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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 1340/2010

% Judgment dated 28.02.2012

M/S AMBEY MAA SAREE & ORS ..... Plaintiff  
Through: Mr.Arun Singh and Mr.Vijay Jakhwal,  
Advocates

versus

CHHABRA 484 EXPRESS ..... Defendant  
Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The present suit has been filed by the plaintiffs for recovery of money of Rs.78,84,906/- against the defendant.
2. Summons were issued in the suit. The plaintiffs made numerous attempts to serve the defendant and despite such steps being taken, the defendant remained unserved. As defendant could not be served in the ordinary way, plaintiff filed an application under Order 5 Rule 20 CPC, which was allowed by an order dated 05.07.2011. The defendant did not enter appearance despite service by way of publication in "The Statesman" (Delhi Edition). By an order dated 05.09.2011, the defendant was proceeded *ex parte*.
3. Plaintiffs have filed the affidavits by way of evidence of PW-1, Sh.Bimla Shanker Pandey, proprietor of plaintiff no.1, and PW-2, Smt.Hemlata Bimal Pandey, proprietor of plaintiff no.2. Both the witnesses have deposed on the lines of the plaint.
4. In the affidavit, PW-1, Sh.Bimla Shanker Pandey, has deposed that he is the proprietor of plaintiff no.1 and hence, is well conversant with the facts

of the case. PW-1 has deposed that plaintiff no.2 and he are both engaged in the wholesale business of sarees since from 23.11.2004 and 19.01.2006 respectively. He has further deposed that the defendant had started purchasing goods from plaintiff no.2 from 12.06.2006 and thereafter the business relations started expanding. Initially the relationship between the plaintiffs and defendant was good and defendant was making the payments regularly, however, after January, 2007, the defendant stopped making payments even though the goods were being purchased by the defendant regularly. On various occasions between 15.1.2007 and 16.6.2007, the defendant made various purchases from plaintiff no.2 and the total amount due till 16.06.2007 was Rs.55,92,178/-. PW-1 has also deposed that the orders during this period were placed either by Mr.Niranjan Chhabra, proprietor of defendant, or Mr.Kamal Chhabra (son of Mr. Niranjan Chhabra) by travelling to Kolkata to personally verify the colours, variety, rates and texture of the *Sarees*. The payments for the above said purchases were not cleared by the defendant, who had given assurance that the outstanding amounts would be cleared to the plaintiffs. On the assurance given by the defendant and also taking into consideration that the defendant has been in continued business with them, the plaintiff was convinced that the defendant will make the aforesaid payments. However, despite such assurance given to the plaintiff, the defendant has not made any payment to the plaintiff till June, 2007. In the affidavit, PW-1 has extracted the details of following bills, which remained unpaid to plaintiff no.2:

| Sl. No. | Bill No. | Date     | Amount     | Consigner                                                  |
|---------|----------|----------|------------|------------------------------------------------------------|
| 1.      | Amc/569  | 15/01/07 | 1,81,637/- | Patel Service, 111, Park Street, Kolkata-16, L. R. No.980. |

|    |         |          |             |                                                                                             |
|----|---------|----------|-------------|---------------------------------------------------------------------------------------------|
| 2. | Amc/603 | 29/01/07 | 8,50,856/-  | Patel Service, 111, Park Street, Kolkata-16, L. R. No.2835.                                 |
| 3. | Amc/613 | 08/02/07 | 7,78,495/-  | P. Patel Carriers, 168b, Jamuna Lal Bazaz Street, (ground floor), Kolkata-07, Bill No. 936. |
| 4. | Amc/683 | 30/03/07 | 13,07,685/- | P. Patel Carriers, 168b, Jamuna Lal Bazaz Street, (ground floor), Kolkata-07, Bill No.3155. |
| 5  | Amc/26  | 17/4/07  | 10,59,495/- | Krishna Cargo Movers, 115, Cotton Street, Bara Bazar, Kolkatta-07, Bill No. 43722.          |
| 6. | Amc/50  | 12/05/07 | 2,22,860/-  | Krishna Cargo Movers, 115, Cotton Street, Bara Bazar, Kolkatta-07, Bill No. 46074.          |
| 7. | Amc/141 | 14/06/07 | 8,01,500/-  | Krishna Cargo Movers, 115, Cotton Street, Bara Bazar, Kolkatta-07, Bill No. 48981.          |
| 8  | Amc/155 | 16/06/07 | 3,89,650/-  | Krishna Cargo Movers, 115, Cotton Street, Bara Bazar, Kolkatta-07, Bill No. 49364.          |
|    |         | Total    | 55,92,178/- |                                                                                             |

