

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

+ **CS(OS) 1857/1998 and IA No.1337/2010**

BIRLA TEXTILE MILLS Plaintiff
Through: Mr. Amit Sibal, Ms. Priyanka
Kalra and Mr. Anirban Sen,
Advocates

versus

ASHOKA ENTERPRISES & ORS. Defendants
Through: Defendants are *ex parte*.

% Date of Decision : July 06, 2012

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

JUDGMENT

: REVA KHETRAPAL, J.

1. The plaintiff has filed the abovementioned suit against the defendants praying, *inter alia*, for a decree of recovery of ₹ 46,16,945/- (Rupees Forty Six Lacs Sixteen Thousand Nine Hundred and Forty Five Only) with costs of the suit and future interest @ 24% per annum from the date of the institution of the suit, i.e., from 28.08.1998 until realisation.

2. The plaintiff is a partnership firm engaged in the business of manufacture and sale of yarn and is duly registered under the Indian Partnership Act at Calcutta with the Registrar of Firms.

3. The defendant No.1 firm had been purchasing cotton yarn from the plaintiff firm at Delhi for the last 12-13 years prior to the institution of the suit. The amount of bills raised on the defendant No.1 were payable within seven days therefrom, failing which interest on overdue payment was also liable to be paid @ 24% per annum according to agreement, market usage and law.

4. It is the case of the plaintiff that the plaintiff firm maintains regular Books of Accounts in which there is an account of the defendants. Bills raised on the defendants for purchases made and bills/debit notes raised for interest on overdue payments were duly debited to the account of the defendants and payments made were duly credited. It is also the case of the plaintiff that the defendants had been paying interest on overdue payments all through their dealings with the plaintiff firm. Further, all the bills raised on the defendants for the purchase of yarn prior to 09.01.1996 were paid for. Only the bills as per the details given in the plaint remain outstanding

and the amounts thereof totalling ₹ 33,25,896/- (Rupees Thirty Three Lacs Twenty Five Thousand Eight Hundred and Ninety Six Only) remain due to the plaintiff from the defendants. The defendants are also liable to pay interest on account of late payment of the bills referred to in the plaint in respect of which debit notes were raised on the defendants as per details given in the plaint. The total amount claimed for interest on account of late payment of bills is ₹ 93,726/-. The defendants are further liable to pay ₹ 11,97,323/- as interest on the amount of ₹ 33,25,896/- @ 24% per annum as per agreement, market usage and law. Thus, a sum of ₹ 46,16,945/- is payable to the plaintiff by the defendants with costs of the suit and future interest @ 24% per annum.

5. On service of summons of the suit on the defendants through substituted service by publication, the defendant No.2 – Mr. Vinod Aggarwal arrayed as proprietor of the defendant No.1 – M/s. Ashoka Enterprises – under which trade name he had been carrying on the business in yarn with the plaintiff, filed written statement. In the said written statement, apart from other objections taken by the defendant No.2, the main defence raised was that there was no privity of contract

between the plaintiff and the defendant No.2. The defendant No.2 contended that he is not and never was the sole proprietor of defendant No.1. According to the defendant No.2, the firm M/s. Ashoka Enterprises does not belong to him. He had never received any supplies and, therefore, there was no question of making any payment to the plaintiff.

6. On the basis of the aforesaid pleadings, the following issues were framed on 27th October, 2005:-

- “1) Whether the plaintiff is a partnership firm duly registered under the Partnership Act and Mr. R.K. Aggarwal, who has signed and verified the plaint, is competent to do so? OPP*
- 2) Whether there is privity of contract between the plaintiff and the defendants, as mentioned in the preliminary objection no.1? OPP*
- 3) Whether the plaintiff is entitled to the amount claimed in the suit? OPP*
- 4) Whether the plaintiff is entitled to interest? If so, at what rate? OPP*
- 5) Relief.”*

7. The plaintiff examined its witness Mr. R.K. Aggarwal as PW1 and the defendant No.2 Mr. Vinod Aggarwal appeared in the witness box as DW1 in support of his defence. The learned Single Judge by his judgment and order dated May 16, 2006 held that the plaintiff had

failed to prove that the defendant No.2 was the sole proprietor of the defendant No.1; there was no privity of contract between the plaintiff and the defendants; and hence the suit against the defendant No.1 was liable to fail. The suit was accordingly dismissed in view of the findings rendered by the learned Single Judge on Issue No.2.

