

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

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CS (OS) No. 855 of 2010

COIM INDIA PVT LTD

..... Plaintiff

Through: **Mr. Pankaj Chaudhary, Advocate**

versus

**KURT O JOHN SHOE COMPONENTS(I) PVT
LTD & ANR**

..... Defendants

Through: **Mr. Murari Kumar & Mr. Yakesh
Anand, Advocates**

CORAM: JUSTICE S. MURALIDHAR

ORDER

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09.07.2013

**IA No. 2523 of 2011 [under Order XXXVII Rule 3(5) Code of Civil
Procedure, 1908 for leave to defend]**

1. This summary suit has been filed by the Plaintiff under Order XXXVII of the Code of Civil Procedure 1908 ('CPC') for recovery of a sum of Rs. 1,40,64,950 together with *pendente lite* and future simple interest @ 22% p.a..

2. The case of the Plaintiff is that it has its registered office at Rajendra Place, New Delhi. The orders placed by Defendant No.1 were received by the Plaintiff at its office in New Delhi. Defendant No.2 is the Managing

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Director and signatory of the cheques issued by Defendant No.1. Even prior to 1st April 2007, the Plaintiff was supplying to Defendant No.1 several items like polyol, isocyanate Urecom, etc. on 60 days' credit and subject to the jurisdiction of the Delhi Courts. Orders from Defendant No.1 were received and accepted by the Plaintiff at its office in New Delhi. Defendant No.1 had been remitting the on account part payment by cheques to the Plaintiff at the said registered office. The Plaintiff states that a confirmation of accounts was duly signed by the authorised signatory of Defendant No.1, Mr. Sanjay Swami, on 1st April 2007. This concerned the purchases of goods by Defendant No.1 from the Plaintiff up to 1st April 2007.

3. In para 6 of the plaint, the details of the invoices from 6th April 2007 to 11th November 2008 for supply of goods by the Plaintiff to Defendant No.1 and the amount due against each of the invoice has been set out.

4. It is stated that Defendant No.1 has issued Sales Tax C-form in favour of the Plaintiff, thus confirming the purchase of goods under the said invoices from the Plaintiff. The Plaintiff has placed on record the originals of the invoices containing endorsement on the reverse of the terms of payment, of which one is that "interest @ 22% p.a. be charged in case of delay in

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payment". It is also clearly mentioned that "all disputes are subject to the jurisdiction of Delhi Courts only".

5. The Plaintiff has stated that Defendant No.1 had to pay it a total outstanding sum of Rs. 1,84,99,624.54, after accounting for the sum covered by the invoice for which C-form had been issued and for which payment had been received. There was a balance payment of Rs. 1,00,11,523.37 still due from Defendant No.1, which it had failed to do despite repeated reminders and oral assurances. In para 10 of the plaint, it is stated that as against the aforementioned balance amount, and as on account, part payment of Rs. 37,35,462 had been offered for which cheques had been issued with the assurance that the sum would be paid with interest. The details of the cheques issued, date and amount have been set out in para 10. Reliance is placed on a letter dated 7th February 2009 issued by the authorised signatory of Defendant No.1 enclosing a cheque for Rs.30,00,000 and assuring that it would pay Rs. 50,000 to Rs. 75,000 per month against the outstanding payment and give an advance payment against the materials purchased. It also undertook that the cheques which had expired would be replaced. However, no such payment was made. It is stated that when the said cheques, as detailed in para 10, were presented for

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payment, they were returned dishonoured with the remarks "payment stopped by the drawer". Separate complaints under Section 138 of the Negotiable Instruments Act, 1881 have been instituted by the Plaintiff against the Defendants. It is stated that in nine criminal complaints, an assurance was given before the Court of the learned Metropolitan Magistrate by learned counsel for the Defendants that they would settle those complaints by making payment of the cheque amounts to the tune of Rs.6,57,680. Accordingly, the Plaintiff has restricted its claims to the present suit for recovery of Rs. 93,53,843, reserving its right to claim the further sum of Rs. 6,57,680 in case the aforementioned payment is not made by the Defendants.

6. In para 14, it is stated that on the balance sum of Rs. 93,53,843, the Defendants are liable to pay Rs. 47,11,107 as interest @ 22% p.a. and that the total sum works out to Rs. 1,40,64,950 on the date of the filing of the suit.