5. PW-1 has further deposed that the defendant also started dealing with plaintiff no.1 from 30.11.2006 and orders were being placed by the defendant either through Sh.Niranjan Chabra or Mr.Kamal Chabra, simultaneously, on both the plaintiffs. He has further deposed that a total sum of Rs. 29,92,728/- is due and payable by the defendant for the purchases made during the period 15.1.2007 to 16.6.2007. A list of bills regarding the purchases made by defendant from plaintiff no.1, as extracted in the affidavit of PW-1, is as under:

| S. No. | Bill No. | Date     | Amount(Rs)  | Consigner                                                                                   |
|--------|----------|----------|-------------|---------------------------------------------------------------------------------------------|
| 1.     | Ams/439  | 16/01/07 | 10,308/-    | Patel Service, 111, Park Street, Kolkata-16, L. R. No.1033                                  |
| 2.     | Ams/466  | 08/02/07 | 6,48,595/-  | Krishna Cargo Movers, 115, Cotton Street, Bara Bazar, Kolkatta-07, Bill No. 34460           |
| 3.     | Ams/484  | 31/03/07 | 8,25,085/-  | P. Patel Carriers, 168b, Jamuna Lal Bazar Street, (ground floor), Kolkata-07, Bill No. 3248 |
| 4.     | Ams/29   | 16/06/07 | 15,08,740/- | Krishna Cargo Movers, 115, Cotton Street, Bara Bazar, Kolkatta-07, Bill No. 49331           |
|        |          | Total    | 29,92,728/- |                                                                                             |

6. The original Bills have been filed on record and the same are exhibited as Ex.PW-1/2, Ex.PW-1/3, Ex.PW-1/4 and Ex.PW-1/5.
7. PW-1, has also deposed that the goods were consigned on the directions of the defendant. A copy of the receipt LR No.1033 of the consigner pertaining to services is exhibited as Ex.PW-1/6 to Ex. PW-1/9. At the repeated requests of the plaintiffs, defendant issued a total 15 cheques in favour of plaintiff No.2, out of which three cheques were encashed for Rs.3.0 lacs whereas remaining 12 cheques were dishonoured by the banker of plaintiff no.2 on account of insufficient fund, details of which are as under:

| S.No. | Date of cheque issued | Cheque No. | Amount     | Deposited on | Cheque dishonored on |
|-------|-----------------------|------------|------------|--------------|----------------------|
| 1     | 20/06/07              | 520856     | 81,637/-   | 20/06/07     | 21/06/07             |
| 2     | 15/07/07              | 560528     | 1,00,000/- | 23/07/07     | 23/07/07             |
| 3     | 20/07/07              | 560529     | 1,00,000/- | 24/07/07     | 24/07/07             |
| 4     | 25/07/07              | 560530     | 1,00,000/- | 10/08/07     | 10/08/07             |
| 5     | 15/08/07              | 520854     | 1,00,000/- | 16/08/07     | 16/08/07             |