8. At this juncture, in a separate proceeding in connection with the re-allocation of industrial units outside Delhi, the business of the plaintiff was ordered to be shut down under the orders of the Hon'ble Supreme Court and subsequently the works were re-allocated to Baddi (H.P.). In view of the findings of this Court and consequent dismissal of the suit, efforts were made to trace the records to determine the actual proprietor of the defendant No.1 firm. Ultimately, the plaintiff discovered some counterfoils of ST-1 Forms issued by the Sales Tax Authorities to M/s. Ashoka Enterprises (the defendant No.1) for onward transmission to the plaintiff and it was revealed that the actual proprietor of the firm was Mrs. Beena Aggarwal, wife of Mr. Vinod Aggarwal, the defendant No.2.

9. On discovery that the actual proprietor of defendant No.1 is the wife of Mr. Vinod Aggarwal, namely, Mrs. Beena Aggarwal, the

plaintiff challenged the judgment and order of the learned Single Judge dated 16.05.2006 before the Division Bench of this Court in RFA(OS) No.95/2006 and filed along with the appeal an application for impleadment of Mrs. Beena Aggarwal and amendment of the plaint by substituting the name of Mrs. Beena Aggarwal as the proprietor of the proprietorship concern in place of Mr. Vinod Aggarwal.

10. By its order dated September 12, 2008, the Division Bench allowed the impleadment of Mrs. Beena Aggarwal in the capacity of defendant No.3, being a proper and necessary party and the consequent amendment of the plaint.

11. Thereafter, the Division Bench by its order dated 08.12.2009 remanded the matter to the Original Side of this Court, observing that as a sequel to the judgment dated 12.09.2008, Suit No.1857/1998 stood revived. The appellant (the plaintiff) was directed to file certified copies of the amended plaint, written statement to it, as well as the replication, i.e., the pleadings that had been filed in the appeal on the file of Suit No.1857/1998, i.e., the present suit.

12. After the remand of the instant suit to the learned Single Judge, the defendant No.3, who had till date not entered appearance despite service of notice upon her in the Appeal, was again sought to be served at the address of the defendant Nos.1 and 2 at 319, Kucha Ghasi Ram, Chandni Chowk, Delhi, but having evaded service was served by way of publication. Despite service by publication on the defendants No.1 to 3, however, none of the defendants appeared in the ongoing proceedings in the suit. Therefore, by order dated October 07, 2010, defendant No.3 was proceeded *ex parte* and by order dated 12.12.2011 defendants No.1 and 2 were also proceeded *ex parte*.

13. Subsequent to the remand of the suit, the plaintiff filed an additional affidavit by way of evidence and additional documents including the copy of the Electoral Roll of the defendants No.2 and 3 to indicate that Smt. Beena Aggarwal (the defendant No.3) is the wife of Shri Vinod Aggarwal (the defendant No.2) and resides with all the family members at the given address of 319, Kucha Ghasi Ram, Chandni Chowk, Delhi and the business of the proprietorship concern (the defendant No.1) is also carried on from the said address.

14. The Court has heard Mr. Amit Sibal, the learned counsel for the plaintiff and with his assistance gone through the evidence on record, including the documentary evidence. Issue-wise findings of the Court are recorded below.

15. **ISSUE No.1**

“Whether the plaintiff is a partnership firm duly registered under the Partnership Act and Mr. R.K. Aggarwal, who has signed and verified the plaint, is competent to do so? OPP”

16. In order to prove this issue, the plaintiff has placed on record certified copy of the certificate of Registration of the Firm, duly registered by the Registrar of Firms at Calcutta as Ex.P1 and a copy of Power of Attorney in favour of Mr. R.K. Aggarwal as Ex.P2. There is no cross-examination of PW1 on this aspect. This issue is accordingly decided in favour of the plaintiff and against the defendants.

