

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Judgment delivered on: 18.07.2012

+ **CS(OS) No. 946/2008**

M/s Paras Lubricants Ltd. Plaintiff
Through: Mr Dinesh Singh Chaudhary, Adv.
versus
Sh. Naresh Kumar Bansal Defendant
Through: None

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT
V.K.JAIN, J. (ORAL)

1. This is a suit for recovery of Rs 1,18,36,418/-. The case of the plaintiff is that the defendant was appointed as a consignment stockiest for its products for the region of Punjab and an agreement dated 01.01.2003 was executed between the parties in this regard at Delhi. Pursuant to the aforesaid agreement, the defendant used to place order upon the plaintiff, which used to supply material to him from time to time on credit basis. A sum of Rs 87,61,790/- was due to the plaintiff from the defendant, when payment of Rs 50,000/- was made by way of security, thereby leaving a balance sum of Rs 87,11,790/- as the principal sum due from him. The defendant made last payment of Rs 8,521/- vide demand draft dated 23.04.2005. Thereafter, no payment was made by him. This payment of Rs 8,521/- was made before payment of Rs 50,000/- by way of security. The plaintiff has, therefore, now claimed Rs 87,11,790/- as principal sum and Rs 31,24,628/- as interest for the

pre-suit period at the rate of 12% per annum. It is alleged in the plaint that as per agreement between the parties contained in the invoices, the defendant was liable to pay interest at the rate of 24% per annum, whereas interest was payable at the rate of 18% per annum as per the terms of the agreement dated 01.01.2003.

2. The defendant was proceeded ex parte vide order dated 15.05.2009. The plaintiff has filed affidavit of two witnesses by way of ex parte evidence. In his affidavit by way of evidence, Shri A.K. Mukherjee, Deputy General Manager of the plaintiff-company has stated that the agreement Ex.PW-1/3 was entered into by the parties at Delhi on 01.01.2003. He has further stated that after his appointment as consignment stockiest, the defendant used to place orders upon the plaintiff-company from time to time for supply of materials and the plaintiff used to supply that material to him on credit basis as per his requirement and specifications. He has further stated that the plaintiff-company used to raise invoices upon the defendant towards supply of material and it was also maintaining the proper books of account with respect to the goods sold to the defendant and payment made by him. Ex. PW-1/4 and PW-1/5 are two invoices in respect of the material delivered on 04.05.2005 and 05.05.2005 respectively. He has further stated that a sum of Rs 87,61,790/- had become due from the defendant after giving credit for the payments received from him. According to him, the defendant through one Bimla Devi provided security of Rs 50,000/- to the plaintiff. This amount was liable to be forfeited in the event of failure of the defendant to make payment. Since the

defendant failed to clear the dues of the plaintiff, the aforesaid amount was adjusted against the amount payable by him, thereby leaving a principal sum of Rs 87,11,790/- due from the defendant to the plaintiff. He has also proved the notices sent to the defendant, which are Ex. PW1/6 and PW1/8 and were sent/served vide postal receipts PW1/7 and PW1/9 and certificate of posting Ex. PW1/10.

3. PW-2 Shri Radhey Shyam is the Accountant with the plaintiff-company and has stated that the plaintiff-company maintains accounts in the course of its business. According to him, all the relevant entries/data is fed in the computer so as to maintain proper accounts. He has further stated that account of M/s Green Traders proprietorship concern of the defendant, was being handled and operated by him and he had lawful control over the use of the computer in which the accounts were maintained. The printouts of the statement of account of the defendant with the plaintiff has been proved by him and exhibited as Ex.PW-1/11. He has confirmed that as per the statement of account, a sum of Rs 87,11,790/- was still due from the defendant to the plaintiff.

4. Ex.PW-1/1 is the Memorandum and Article of Association of the plaintiff-company, whereas Ex.PW-1/2 is the copy of Board Resolution, whereby Mr Paras Bansal and Mr A.K. Mukherjee were authorised to institute suits for recovery of dues from the defendant and take all other necessary legal steps in this regard. They were also authorized to sign and verify the pleadings on behalf of the plaintiff-company.