|    |          |        |            |          |          |
|----|----------|--------|------------|----------|----------|
| 6  | 15/08/07 | 520855 | 1,00,000/- | 16/08/07 | 16/08/07 |
| 7  | 31/08/07 | 560535 | 1,00,000/- | 06/12/07 | 07/12/07 |
| 8  | 05/08/07 | 560533 | 78,495/-   | 07/12/07 | 08/12/07 |
| 9  | 20/08/07 | 520857 | 1,00,000/- | 07/12/07 | 08/12/07 |
| 10 | 20/08/07 | 520858 | 1,00,000/- | 11/12/07 | 12/12/07 |
| 11 | 07/09/07 | 560534 | 1,50,856/- | 24/12/07 | 24/12/07 |
| 12 | 28/08/07 | 520860 | 1,00,000/- | 24/12/07 | 24/12/07 |

8. PW-1 has also deposed that he three cheques paid or encashed in favour of the plaintiff No.2 are worth of Rs.3,00,000/- (Rupees three lacs only). The details of it are as follows :

Table D

| S. No. | Date     | Cheque No | Amount     | Remarks |
|--------|----------|-----------|------------|---------|
| 1.     | 07/07/07 | 560526    | 1,00,000/- | Paid    |
| 2.     | 15/07/07 | 560527    | 1,00,000/- | Paid    |
| 3.     | 06/12/07 | 560859    | 1,00,000/- | Paid    |
|        |          | Total     | 3,00,000/- |         |

9. Sh.Bimla Shankar Pandey, has stated that the outstanding amount yet to be paid by the defendant is of Rs.52, 92,178/- (i.e. Rs.55,92,178 – Rs.3,00,000 = Rs. 52,92,178) against plaintiff No.2. It is also deposed that similarly the defendant has also issued 7 cheques in favour of the plaintiff No. 1, out of which only three cheques were encashed. The list consisting the details of the encashed cheques with dates are as follows :

Table E

| S. No. | Date     | Amount     | Remarks |
|--------|----------|------------|---------|
| 1.     | 07/06/07 | 1,00,000/- | Paid    |
| 2.     | 25/06/07 | 1,00,000/- | Paid    |
| 3.     | 30/08/07 | 2,00,000/- | Paid    |
|        | Total    | 4,00,000/- |         |

10. PW-1 has further deposed that the three cheques paid in favour of the plaintiff no.1 are worth of Rs.4,00,000/- (Rupees four lacs only), thus the outstanding amount yet to be paid by the defendant is of Rs.25,92,728 (i.e. Rs.29,92,728 – Rs.4,00,000 = Rs.25,92,728); and the total net outstanding of the defendant against plaintiff no.1 and plaintiff no.2 added together amounts to Rs.78,84,906/- (Rupees seventy eight lacs, eighty four thousand nine hundred and six only) after subtracting the cheques received and encashed.
11. Sh.Bimla Shankar Pandey has also deposed that the cheques being dishonored by the banker of plaintiffs i.e. Axis Bank, Kolkata were returned to the plaintiff no. 1 and plaintiff no.2 because of “Funds not arranged for” which means that there were insufficient funds in the bank of the drawer. In addition to this, a huge amount of Rs.78,84,906/- (Rupees seventy eight lacs, eighty four thousand nine hundred and six only) is pending towards the defendant since 16.06.2007, which the defendant is not intending to pay even after repeated requests being made by the plaintiffs.
12. PW-1 has also deposed that reposing their trust on account of good business relations between the parties did not at the outset initiate legal proceedings against the defendant, however, when all efforts at securing the payment from the defendant failed, the plaintiffs had no other option but to approach this Court for seeking justice. The plaintiffs sent legal notice dated 10.06.2010 to the defendant through their advocates calling upon the defendant to clear the accounts and pay back the amount of Rs.25,92,728/- to the plaintiff no.1 and Rs.52,92,178/- to the plaintiff no.2. No reply even to the legal notice has been received by the plaintiffs or their counsel. Copy of the legal notices along with its acknowledgement and the postal receipt, are exhibited as Ex.PW-1/10.

