

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

% CS(OS) 1611/2007

+ Date of Decision: 10th September, 2013

M/S WALIA DESTINATION Plaintiff
Through: Mr. Sanjay Sharma, Advocate

Versus

\$ M/S ROAD GEARS & ORS. Defendants
Through: None(ex parte)

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

This is a suit for recovery of money on account of price of goods sold by the plaintiff between to defendant no.1 firm, which as per the case of the plaintiff is a partnership firm of defendant nos. 2 and 3.

2. Defendant no.1 had allegedly been regularly purchasing from the plaintiff car accessories like car seat covers, solar films, car perfumes etc. in which items the plaintiff was dealing. During the period from 1st April,2004 till 20th July,2004 the defendants purchased goods in respect of which various bills were raised by the plaintiff in which one of the terms of payment was that payment was

to be made within 15 days from the date of delivery of the goods purchased else interest on the price of the goods @ 24 % p.a. was also to become payable by the defendants. It is alleged in the plaint that during the aforesaid period goods worth Rs. 19,15,676/- were supplied to the defendant no.1 firm but it had failed to make any payment towards the price of those goods despite demands made by the plaintiff. It was also the case of the plaintiff that defendants had issued 41 post dated cheques also towards the discharge of their liability in favour of the plaintiff and but all were dishonoured. Having failed to get its money from the defendants, the present suit for recovery was filed. In addition to the said principal amount of Rs.19,15,676/- the plaintiff also claimed Rs. 13,87,193/- on account of interest on the that amount but calculated @ 18% p.a.

3. The defendants in their written statement contested the suit claim inter alia on the grounds that they had not purchased the goods of the value of Rs.19,15,676/- as was being claimed by the plaintiff and that the suit was in any case time barred also. Then the following issues were framed on 1st October, 2008:

"1) Whether the Plaintiff had supplied goods of the total value of Rs. 19,15,676/- or of any other value to the Defendant No. 1 and if so, what amount, if any, is the Plaintiff entitled to recover and from which of the Defendants? OPP

2) Whether the Plaintiff is entitled to interest, if so, on what amount, at what rate and for what period? OPP

3) *Whether the Defendant No. 1 is a proprietorship concern of the Defendant No. 2 and the Defendant No. 3 has no concern with the same? OPD*

4) *Whether the claim in the suit or any part thereof is barred by time? OPD*

5) *Whether the Defendants No. 2 and 3 had issued post-dated cheques to the Plaintiff without any consideration and if so, to what effect? OPD*

6) *Relief."*

4. Thereafter, on behalf of the plaintiff firm, his proprietor filed his own affidavit by way of his evidence. Affidavit of one more witness was also filed on behalf of the plaintiff. None of them was, however, cross-examined on behalf of the defendants despite opportunities granted for that purpose. In fact, when the case was fixed for cross-examination of the two witnesses of the plaintiff on 6th April, 2011 none appeared before the Joint Registrar on behalf of the defendants and consequently their cross-examination was treated as nil. Thereafter, the case was listed by the Joint Registrar for defendants' evidence but no evidence was led. On 16th October, 2012 counsel for the defendants had appeared but he had sought his discharge. He was asked to move a proper application. However, thereafter no application was moved by the counsel and, in fact, he stopped appearing in the matter. Finally, evidence of the defendants was closed on 11th January, 2013 on which date also none had appeared on their behalf.

5. Thereafter, ex parte arguments were advanced by the counsel for the plaintiff.

6. As far as Issue No.1 is concerned the plaintiff was supposed to establish that it had supplied goods worth Rs.19,15,676/-. Though the plaintiff firm's proprietor had proved 21 bills of the said value and in the plaint also those bills were referred to but in fact seven out of those 21 bills are not in the name of the defendant no.1 firm but are in the name of another firm by the name of Road Gears Design & Concept. The defendants had taken this objection in also in their written statement. Total value of the goods sold to the said firm is Rs.4,55,487/- . So, that much amount has to be excluded from the suit claim. The rest of the claim has remained unchallenged from the side of the defendants since the plaintiff's proprietor and his other witness were not cross-examined at all on behalf of the defendants. So, issue no.1 is decided holding that the plaintiff had sold goods of the value of Rs. 14,60,189/- to the defendants.

7. It was agreed by the defendants that in case of non payment of the bill amount within 15 days interest @ 24% was payable. However, since the plaintiff itself is claiming interest @ 18% p.a. only the defendants are liable to pay at that rate on the amount of Rs. 14,60,189/- for the period of three years prior to the date of filing of the suit.

8. However, the plaintiff's suit is still liable to be dismissed as being time barred. It is the plaintiff's case that it had been selling goods to the defendants and as and when the goods were sold to the defendants a bill used to be raised. It is also the case of the plaintiff that in respect of various transactions of sale of goods by the plaintiff to the defendants between the period 1st April, 2004 to 20th July, 2004 different bills of different amounts were raised during that period. The plaint was however presented on 20th August, 2007 which clearly was beyond the period of limitation of three years prescribed under the Limitation Act for such kind of suits. The plaintiff has not pleaded a case of acknowledgment of debt within the period of limitation in respect of each one of the bills raised by it, which could have been extended the period of limitation for filing of the suit for recovery. Though it was pleaded in the plaint that the defendants had issued some post dated cheques towards part payment of their liability towards the plaintiff, but neither the details of those cheques were given in the plaint nor those cheques were proved in evidence. In fact, the same have not even been placed on record. It appears that those cheques have been utilized by the plaintiff for filing complaint cases against the defendants under Section 138 of the Negotiable Instruments Act, as those post dated cheques were dishonoured when presented for encashment. Therefore, the plaintiff cannot get any advantage of Section 18 of the

Limitation Act. Issue No.4 relating to the objection taken by the defendants to the effect that the present suit is time barred is, accordingly, decided against the plaintiff and in favour of the defendants.

9. Issue nos. 3 and 5 are decided against the defendants since no evidence has been led by them to discharge its onus.

10. In view of my findings on issue No.4 going against the plaintiff, this suit is dismissed as being time barred.

P.K. BHASIN, J

SEPTEMBER 10, 2013