17. **ISSUE No.2**

“Whether there is privity of contract between the plaintiff and the defendants, as mentioned in the preliminary objection no.1? OPP”

18. As noted above, on account of the finding rendered by the learned Single Judge that the plaintiff had failed to prove that the

defendant No.2 was the sole proprietor of the defendant No.1, the suit against the defendant No.1 had been dismissed by the learned Single Judge by his order dated May 16, 2006. Subsequently, the plaintiff was permitted to amend the plaint by the orders of the Division Bench dated 12th September, 2008 passed in RFA(OS) No.95/2006. No written statement to the amended plaint has been filed by the defendant No.3, who had been newly added, to counter the averment of the plaintiff that the defendant No.3 was a sole proprietor of the defendant No.1 firm. In the written statement of the defendant No.2 to the amended plaint filed before the Division Bench, however, an objection was raised by the defendant No.2 that a fresh suit for recovery of money against the defendant No.3 was barred by limitation in view of the provisions of Sub-Rule 5 of Order I Rule 10, which read as under:-

“Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

19. The case of the plaintiff, on the other hand, is that the Proviso to Section 21 of the Limitation Act, 1963 stipulates that where a Court is

satisfied that the omission to include the defendant is due to a mistake made in good faith, it may direct that the suit as regards such defendant shall be deemed to have been instituted on an earlier date.

20. To be noted at this juncture that the Division Bench while allowing the plaintiff's application for adding the defendant No.3 as a party defendant to the suit and dealing with the issue of limitation raised by the defendant No.2 made the following pertinent observations:-

*“15. As far as the issue of limitation is concerned, we are of the opinion that this plea is certainly available to the newly proposed Defendant No.3. However, as mentioned above, if the Appellant's version in the amendment application is taken as true, then by virtue of Proviso to Section 21 of the Limitation Act, the suit as regard to the new defendant could be deemed to have been instituted on an earlier date. In our opinion, the issue of limitation in the present case is **a mixed question of fact and law and the same would have to be decided at the stage of final determination of the present appeal.**”*

21. On the aforesaid aspect of the matter, Mr. Amit Sibal, the learned counsel for the plaintiff contended that the original suit for recovery was filed within the period prescribed under the provisions of the Limitation Act. On the suit being dismissed on the limited issue

of ‘privity of contract’, at the first instance of the discovery of the fact that the defendant No.2 was not the proprietor of the proprietorship concern and the real proprietor was the wife of the defendant No.3, Mrs. Beena Aggarwal, the plaintiff challenged the order dated 16.05.2006 before the Division Bench in RFA(OS) No.95/2006 and filed an application for amendment of the plaint by impleadment of the defendant No.3. The amendment to the plaint was purely formal and did not alter the cause of action on the basis of which the real *lis* was raised and the suit was filed. In such circumstances, the Proviso to Section 21 of the Limitation Act, 1963 would be squarely applicable in the instant case, as the omission to include defendant No.3 was due to *bonafide* mistake by the plaintiff.

22. In order to substantiate his aforesaid contention, Mr. Sibal placed reliance on a judgment of the Kerala High Court in *Gopalakrishnan Chettiar and Anr. vs. Annamma Devassye and Ors.*, *AIR 1991 Kerala 72* and of the Supreme Court in *Karuppaswamy and Ors. vs. C. Ramamurthy*, (1993) 4 SCC 41. The facts in the case of *Gopalakrishnan Chettiar (supra)* relied upon by Mr. Sibal are identical with the facts in the present case. In the said case, a suit for

damages was filed against the proprietor and employees of a photo studio. One of the employees was impleaded as the proprietor of the studio and later the real proprietor was impleaded by way of amendment. The Court opined that there was no omission in impleading the proprietor, but only a bonafide mis-description, which was subsequently rectified. In the circumstances, under the Proviso to Section 21 of the Act, the Court held that it has power, if it is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith, to direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on an earlier date.