7. In the application for leave to defend, it is stated by the Defendant that the mere issuing of bills by the Plaintiff to the Defendant did not constitute a written contract between the parties and therefore, the present suit under

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Order XXXVII CPC is not maintainable. Secondly, it is submitted that the suit is liable to be dismissed for want of territorial jurisdiction as no cause of action has arisen in Delhi. The Defendant No. 2 does not reside in Delhi. The office and works of Defendant No. 1 are situated in Noida, U.P. The goods were supplied at Noida, U.P. Thirdly, it is submitted that there was no basis of claim of *pendente lite* and future interest @ 22% per annum. Such claim is not covered under Order XXXVII CPC. In any event the above issues are all triable issue for which evidence has to be led. Lastly, it is pointed out that the Plaintiff has made contradictory statements in the plaint regarding the amount due.

8. Learned counsel for the Defendants adds that the sum total of all the invoices, sales tax forms 'C' works out the amount Rs. 83 lakhs and there is no evidence of the Defendants owing the Plaintiff the sum as claimed in the plaint. It is pointed out that the Plaintiff has admitted that the Defendants had paid Rs. 84,88,101 towards the goods supplied by the Plaintiff. It is stated that after filing of the suit, the Defendant No. 1 has paid a sum of Rs. 7,50,000 towards the settlement of nine complaint cases filed under Section 138 of the Negotiable Instrument Act ('NI Act'). The amount as claimed in the plaint is stated to be incorrect. Reliance is placed on the

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decisions in *Mechalec Engineers & Manufacturing v. Basic Equipments*
AIR 1977 SC 577 and *Raj Duggal v. Ramesh Bansal AIR 1990 SC 2218*.

Learned counsel for the Defendants states that the Defendants are not in a good financial condition and will not be in a position to satisfy the terms that may be imposed for grant of a conditional leave to defend.

9. In reply to the application, the Plaintiff has pointed out *inter alia* that after filing of the suit, Defendants had paid to the Plaintiff a sum of Rs. 6,57,680 and not Rs. 7,50,000 as incorrectly stated by the Defendants. It is stated that even on the date of filing of the reply, i.e., 5th September 2011 the Defendants owed Rs. 93,53,843 besides interest and costs. It is reiterated that a separate complaint under Section 138 NI Act filed against the Defendants in respect of the dishonoured cheque dated 20th August 2009 for Rs. 30 lakhs is pending. It is denied that the Plaintiff accepted any cheque towards security. It is pointed out that initially a cheque dated 20th August 2009 for Rs. 30 lakhs was issued against the already dishonoured cheque dated 30th June 2008 for Rs. 30 lakhs and in response to the legal notice dated 24th January 2009 issued to Defendants under Section 138 NI Act. The said cheque for Rs. 30 lakhs was issued by the Defendants to the Plaintiff towards part payment of goods already purchased by the Defendants and not

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as any security as falsely and dishonestly alleged by the Defendants.

10. It appears to this Court that the defence set up by the Defendant is nothing but moonshine. Copies of the invoices raised by the Plaintiff on the Defendant towards supply of goods have been filed in the original. The reverse of each invoice states that "all disputes are subject to the jurisdiction of Delhi Courts only".

11. As regards the issue of jurisdiction the plaint sets out the series of events which show that part of the cause of action arose in Delhi. Clearly the order was placed in New Delhi and payment had been made in Delhi. There is no merit in this contention. The Defendants have been unable to show that it has at any point in time denied its liability to make payment to the Plaintiff for the goods supplied to it by the Plaintiff. Indeed, the cheque of Rs. 30 lakhs appears to have been issued by the Defendants not once but twice. Consequently, therefore, these could not have been issued to the Plaintiff by way of security.

12. The Court is satisfied that the Plaintiff has been able to demonstrate that in the absence of a specific denial by the Defendants, the Defendants owe the Plaintiff a sum of Rs. 93,53,843. The rate of interest is also clearly

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specified on the reverse of each invoice. The Court is of the view that the Defendants have failed to raise any triable issue as such. The Plaintiff has successfully demonstrated that the Defendants owes the Plaintiff a sum of Rs. 93,53,842 together with *pendente lite* and future simple interest @ 22% per annum from the date of each invoice/bill till the date of payment of the amount against such invoices.

13. IA No. ²⁵²³~~2253~~ of 2011 filed by the Defendants for leave to defend is accordingly dismissed. The defence of Defendants is struck off. The suit is decreed as prayed for by the Plaintiff with costs of Rs. 20,000.

14. Decree sheet be drawn up accordingly.



S.MURALIDHAR, J

JULY 09, 2013
Tp/rk