW1/2 has been proved by the said witness as correct photo copy of Form-C issued by the Registrar of Firms, Karnal, Haryana. An original franchisee MOU dated 12.4.2007 has been proved as Ex.PW1/3. Certified copies of the cheques dated 20.1.2008 have been proved on record as Ex. PW1/4 and PW1/5. Certified copies of the return memos dated 2.7.2008 and 7.7.2008 have been proved on record as Ex. PW1/6 and PW1/7. Copies of legal notices dated 31.7.2008 and 4.8.2008 have been proved on record as Ex. PW1/8 and PW1/9. Ex. PW1/10 is the certified copy of the various postal receipts in respect of dispatch of the legal notice. Ex. PW1/11 are the certified copies of the certificate of posting. Ex. PW1/12 is the certified copy of the postal receipts and Ex. PW1/13 are the copies of certificate of posting. Ex. PW1/14 and PW1/15 are the certified copy of the complaints under Section 138 of Negotiable Instrument Act, 1881 filed by the plaintiff against the defendants. Since the defendants failed to contest the present suit, therefore the

averments made by the plaintiff in the plaint remained uncontroverted. The testimony of PW-1 also remained unchallenged and unrebutted. In the absence of any contradiction to the testimony of the said PW1, there is no reason to disbelieve his testimony. The plaintiff thus succeeds in the present case. The suit filed by the plaintiff for a sum of Rs.34 lacs is accordingly decreed together with interest @12% p.a. from the date of filing of the present suit till realization along with cost of the suit.

Let the decree sheet be drawn up accordingly.

KAILASH GAMBHIR, J

October 17, 2012
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