23. The Supreme Court in *Karuppaswamy's* case (*supra*) had examined the provisions of Section 21 of the Limitation Act, 1963 in juxtaposition with the provisions of Section 22 of the Indian Limitation Act, 1908. For the facility of ready reference, the said provisions are reproduced hereunder:-

Section 22 of Limitation Act, 1908

“Effect of substituting or adding new plaintiff on defendant.— Where, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be

deemed to have been instituted when he was so made a party.

(2) Nothing in Sub-section (1) shall apply to a case where a party is added or substituted owing to an assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

Section 21 of Limitation Act, 1963

“Effect of substituting or adding new plaintiff or defendant.—

(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

24. In *Karuppaswamy (supra)*, the question which arose was whether a suit filed against a dead person is *non est* and whether that dead person impleaded could be substituted by his heirs and legal

representatives or they could be added as parties to the suit. On examination of the sweep of the relevant provisions of the Act governing the subject, unamended and amended, the Supreme Court concluded as follows:-

“4. A comparative reading of the proviso to sub-section (1) shows that its addition has made all the difference. It is also clear that the proviso has appeared to permit correction of errors which have been committed due to a mistake made in good faith but only when the court permits correction of such mistake. In that event its effect is not to begin from the date on which the application for the purpose was made, or from the date of permission but from the date of the suit, deeming it to have been correctly instituted on an earlier date than the date of making the application. The proviso to sub-section (1) of Section 21 of the Act is obviously in line with the spirit and thought of some other provisions in Part III of the Act such as Section 14 providing exclusion of time of proceeding bona fide in court without jurisdiction, when computing the period of limitation for any suit, and Section 17(1) providing a different period of Limitation starting when discovering a fraud or mistake instead of the commission of fraud or mistake. While invoking the beneficial proviso to sub-section (1) of Section 21 of the Act an averment that a mistake was made in good faith by impleading a dead defendant in the suit should be made and the court must on proof be satisfied that the motion to include the right defendant by substitution or addition was just

and proper, the mistake having occurred in good faith. The court's satisfaction alone breathes life in the suit.”

25. It is the contention of Mr. Sibal that in the present case, the defendant No.2 – Mr. Vinod Aggarwal was arrayed by the plaintiff as the sole proprietor of the defendant No.1, M/s. Ashoka Enterprises in view of the fact that the defendant No.2 was conducting the day-to-day affairs of the the defendant No.1 and had regular business dealings with the plaintiff and its officials spread over a span of 12 to 13 years. In these circumstances, since Mr. Vinod Aggarwal through his acts and conduct had all along represented and held himself out to be the proprietor of the defendant No.1 M/s. Ashoka Enterprises, the plaintiff had no reason to believe that Mr. Vinod Aggarwal was not the proprietor of the said proprietorship concern. The factum of Mr. Vinod Aggarwal not being a proprietor of the defendant No.1 proprietorship concern was never disclosed to the plaintiff. Thus, based on a bonafide belief, the plaintiff had impleaded Mr. Vinod Aggarwal as defendant No.2 in the array of parties, in the capacity of proprietor of defendant No.1.

26. Mr. Sibal highlighted that since the very beginning, i.e., from the time the suit for recovery was filed by the plaintiff, the defendant No.2 in the context of proprietorship of the defendant No.1 firm had been trying to mislead the Court, and had even made false statements in the Court when his evidence was being recorded. Thus, the defendant No.2 stated in his cross-examination dated 3rd May, 2006 that the name of his wife was “Vani Aggarwal”, whereas in fact it is Beena Aggarwal. Mr. Sibal placed reliance on a copy of the Electoral Roll to submit that the said document conclusively shows that it is Smt. Beena Aggarwal who is the wife of Shri Vinod Aggarwal and is residing with all his other family members at 319, Kucha Ghasi Ram, Chandni Chowk, Delhi. The defendant No.1 firm also used the same address and all notices to the defendants Nos.1 to 3 were issued and sent to the same address.

