

19

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CS(OS) 980/2010

%

Judgment dated 19.03.2012

VIKAS TEXTILES

..... Plaintiff

Through: Mr. Subhash Chandra, Advocate

versus

CREATIVE HOME FASHIONS PVT LTD & ANR Defendant

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. This is a suit for recovery of Rs.22,03,709/-. The defendants were proceeded ex parte by order dated 18.11.2011. The plaintiff has filed affidavit of Mr.Mohinder Jain, by way of evidence. The affidavit by way of evidence has been exhibited as Ex.PW-1/A. The suit has been instituted on the basis of a special power of attorney dated 14.05.2009, which has been exhibited as Ex.PW-1/1. PW-1 has deposed that the plaintiff is a cloth merchant and is engaged in the business of dress materials/cloth. Defendant No.1 is a Private Limited Company within the meaning of Indian Companies Act 1956, having its office at B-44-45, Sector 58, Noida (U.P). Defendant No.2 above named is one of the Directors of the Defendant No. 1 Company and had been placing orders to the plaintiff for supply of cloth. Defendant No.2 along with other Directors of the defendant No.1 company has been taking decisions pertaining to the business issues with plaintiff and he (defendant No.2) is

also the authorized signatory of the defendant No.1 Company.

2. PW-1 has also deposed that defendant No.1 Company through its Directors approached the plaintiff above named and requested for supply of cloth on credit basis with specific terms of 60 days period. Accordingly the plaintiff started supplying cloth/materials to the defendant No.1 company as per their demands through purchase orders or on telephonic demands, on credit basis upto 26.09.2007. Purchase orders placed by the defendant No.1 through defendant No.2 are exhibited as Ex. PW-1/2 to PW1/21.
3. This witness has also deposed that the plaintiff had been raising the invoices as per supply of cloth based on purchase orders and the same were handed over to the defendant No.1 Company along with the delivery challans. Duplicate bills raised by the plaintiff against the goods/cloth supplied to the defendant No.1 are exhibited as Ex.PW-1/22 to PW1/60.
4. Mr.Mohinder Jain, has deposed that the defendant No.1 Company had been acknowledging the goods/cloth supplied by the plaintiff, on delivery challans. Delivery challans duly acknowledged by the defendants showing proof of delivery of goods/cloth are exhibited as Ex. PW-1/61 to PW-1/103. It is also deposed that the Defendant No.1 has paid the invoice amounts in part through cheques. Plaintiff accepted the part payments also, keeping in view the long business relationships and the current account of the defendant No.1 Company with the plaintiff proprietorship was being maintained till last transaction i.e. upto 22.01.2009 when the last payment was made by the defendant No.1 Company to the plaintiff through cheque, against the total outstanding Balance. However, as per ledger balance, the total outstanding balance of Rs. 15,43,709/- (Rupee Fifteen Lacs Forty Three Thousand Seven Hundred and Nine) is payable by the defendant No.1 Company to the plaintiff. Statement of account

showing total invoice amount, amount paid by the defendant and amount recoverable from the Defendants is exhibited as Ex. PW-1/104.

5. PW-1 has also deposed that as per agreed terms of 60 days period, clearly mentioned on Purchase Orders of the Defendant No.1 Company, the defendant No.1 did not release the outstanding balance of Rs. 15,43,709/- (Rupee Fifteen Lacs Forty Three Thousand Seven Hundred and Nine), hence the Plaintiff claimed interest at the rate of 12% p.a. on invoice amount from its respective dates which comes to Rs. 6,60,000/- (Rupee Six Lacs Sixty Thousand Only) as on 31st March, 2010 and by this way the defendants are liable to pay a sum of Rs.22,03,709/- (Rupee Twenty Two Lacs Three Thousand Seven Hundred and Nine Only) upto 31st March, 2010 including interest.
6. It is also deposed that against the outstanding balance the defendant No.2 under his signatures had issued cheques bearing Nos. 600130 dated 20.01.2008, 600134 dated 29.11.2008, 600135 dated 20.12.2008, 600136 dated 29.12.2008, 600137 dated 20.01.2009, 600138 dated 29.01.2009 for Rs. 1,50,000/- Lacs (Rupee One Lac Fifty Thousand) each and cheque beating No. 600139 dated 25.02.2009 for a sum of Rs. 1,74,771/- all payable at "The Catholic Syrian Bank Ltd., G36, Connaught Circus, New Delhi-110 001" in favour of the plaintiff against the outstanding balance, however all the above mentioned cheques were dishonored by the Banker of the defendant No.1 Company on its presentation for encashment, due to "Insufficient funds" and the plaintiff has already filed criminal complaints against the defendant No.1 Company (through its respective Directors) under Sec. 138 of Negotiable Instrument Act, 1881 and the same are pending before the Ld. M.M. New Delhi. Certified copies of cheques above mentioned issued by the defendant No.2 as part of total outstanding balance and their returning memoes are exhibited as Ex. PW-1/105 to