13. Sh.Bimla Shankar Pandey, has further deposed that the plaintiffs have always been working in good faith and trusted the defendant but the defendant failed to make the payment even after repeated requests of the plaintiffs via telephone as well as personal visits. The defendant always assured the plaintiffs that he will make the payments soon, but when the defendant failed to make the payments even after six months i.e. till June 2007 and the cheques given were dishonored by the bank, the plaintiffs decided to stop dealing with the defendant and also decided that they would not transport any goods to the defendant in future. The plaintiffs waited for the payments for nearly 34 months but still the defendant failed to make the payments and thus the plaintiffs had no other option then to come before this Court to seek justice.
14. In support of their case, affidavit of Ms.Hemlata Bimla Pandey (Ex.PW-2) has also been filed, which is exhibited as Ex. PW-2/A. PW-2 has deposed that she is the proprietor of plaintiff no.2; and plaintiff no.1, i.e. M/s.Ambey Maa Saree is running its business at 8/2, Jagmohan Malik Lane, Duggar Katra, 2<sup>nd</sup> Floor, Kolkata-700007; and the plaintiff No.2, i.e. M/s.Ambey Maa Creation is running its business at 82/C, Burtolla Street, 1<sup>st</sup> Floor, Kolkata-700007. Both the plaintiffs are engaged in the wholesale business of sarees since 23.11.2004 and 19.01.2006 respectively.
15. Ms.Hemlata Bimla Pandey has further deposed that the defendant M/s.Chhabra 484 Express is a customer of plaintiffs and is running his business under the proprietorship of Mr.Niranjan Chhabra at 484, Katra Asharfi, Chandni Chowk, Delhi-110006; and plaintiff no.1 is running its business under proprietorship of Sh.Bimla Shanker Pandey and plaintiff No.2 is running its business under her proprietorship. Plaintiffs are pursuing this business legally and have trade license issued by the Kolkata

Municipal Corporation for the same. The Certificate of Enlistment of plaintiff no.2 is exhibited as Ex.PW-2/1.

16. PW-2 has deposed that though plaintiff no.1 and plaintiff no.2 are two separate entities having different proprietors, but the business is run solely by Mr.Bimla Shankar Pandey. Thus, all the business transactions are done by the Mr.Bimla Shankar Pandey on behalf of plaintiff no. 1 and Plaintiff no.2; and the defendant being in the same business once turned to plaintiff No.2 and being satisfied by the variety and the rates of the goods, started purchasing goods from plaintiff No.2 from dated 12.06.2006, and the business relations started flourishing, slowly and stealthily. The relations were going smoothly and payments were coming regularly from the defendant, but the defendant stopped making payments from January 2007, though he regularly came for purchases. At various occasions between 15.01.2007 till 16.6.2007 the defendant has made purchases from the plaintiff No.2. The total amount raised by the defendant till 16.06.2007 was of Rs.55,92,178/- (Rupees fifty five lakhs ninety two thousand one hundred and sevety eight only). These orders were placed either by Mr.Niranjan Chhabra or Mr.Kamal Chhabra (son of Mr. Niranjan Chhabra) by coming down to Kolkata and after personally verifying the colours, variety, rates and texture of the sarees, but the payment was not given for these purchases. The defendant assured that he will make the payment by cheque and being in continued business with the defendant and seeing his regularity of payment, the plaintiff No.2 was convinced that the defendant will make the payments, but no amount was paid till June 2007. The list of all the bills regarding the purchases from plaintiff No.2 along with bill number, date and amount have also been extracted in the affidavit.