27. Mr. Sibal further contended that the defendant No.2 was conscious of the fact that he was deliberately suppressing facts within his knowledge which he ought to have disclosed to this Court. In the written statement filed by him in response to the averment that the defendant No.2 was the proprietor of the defendant No.1

proprietorship concern, he simply denied that he was the proprietor of the defendant No.1. However, he did not disclose that his wife Smt. Beena Aggarwal was the actual proprietor of the defendant No.1 proprietorship concern. Thus, the reply given by the defendant No.1 to paragraph 2 of the plaint was evasive and against the mandate provided in Order VIII Rule 4 of the Code of Civil Procedure, which requires the defendant to state the precise facts which are within his knowledge.

28. Having considered the aforesaid contentions of Mr. Sibal, the Court is of the opinion that the defendant No.2 and the defendant No.3, who are husband and wife, have acted in concert with one another to avoid any liability being fastened upon them for the transactions with the plaintiff for which they owed money to the plaintiff. The plaintiff *bonafide* believed the defendant No.2 to be the sole proprietor of the defendant No.1 firm and on coming to know of the fact that it was the wife of the defendant No.2 who was in fact the proprietor, the plaintiff without any delay moved an application for amendment of the plaint. In such circumstances, the omission to impleaded defendant No.3 clearly was a bonafide mistake and in such

circumstances the Proviso to Section 21 of the Limitation Act, 1963 (which Proviso did not exist in the Limitation Act of 1908) is squarely applicable to the facts of the present case. The instant suit, therefore, must be deemed to have been instituted on the date of the original institution of the suit and cannot be said to be barred by limitation.

29. Issue No.2 is accordingly answered in the affirmative in favour of the plaintiff and against the defendants.

30. ISSUE NO.3, ISSUE NO.4 and ISSUE NO.5

“3. Whether the plaintiff is entitled to the amount claimed in the suit? OPP”

“4. Whether the plaintiff is entitled to interest? If so, at what rate? OPP”

“5. Relief.”

Issue Nos. 3, 4 and 5 are being dealt with together for the sake of convenience and in order to avoid prolixity.

31. In order to substantiate its case as delineated in the plaint, the plaintiff adduced the evidence of PW1 Shri R.K. Aggarwal, who, in addition to the affidavit by way of evidence tendered by him on 20.02.2006 (Ex.PW1/A), relied upon his additional affidavit Ex.PW1/B and proved on record documents Ex.P1 to Ex.P78. In his

affidavit Ex.PW1/A , PW1 Shri R.K. Aggarwal reiterated the contents of the plaint and categorically stated that the outstanding bills of the plaintiff totalling ₹ 33,25,896/- remained due and payable to the plaintiff from the defendants. The defendants had made late payment of the bills referred to in paragraph 7 of the plaint, in respect whereof the plaintiff firm had raised 15 debit notes for a total sum of ₹ 93,726/- on account of interest for the late payments of the said bills. Documents **Ex.P3 to Ex.P36** were proved on record by the witness, being invoices/bills for the goods purchased by the defendant No.1 which were debited to the ledger account of the defendant No.1 during the period intervening 19.01.1996 to 22.03.1996. He also proved on record documents **Ex.P37 to Ex.P49**, being carbon copies of the debit notes raised on the defendant No.1 and debited to their account on account of interest for late payment of bills/invoices as detailed in the plaint. The original contracts **Ex.P50 to Ex.P61**, the list of debit notes **Ex.P62** and the list of unpaid bills **Ex.P63**, were also proved on record by the witness. The true copy of the Ledger for the period 01.04.1995 to 31.03.1996 was proved as **Ex.P64**, the legal notice

issued to the defendants through counsel as **Ex.P65**, postal receipts as **Ex.P66** and AD Card as **Ex.P67**.