PW-1/118.

7. PW-1 has also deposed that the defendant No.2 had also issued an account payee cheque bearing No. 600129 dated 29.09.2008 for a sum of Rs. 1,50,000/- payable at “The Catholic Syrian Bank Ltd., G36, Connaught Circus, New Delhi-110 001” also as part of total outstanding balance and same was dishonoured twice by the banker of the defendant No.1 and when the plaintiff presented the same cheque on 24.03.2009 the Banker of the Defendant No.1 Company wrongly dishonoured the same on the ground of “OUT OF DATE”, whereas the said cheque was presented for encashment well within time. Certified copies of cheques above mentioned issued by the defendant No.2 as part of total outstanding balance and its return memo are exhibited as Ex. PW-1/119 and PW-1/120 respectively.
8. PW-1 has also deposed that the plaintiff demanded the payment of outstanding balance from the defendant No.1 (through Defendant No.2) several times but the defendant No.2 failed to make the payment of aforesaid outstanding balance amount which is causing great financial loss to the plaintiff. The sum of Rs.15,43,709/- (Rupee Fifteen Lacs Forty Three Thousand Seven Hundred and Nine) as principal amount and a sum of Rs.6,60,000/- (Rupee Six Lacs Sixty Thousand Only) as interest upon the principal amount at the rate of 1% monthly interest on invoice amount from its respective dates till 31st March, 2010 is payable by the defendants to the plaintiff, being a business transaction. Thus a total sum of Rs.22,03,709/- (Rupee Twenty Two Lacs Three Thousand Seven Hundred and Nine Only) has been claimed by the plaintiff by way of present suit and the plaintiff seeks a decree against all the defendants in respect of the above amount due as also for pendente lite and future interest upon the above mentioned amount. It is deposed that as the defendant has not paid

any amount to the plaintiff against the above mentioned total outstanding amount till date, the Plaintiff is also entitled for pendent lite and future interest on the suit amount.

9. I have heard counsel for the plaintiff and perused the plaint and accompanying documents. The plaintiff has been able to establish that the plaintiff was carrying on business with the defendants and various purchase orders were made by the defendant no.1 on the plaintiff upto 26.09.2007, copies of which have been exhibited as Ex.PW-1/2 to PW-1/21. The duplicate challans, bills raised by the plaintiff against the goods supplied to the defendant no.1 have also been exhibited as Ex.PW-1/22 to Ex.PW-1/60. The plaintiff has also placed on record delivery challan duly acknowledged by the defendant no.1, showing proof of delivery of goods/ supplied, copies of which have been exhibited as Ex.PW-1/61 to Ex.PW-1/103. The plaintiff has also placed on record the statement of account, showing the total invoice amounts paid by the defendant no.1 and the amounts recoverable which has been exhibited as Ex.PW-1/104. The plaintiff has also claimed interest @ 12%. Plaintiff has also given details of the cheques which were issued and honoured being Ex.PW-1/105 and Ex.PW-1/118. The evidence of the plaintiff has gone unrebutted. Accordingly, the present suit is decreed against the defendant no.1 in the sum of Rs.23,03,709/- together with interest pendente lite @ 12% from the date of filing of the suit, till realization. Decree-sheet be drawn up accordingly.

G.S.SISTANI, J

MARCH 19, 2012

ssn