

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CS(OS) 2361/2010**

Date of Decision: 31st October, 2012

IN THE MATTER OF:

M/S VARDHMAN CUSTOM CLEARING & FORWARDING AGENTS

..... Plaintiffs

Through: Mr. Amulya Dhingra, Advocate

versus

M/S MAJGENTA FASHIONS & ORS.

..... Defendants

Through: None

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present summary suit has been instituted by the plaintiff against the defendants for recovery of a sum of ₹25,95,207/-, alongwith *pendentelite* interest claimed @ 18% per annum.

2. Learned counsel for the plaintiff submits that the plaintiff is a proprietorship firm and a duly approved forwarding and clearing agent. The plaintiff is also working as an international freight forwarder and consolidator and a copy of the license issued by the office of Collector of Customs in favour of the plaintiff has been filed along with the list of documents.

3. The defendant No.1 is described as an export firm that is engaged in the business of exporting readymade garments and leather garments. Defendant No.2 is stated to be the marketing agent and the defendant No.3 is described as the partner of the defendant No.1. It is averred in the plaint that the defendants No.2 and 3 had approached the plaintiff for availing its services for shipping their readymade garments abroad and they had appointed the plaintiff as their custom clearing and forwarding agent in accordance with the terms and conditions laid down in the airway bills as also on the invoices that were subsequently raised by the plaintiff, upon rendering such services to the defendants.

4. Counsel for the plaintiff states that the procedure adopted by the parties for conducting their business was that the plaintiff used to raise invoices for its service charges, which were served upon the defendants alongwith other relevant documents. The said invoices were debited and all the payments received were credited in a separate running account maintained by the plaintiff in its ledger in the name of the defendant No.1. The relevant extract of the ledger of the plaintiff in respect of the defendant No.1's account is enclosed with the list of documents at pages 164 to 172. As per the last page of the ledger account, as on 14.06.2010, the defendant No.1 had owed a

sum of ₹24,14,146.33 paise to the plaintiff. Apart from the ledger account, the plaintiff has also filed copies of seventy nine invoices that were raised by it on the defendant No.1 for the period w.e.f. 13.01.2010 to 05.06.2010, totalling to a sum of ₹79,54,146.33 paise. It is submitted that after adjusting an amount of ₹55,40,000/- paid by the defendant No.1 to the plaintiff for the period between 10.02.2010 and 05.06.2010, as detailed in para 11 of the plaint, the defendant No.1/firm was liable to pay a balance sum of ₹24,14,146/- to the plaintiff.

5. Despite the aforesaid outstanding amount, which was conveyed by the plaintiff to the defendant No.1, followed by repeated reminders and personal visits made to the office of the defendant No.1, the defendants did not clear the arrears. It is submitted that as per the understanding arrived at between the parties, the plaintiff was required to pay all direct, indirect and other incidental expenses on behalf of the defendants for the shipments made abroad and therefore, it is claimed that the outstanding amount had mounted, and instead of making the payment, the defendants continued to dilly dally. Finally, the plaintiff was compelled to issue a legal notice dated 04.08.2010(enclosed at pages 183-187 of the list of documents), followed by a reminder dated 09.09.2010 issued to the defendants.

The defendants had replied to the aforesaid legal notice dated 04.08.2010, by asking the plaintiff to supply the shipment documents and stating *inter alia* that the payment would be made by them to the plaintiff within 30 to 45 days from the date of receipt of bills and the shipment documents and not before that.

6. Learned counsel for the plaintiff states that the aforesaid reply submitted by the defendants to the legal notice sent by the plaintiff is misconceived for the reason that there was no such understanding arrived at between the parties, and in any case, the defendants are well aware of the fact that the shipment documents are routinely forwarded to the consignee of the shipment and therefore, the said documents are not in the possession of the plaintiff. It is additionally stated that the invoices that were raised by the plaintiff on the defendants had clearly stipulated that the same were required to be paid on presentation, failing which they would attract interest @ 18% per annum.

7. It is further explained by the counsel for the plaintiff that the present suit has been instituted by the plaintiff on the basis of the invoices that were raised on the defendants which amounts to a "written contract", as contemplated under Rule 2(d) of Order XXXVII CPC and therefore, the same is maintainable as a summary suit. In

support of the aforesaid submission, learned counsel for the plaintiff relies on the decisions in the cases of Messrs. Punjab Pen House vs. Samrat Bycycle Ltd. reported as **AIR 1992 Delhi 1**, Beacon Electronics vs. Sylvania and Laxman Ltd. reported as **1998(3) Apex Decisions (Delhi) 141** and KLG Systel Ltd. vs. Fujitsu ICIM Ltd. reported as **2001 AIR(Del) 357**,.

8. In view of the aforesaid submissions, counsel for the plaintiff states that the plaintiff is entitled to grant of a decree against the defendants, for a sum of ₹24,95,207/-, which includes the principal amount of ₹24,14,146/- alongwith interest that has been calculated @ 18% per annum for the period from 10.06.2010, till the date of institution of the present suit alongwith future interest payable, till realization of the decretal amount.

9. The Court has perused the averments made in the plaint and the documents that have been filed by the plaintiff. In view of the fact that the leave to defend application filed by the defendants has been dismissed for non-prosecution by a separate order passed today, the pleas taken by the plaintiff in the present suit remain unrebutted and have to be accepted as true and correct. Based on the said averments, and the submissions made by learned counsel for the plaintiff, the Court is satisfied that the plaintiff is entitled to grant of a

decree against the defendant No.1. However, the rate of interest that has been claimed by the plaintiff is found to be unreasonably high and is therefore reduced. Accordingly, the suit is decreed in favour of the plaintiff and against the defendant No.1 for a sum of ₹24,14,146/- alongwith simple interest payable @ 9% per annum from 10.06.2010, till realization, with costs and counsel's fee quantified at ₹20,000/-.

OCTOBER 31, 2012
rkb/mk

(HIMA KOHLI)
JUDGE