32. In his additional affidavit by way of evidence (Ex.PW1/B), PW1 Shri R.K. Aggarwal categorically stated that defendant No.3 was the proprietor of the defendant No.1 firm. The defendant No.2 Mr. Vinod Aggarwal was the husband of the defendant No.3, who had never disclosed the fact that he was not the proprietor of the defendant No.1 firm during the course of his business dealings with the plaintiff spread over a span of 12 to 13 years. He stated that in the year 2000 when the plaintiff firm was re-located to Baddi (H.P.), ST-1 Forms issued by the Sales Tax Authorities to the defendant No.1 for onward submission to the plaintiff were traced out from which it was revealed that actually the proprietor of the defendant No.1 firm was Beena Aggarwal (defendant No.3). The original copies of the said ST-1 Forms at Serial Nos.2JA 020957 to 2JA 020962; 2JA 020968, 2JA 020969, 2JA 020972 and 2JA 020974 were **Ex.P68 to Ex.P77**. The copy of the Electoral Roll in which it is clearly mentioned that Smt. Beena Aggarwal is the wife of Shri Vinod Aggarwal and residing with

him and other family members at 319, Kucha Ghasi Ram, Chandni Chowk, Delhi was **Ex.P78**.

33. Although PW1 was extensively cross-examined on his affidavit by way of evidence tendered by him on 20.02.2006 (Ex.PW1/A), nothing worthwhile emerged from his said cross-examination to discredit the testimony of the witness in any manner. The averments made by him in his additional affidavit by way of evidence Ex.PW1/B, tendered in evidence by him after the remand of the suit by the Division Bench to this Court, however remained unchallenged and unrebutted on record.

34. Subsequent to the remand of the case, no evidence in defence was adduced by any of the defendants, who, as stated above, were proceeded *ex parte* in default of appearance. The inevitable result is that the testimony of PW1 Shri R.K. Aggarwal must prevail and be accepted as true and correct.

35. From the aforesaid, it is amply clear that there are three components to the claim of the plaintiff. The first component relates to bills raised on the defendants for the purchase of yarn subsequent to 09.01.1996 which have not been paid for. The plaintiff has adduced

evidence to prove the said unpaid bills (Ex.P3 to Ex.P36) and the amounts outstanding against each of the said bills, totalling ₹ 33,25,896/-. The details of the said bills are as follows:-

	BILL NO.	DATE	AMOUNT Rs. P.
1	Cy 3735	19.01.96	2,73,136.00
2	Cy 3834	30.01.96	37,619.00
3	Cy 3892	20.02.96	37,619.00
4	Cy 3898	03.02.96	36,418.00
5	Cy 3904	03.02.96	49,165.00
6	Cy 3905	03.02.96	94,347.00
7	MMY 2795	03.02.96	63,032.00
8	MMY 2796	03.02.96	90,045.00
9	Cy 3920	05.02.96	37,619.00
10	Cy 3954	08.02.96	81,041.00
11	Cy 3962	08.02.96	20,985.00
12	MMY 2860	09.01.96	90,045.00
13	Cy 3976	09.01.96	75,239.00
14	Cy 3977	09.01.96	36,418.00
15	Cy 4039	16.02.96	1,40,470.00
16	Cy 4057	19.02.96	94,048.00
17	Cy 4058	19.02.96	75,638.00
18	MMY 2985	22.02.96	90,045.00
19	MMY 2986	22.02.96	90,045.00
20	Cy 4097	22.02.96	60,028.00
21	Cy 4098	22.02.96	54,027.00
22	Cy 4099	22.02.96	1,23,063.00
23	Cy 4121	24.02.96	1,39,471.00
24	Cy 4141	27.02.96	62,431.00
25	MMY 3081	02.03.96	98,212.00
26	Cy 4184	02.03.96	1,24,862.00
27	Cy 4205	07.03.96	1,12,856.00
28	Cy 4279	14.03.96	2,33,076.00
29	Cy 4284	14.03.96	54,027.00
30	Cy 4306	16.03.96	54,027.00
31	Cy 4307	16.03.96	37,619.00
32	Cy 4319	16.03.96	1,51,276.00
33	Cy 4333	16.03.96	1,96,450.00
34	Cy 4339	18.03.96	1,15,559.00

35	Cy 4385	22.03.96	1,96,938.00
			Rs. 33,25,896.00

36. The second component of the claim of the plaintiff pertains to the interest payable on the aforesaid amount of ₹ 33,25,896/- (Rupees Thirty Three Lacs Twenty Five Thousand Eight Hundred and Ninety Six Only) @ 24% as per agreement, market usage and law. The following debits notes (Ex.P-37 to Ex.P49) for interest on account of late payment of the bills referred to hereinabove were raised on the defendants as per details given hereunder:-