17. Copy of the original Bill No. AMC/569 dated 15.01.2007 from plaintiff No.2 is exhibited as Ex.PW-2/2. Copy of the original Bill No.AMC/603 dated 29.01.2007 from plaintiff No.2 is exhibited as Ex.PW-2/3. Copy of the original Bill No.AMC/613 dated 08.02.2007 from plaintiff No.2 is exhibited as Ex.PW-2/4. Copy of the original Bill No.AMC/683 dated 30.03.2007 from plaintiff No.2 is exhibited as Ex.PW-2/5. Copy of the original Bill No.AMC/26 dated 17.04.2007 from plaintiff No.2 is exhibited as Ex.PW-2/6. Copy of the original Bill No.AMC/50 dated 12.05.2007 from plaintiff No.2 is exhibited as Ex.PW-2/7. Copy of the original Bill No.AMC/141 dated 14.06.2007 from plaintiff No.2 is exhibited as Ex.PW-2/8. Copy of the original Bill No.AMC/155 dated 16.06.2007 from plaintiff No.2 is exhibited as Ex.PW-2/9.
18. Ms. Hemlata Bimla Pandey has further deposed that the defendant has made no payment for the above mentioned bills which were raised between 15.01.2007 to 16.06.2007. The defendant assured that he will make the payment soon and being in continued business with the defendant and seeing the regularity of payment, plaintiff no.1 and plaintiff no.2 being run by same person was convinced that defendant will make the payments, but no amount was paid till June 2007. However, these goods were transported by various consigners of Kolkata; and these consigners were responsible to deliver the goods to the defendant. This being a normal practice in wholesale business all over, both parties were clear about these terms of transport and were agreed for the same; and all these terms are based on the general market principles and mutual trust whereby no written agreement is required; and accordingly the cost of transportation is included in the bills raised by the defendant. Plaintiff no.1 and plaintiff no.2 have with due diligence and necessary care loaded the goods ordered by the defendant through various consigners on

the same day when the orders are placed. The names of the consigner are mentioned above in Table A and Table B respectively. Copy of the receipt LR No.980 of the consigner M/s.Patel Services is exhibited as Ex.PW-2/10. Copy of the receipt LR No.2835 of the consigner M/sPatel Services is exhibited as Ex.PW-2/11. Copy of the receipt Bill No.936 of the consigner M/s.P.Patel Carriers is exhibited as Ex.PW-2/12. Copy of the receipt Bill No.3155 of the consigner M/s.P. Patel Carriers is exhibited as Ex.PW-2/13. Copy of the receipt Bill No.43722 of the consigner M/s.Krishna Cargo Movers is exhibited as Ex.PW-2/14. Copy of the receipt Bill No.46074 of the consigner M/s.Krishna Cargo Movers is exhibited as Ex.PW-2/15. Copy of the receipt Bill No.48981 of the consigner M/s.Krishna Cargo Movers is exhibited as Ex.PW-2/16. Copy of the receipt Bill No.49364 of the consigner M/s.Krishna Cargo Movers is exhibited as Ex.PW-2/17.

19. PW-2 has further deposed that after receiving the goods the defendant also informed the plaintiffs about the confirmation of receiving the goods via telephone and has also confirmed that the goods received by the defendant are the same, which were ordered by him.
20. Ms.Hemlata Bimla Pandey has deposed that since the defendant failed to repay for six months, plaintiff no. 1 and plaintiff no.2 were worried for the huge outstanding payment becoming due and asked the defendant verbally for repayment or else the plaintiffs would not continue further business with the defendant. The defendant on repeated requests made by the plaintiffs issued number of cheques to the plaintiffs. Defendant issued a total 15 cheques in favour of plaintiff No.2, of various dates out of which, only 3 cheques in favour of plaintiff No.2 were encashed, whereas all the other 12 cheques were bounced/ rejected and returned by the banker of the plaintiff No.2 i.e. Axis Bank, Kolkata. The list consisting of

details of the cheques which were dishonored by the respective bank have been extracted in the affidavit.