5. A perusal of the agreement Ex.PW-1/3 shows that the document was executed at Delhi on 01.01.2003. Vide this agreement, Green Traders, which is stated to be proprietorship concern of the defendant, was appointed as the consignment stockiest/stockiest of the plaintiff. Clauses 3 and 6 of the agreement read as under:-

“3. On The Consignment Stockiest hiring or otherwise making arrangement for an exclusive godown/consignment stock-point, the Principal will supply the different varieties of products and other items manufactured by the Principal to the said godown/consignment stock-point and the Consignment Stockiest shall receive and store the same in the said godown/consignment stock-point and shall account for the entire stock as held in the said godown/consignment stock-point from time to time and in the format as provided by the Principal.

6. The Consignment Stockiest shall sell the stock of items in terms of the overall sales and credit policy of the Principal from the said godown/consignment stock point to different authorized customers of the Principal on equitable basis. The Consignment Stockiest shall invoice the sales at the rate as per the price list furnished from time to time by the Principal and the Principal will advise the Consignment Stockiest the terms of payment as applicable to such sale of items from time to time. Consignment Stockiest will ensure that the credit policy laid down by the Principal is strictly adhered to and any deviation which may result in additional liability to the Principal will be on the account of Consignment Stockiest. Consignment Stockiest should not extend credit to customers without the prior written consent of the Principal but to sell only on payment terms as advised by the Principal. Consignment Stockiest will exert every care to ensure that the overdue outstanding of customers/dealers are recovered before any further

supplied are effected. The Consignment Stockiest shall endeavour to pay promptly all sums that are due to the Principal.”

6. A perusal of the statement of account Ex. PW-1/11 show that the defendant had been making payment to the plaintiff in writing from time to time. One payment of Rs 8,521/- was made by way of demand draft No. 621559 dated 23.04.2005, on 27.04.2005. Three payments by way of various demand drafts were made on 23.04.2005. The transactions between the parties started on or after 01.01.2003 when the agreement was executed between them at Delhi. The statement of account Ex.PW-1/11 would show that payments in writing were regularly made by the defendant from time to time. Rs 1,50,000/- were paid on 05.04.2004, Rs 2,50,000/- on 10.04.2004, Rs 1,50,000/- on 13.04.2004, Rs 2,00,000/- on 16.04.2004, Rs 1,00,000/- on 16.04.2004, Rs 1,50,000/- on 17.04.2004, Rs 2,00,000/- on 19.04.2004, Rs 1,00,000/- on 22.04.2004, Rs 1,50,000/- on 23.04.2004 and Rs 2,00,000/- on 27.04.2004.

In view of the provisions contained in Section 19 of Limitation Act, a fresh period of limitation commenced from the date of each part payment, since the payments made by cheques and demand drafts are payments in writing. These part payments having commenced from 05.04.2004, it is obvious that they were made within the period of limitation since the transactions between the parties commenced only on or after 01.03.2003.

7. The deposition of PWs-1 and 2, coupled with the documents produced by the plaintiff, including the statement of account, is sufficient to prove that Rs 87,11,790/- was due from the defendant to the plaintiff as the principal sum.

8. Coming to interest, clause 48 of the Consignment Agreement stipulates that all sums of money which are due from either parties and which are not paid on the due date, shall bear interest of 18% per annum from date of default till date of receipt. As per the term printed on the invoices, the interest was chargeable at the rate of 24% per annum. Despite an agreement for payment of interest at a higher rate, the plaintiff has restricted its claim with regard to the interest at the rate of 12% per annum. Even otherwise, this being a suit for price of goods sold and delivered, interest can be awarded by the Court under Section 61 of Sale of Goods Act. I, therefore, hold that the plaintiff is entitled to recover Rs 87,11,790/- and Rs. 31,24,628/- as interest.

For the reasons stated hereinabove, a decree for recovery of Rs. 1,18,36,418/- with costs and pendente lite and future interest at the rate of 12% per annum is hereby passed in favour of the plaintiff and against the defendant.

Decree sheet be drawn accordingly.

V.K.JAIN, J

JULY18, 2012/bg