	Debit Note No.	Date	Amount Rs. P	Relating to items referred to in para 9 of the plaint.
1	YD 967	5.1.96	3745.00	1 & 2
2	YD977	8.1.96	7014.00	3 to 8
3	YD991	13.1.96	3137.00	9 to 11
4	YD998	15.1.96	3143.00	12 to 14
5	YD1009	18.1.96	6952.00	15 to 18
6	YD1023	22.1.96	2346.00	19 to 20
7	YD1039	29.1.96	7680.00	21 to 25
8	YD1045	31.1.96	2757.00	26 to 27
9	YD1058	5.2.96	3957.00	28 to 29
10	YD1098	19.2.96	4736.00	30

11	YD1104	20.2.96	4990.00	31
12	YD1129	27.2.96	6865.00	32 & 33
13	YD1146	6.3.96	6471.00	34 to 36
14	YD1172	15.3.96	14744.00	37 to 41
15	YD1181	18.3.96	15361.00	42 to 44
			Total	Rs. 93,916.00
			Less Excess	Rs. 190.00

Total due on account of interest for late payment of Bills thus amounts to ₹ 93,726/-.

37. The third component of the claim of the plaintiff comprises of the amounts due to the plaintiff from the defendants on account of late payment of the bills as borne out from the debit notes (Ex.P50 to Ex.P61), details whereof are as follows:-

	Bill No.	Date of Bill	Amount Rs. P.	Due Date	Date of Payment	Delay of No. of day
1	Cy 3153	4.12.95	56,028.00	11.12.95	4.1.956	23
2	Cy 3234 & 3235	6.12.95	2,09,855.00	13.12.95	4.1.96	21
3	Cy 3236	06.12.95	78,037.00	21.12.95	6.1.96	16
4	Cy 3268	8.12.95	60,028.00	23.12.95	6.1.96	14
5	Cy 3269	8.12.95	1,10,550.00	15.12.95	6.1.96	22

	Cy 3271					
6	Cy 3293 Cy 3294	11.12.95	2,44,223.00	18.12.95	6.1.96	19
7	Cy 3343	15.12.95	33,617.00	22.12.95	6.01.96	15
8	Cy 3348	16.12.95	71,617.00	23.12.95	6.1.96	14
9	Cy 3349	16.12.95	1,20,057.00	31.12.95	12.1.96	12
10	Cy 3352	16.12.95	98,450.00	23.12.95	12.1.96	20
11	Cy 3361 Cy 3367	15.12.95	75,658.00	25.12.95	12.1.96	18
12	Cy 3384	19.12.95	1,26,363.00	26.12.95	12.1.96	18
13	Cy 3393 Cy 3394 Cy 3396	20.12.95	1,27,662.00	27.12.95	13.1.96	17
14	Cy 3421	22.11.95	22,411.00	29.12.95	13.1.96	15
15	Cy 3360	18.12.95	1,43,212.00	25.12.95	19.1.96	23
16	Cy 2422	22.12.95	1,26,138.00	29.12.95	19.1.96	21
17	3441	23.12.95	76,838.00	7.1.96	19.1.96	12
18	3439 3442	22.12.95	1,85,375.00	30.12.95	19.1.96	20
19	Cy 3477	26.12.95	1,48,463.00	2.1.96	20.1.96	18
20	Cy 3503	28.12.95	56,028.00	4.1.96	20.1.96	16
21	Cy 3445	23.12.95	63,070.00	30.12.95	27.1.96	28