21. The three cheques paid or encashed in favour of the plaintiff No.2 are worth Rs.3,00,000/- (Rupees three lacs only). The details of which have also been extracted in the affidavit.
22. Ms.Hemlata Bimla Pandey has also deposed that the outstanding amount yet to be paid by the defendant is of Rs.52,92,178/- (i.e. Rs.55,92,178 – Rs.3,00,000 = Rs.52,92,178) against plaintiff No.2. Copies of all the cheques issued and dishonored are collectively exhibited as Ex.PW-2/18. Defendant has also issued 7 cheques in favour of the plaintiff No. 1, out of which only three cheques were encashed. The list consisting the details of the encashed cheques with dates have been extracted in the affidavit.
23. Ms.Hemlata Bimla Pandey has also deposed that the three cheques paid in favour of the plaintiff no.1 are worth of Rs.4,00,000/- (Rupees four lacs only), thus the outstanding amount yet to be paid by the defendant is of Rs.25,92,728 ( i.e. Rs.29,92,728 – Rs.4,00,000 = Rs. 25,92,728 ).
24. PW-2 has also deposed that the total net outstanding of the defendant against plaintiff no.1 and plaintiff no.2 added together amounts to Rs.78,84,906/- (Rupees seventy eight lacs, eighty four thousand nine hundred and six only) after subtracting the cheques received and encashed. It is also deposed by this witness that the cheques being dishonored by the banker of plaintiffs i.e. Axis Bank, Kolkata were returned to the plaintiff no.1 and plaintiff no.2 because of “Funds not arranged for” which means that there were insufficient funds in the bank of drawer. In addition to this, a huge amount of Rs.78,84,906/- (Rupees seventy eight lacs, eighty four thousand nine hundred and six only) is pending towards the defendant since 16.06.2007, which the defendant is not intending to pay even after repeated requests being made by the

plaintiffs. The statement issued by Axis Bank, Kolkata i.e. Banker of the plaintiffs in which the cheques were placed is exhibited as Ex.PW-2/19.

25. PW-2 has also deposed that reposing their trust on account of good business relations between the parties did not at the outset initiate legal proceedings against the defendant, however, when all efforts at securing the payment from the defendant failed, the plaintiffs had no other option but to approach this Court for seeking justice. It is also deposed that the plaintiffs sent legal notice dated 10.06.2010 to the defendant through their advocates calling upon the defendant to clear the accounts and pay back the amount of Rs.25,92,728/- to the plaintiff no.1 and Rs.52,92,178/- to the plaintiff no.2. No reply even to the legal notice has been received by the plaintiffs or their counsel. Copy of the legal notices along with its acknowledgement and the postal receipt is exhibited as Ex.PW-2/20.
26. I have heard counsel for the plaintiffs and perused the plaint, application and accompanying documents. Both the witnesses have deposed on similar lines. The plaintiffs have been able to establish that they were carrying on business with the defendant and that various purchase orders were placed by the defendant on the plaintiffs up to 16.06.2007. The original bills raised by the plaintiffs against the goods supplied to the defendant have been exhibited as Ex.PW-1/2 to Ex.PW-1/5 and Ex.PW-2/2 to Ex.PW-2/9 respectively. The plaintiffs have also placed on record copies of the LR No.1033 and LR No.908 of the consigners pertaining to services, exhibited as Ex.PW-1/6 to Ex.PW-1/9 and Ex.PW-2/10 to Ex.PW-2/17 respectively. The plaintiffs have also placed on record the copies of all the cheques issued i.e. Ex.PW-2/18, along with the statement issued by Axis Bank, Kolkata i.e. the Banker of the plaintiffs in which the cheques were placed, exhibited as Ex.PW-2/19. The evidence led by the plaintiffs remain un rebutted. Accordingly, the suit is decreed in

favour of the plaintiffs and against the defendant in the sum of Rs.78,84,906/- with interest @12% per annum from the date of filing of the suit till realization with costs. Let a decree sheet be drawn up accordingly.

G.S.SISTANI,J

FEBRUARY 28, 2012

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