22	Cy 3448	23.12.95	17,109.00	7.1.96	27.1.96	20
23	Cy 3504	28.12.95	2,06,026.00	4.1.96	27.1.96	23
24	Cy 3523 3528	1.1.96	65,718.00	16.1.96	27.1.96	11
25	Cy 3521 3522 3527	1.1.96	2,16,391.00	8.1.96	27.1.96	19
26	Cy 35.67 35.68	5.1.96	1,98,295.00	12.1.96	30.1.96	18
27	Cy 3570 3572	5.1.96	62,351.00	20.1.96	30.1.96	10
28	Cy 3524	1.1.96	2,40,113.00	16.1.96	3.1.96	18
29	Cy 3595	6.2.96	82,042.00	13.1.96	3.2.96	21
30	Cy 3555	3.1.96	2,40,113.00	18.1.96	17.02.96	30
31	Cy 3584	6.1.96	2,05,105.00	13.01.96	19.2.96	37
32	Cy 3581	6.1.96	82,042.00	13.1.96	26.2.96	44
33	Cy 3661 3664	13.1.96	1,84,594.00	20.1.96	26.2.96	37
34	Cy 3586	6.1.96	32,416.00	13.1.96	2.3.96	49
35	Cy 3660	13.1.96	1,08,054.00	20.1.96	2.3.96	42
36	Cy 3662	121.1.96	1,09,295.00	28.1.96	2.3.96	34
37	Cy 3665 3667	13.1.96	2,31,117.00	20.1.96	14.3.96	54

38	Cy 3744 3745	20.1.96	92,847.00	27.1.96	14.3.96	47
39	Cy 3748	20.1.96	1,03,792.00	4.2.96	14.3.96	39
40	Cy 2504	13.1.96	9,0005.00	13.2.96	14.3.96	30
41	Cy 2604	15.1.96	45,023.00	15.2.96	14.3.96	28
42	Cy 3813 to 3815	27.1.96	3,33,768.00	3.2.96	16.3.96	42
43	Cy 3822	29.1.96	1,93,065.00	5.2.96	16.3.96	40
44	Cy 2725	27.1.96	90,045.00	27.2.96	16.3.96	18

38. The plaintiff has also placed on record a chart setting out the corresponding bill number for each certificate and for the ease of reference the copy of each Form ST-1 signed by the defendant No.3 Mrs. Beena Aggarwal in the capacity of the proprietor of defendant No.1, Ashoka Enterprises, which is as follows:-

Sl. No.	Certificate no.	For Bills
1.	21 A 020973	3735
2	21 A 020975	3334, 2795, 2796
3	21 A 020976	3962, 3954, 2860, 3905, 3905, 3898, 3892
4	21 A 020977	4205, 4279, 4039
5	21A 020978	4099, 4098, 2986, 2985, 4057, 3920

6	21 A 020979	4333, 3976, 4307, 4306, 4284, 4058
7	21 A 020980	4184, 4141, 4121, 4097, 3081
8	21 A 020981	3977, 4385, 4339, 4319

39. The aforesaid evidence adduced by the plaintiff is unrebutted and unchallenged on record. The inevitable conclusion is that it must be held that a sum of ₹ 33,25,896/- (Rupees Thirty Three Lacs Twenty Five Thousand Eight Hundred and Ninety Six Only) is due to the plaintiff from the defendants on account of yarn purchased as per bills Ex.P3 to Ex.P36; ₹ 93,726/- (Rupees Ninety Three Thousand Seven Hundred and Twenty Six Only) on account of debit notes raised towards interest for late payment of the bill amounts Ex.P37 to Ex.P49 and ₹ 11,97,323/- (Rupees Eleven Lacs Ninety Seven Thousand three Hundred and Twenty Three Only) on account of interest upto the date of filing of the suit on the aforesaid amount of ₹ 33,25,896/-, i.e., in all, a total sum of ₹ 46,16,945/- (Rupees Forty Six Lac Sixteen Thousand Nine Hundred and Forty Five Only).

40. The suit is therefore decreed by passing a decree in the sum of Rs. 46,16,945/- (Forty Six Lac Sixteen Thousand Nine Hundred and

Forty Five). Registry is directed to draw up a decree sheet accordingly.

41. CS(OS) 1857/1998 and IA No. 1337/2010 stand disposed of in the above terms.

**REVA KHETRAPAL
(JUDGE)**

**JULY 06, 2012
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