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

+ **CS(OS) 2960/2012**

% **Judgment dated 02.05.2014**

ALKA JAIN

..... Plaintiff

Through: Mr. U.N. Sharma, Advocate

versus

M/S SCHOLAR PUBLISHING HOUSE(P) LTD Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for recovery in the sum of Rs.40,13,554.58 together with *pendene lite* interest and future interest.
2. Summons in the suit were issued vide order dated 26.9.2012. The defendant entered appearance on 8.3.2013. Since the written statement was not filed, the matter was put up for plaintiff's evidence on 17.9.2013. As none appeared on behalf of the defendant on 17.9.2013, 26.2.2014 and 15.3.2014, having regard to the fact that neither the written statement nor the affidavit of evidence was filed by the defendant, defendant's evidence was closed by the learned Joint Registrar vide Order dated 2.5.2014. The plaintiff has filed affidavit by way of evidence of Mr.Arun Kumar Jain, (PW1). None is present on behalf of the defendant even today. The affidavit by way of evidence of PW1 has been exhibited as Ex. PW1/A.
3. Learned counsel for the plaintiff submits that a copy of the affidavit by way of evidence was supplied to the defendant. Postal receipt has been filed along with the affidavit. Counsel for the plaintiff prays that a decree

under Order 8 Rule 10 CPC may be passed as the defendant, after seeking time to file written statement, has failed to file the same.

4. Mr.Arun Kumar Jain, PW-1, has deposed in the affidavit by way of evidence, PW-1/A, that he is the authorised representative of the plaintiff. He has further deposed that plaintiff is the proprietor of M/s Mayank Trading Company, having its Office at 2234, Dharampura, Chawri Bazar, Delhi, and the present suit is being filed through him, being the General Power of Attorney holder. The power of attorney has been exhibited as EX. PW-1/1 (Colly). Mr.Kumar has next deposed that the defendant is a private limited company duly registered under the provisions of the Companies Act, 1956, and being so is a separate legal entity in the eyes of law and can sue and be sued in its own name.
5. It is further deposed by PW-1 that the plaintiff deals in paper and board and during the course of time has acquired a good reputation in its field. It is next deposed that around 1985-86 late Sh.Y.P. Ranade the Director of the Company at that point of time approached the plaintiff for the purchase of paper and board and after the settlement of the terms and conditions the defendant started placing orders on the plaintiff. PW-1 has further deposed that on the specific orders of the defendant the plaintiff used to supply material to the defendant and the defendant used to accept the same without any demur or protest.
6. It has further been deposed by PW-1 that the plaintiff used to raise the bills on the defendant as and when the plaintiff used to supply the material to the defendant. Copies of the bills, so raised, have been exhibited as Exhibits PW-1/2 to PW-1/60.
7. It has also been deposed by PW-1 that the defendant was irregular in making the payments to the plaintiff and over a period of time a sum of Rs.91,03,554.58p became due and payable by the defendant to the

plaintiff. He has also deposed that to pay the aforesaid amount the defendant entered into a settlement with the plaintiff to the effect that the defendant would pay for future dealing to the plaintiff by way of post dated cheques and defendant will also pay some amount towards the outstanding.

8. Mr.Jain has further deposed that after the above settlement the defendant purchased goods worth Rs.1,01,53,385/- and out of this the defendant had made a payment of Rs.73,07,783/- thereby leaving a balance of Rs.28,45,602/-. Mr.Jain has next deposed that even after the settlement over a period of time a sum of Rs.73,04,156.58P became due and payable by the defendant to the plaintiff.
9. PW-1 has also deposed that out of the aforesaid sum of Rs.73,04,156.58P, a sum of Rs.28,45,602/- was on account of new dealings and Rs.44,58,554.58P was with respect to past dealings. The copies of the Statement of Accounts have been marked as Ex.PW1/62 and PW-1/63 (Colly.)
10. PW-1 has further deposed that the cheques issued by the defendant for the old dealing were encashed as and when presented for payment, however, the cheques issued by the defendant for the new dealings were dishonoured when presented for payment.
11. PW-1 has next deposed that the plaintiff got issued legal notice for the cheques dishonoured under Section 138 of the Negotiable Instruments Act and cases were also filed when the plaintiff did not receive any response from the defendant to the legal notices issued by the plaintiff.
12. Mr.Jain has also deposed that the concerned Court issued summons to the defendant and consequent thereof the defendant appeared in the Court and on 16.5.2012 a settlement was arrived at between the plaintiff and the defendant to the effect that the defendant will clear all its liabilities

towards the dishonoured cheques within eighteen months along with some penalty on the same, and on receipt of the said payment the plaintiff will withdraw the pending cases filed under Section 138 of Negotiable Instruments Act.

13. It has also been deposed by Mr.Jain that the cheques received by the plaintiff from the defendant and the settlement which took place before the concerned Court as on date a sum of Rs.40,13,554,58P is still due and payable by the defendant to the plaintiff.
14. Mr.Jain has further deposed in the affidavit that since it was a business dealing and the invoices issued by the plaintiff clearly shows that the defendant was to pay 24% interest on the amount due and payable if the amount due is not paid in time, however, in the present case keeping in view the goods relations between the plaintiff and the defendant, the plaintiff had decided to charge 21% interest after the expiry of three months from the date of Bills.
15. Mr.Jain has also deposed that the plaintiff had been reminding the defendant to pay the balance amount, however, on 16.5.2012 the defendant refused to settle with the plaintiff with regard to the old dealings, which forced the plaintiff to issue legal notice to the defendant on 17.5.2012 by Speed Post. Copies of the legal notice, postal receipts and proof of delivery have been marked as Exhibits PW-1/64 to PW-1/66.
16. I have heard learned counsel for the plaintiff and also perused the plaint, accompanying documents, and the affidavit of evidence filed by PW-1. The evidence of the plaintiff is unrebutted and unchallenged.
17. The order sheets of the Court record reveal that summons were issued to the defendant vide order dated 26.9.2012. The defendant entered appearance on 8.3.2013. Since written statement was not filed, the matter was put up for plaintiff's evidence on 17.9.2013. As none appeared on

behalf of the defendant on 17.9.2013, 26.2.2014 and 15.3.2014, and neither written statement nor the affidavit of evidence were filed by the defendant, defendant's evidence was closed on 2.5.2014.

18. Affidavit by way of evidence (Ex. PW1/A) of Mr.Arun Kumar Jain, (PW1), has been filed by plaintiff. As per the evidence filed orders were placed by the defendant, upon which the material was supplied and bills were raised from time to time. Copies of the bills have been exhibited as Exhibits PW-1/2 to PW-1/60. Further, as per the evidence, statement of accounts, have been placed on record. Exhibits PW-1/62 and PW-1/63, as per which a sum of Rs.28,45,602 with respect to new dealings and Rs.44,58,554.58P on account of past dealings, is due and payable by the defendant to the plaintiff. As the payments were not made, legal notices were issued, which have been exhibited as Exhibit PW-1/64, postal receipt has also been exhibited as Exhibit PW-1/65, and proof of delivery has been exhibited as Exhibit PW-1/66.
19. Having regard to the submissions made and taking into consideration the evidence of plaintiff which has gone unrebutted and unchallenged, the present suit is decreed in favour of the plaintiff and against the defendants in the sum of Rs.40,13,554.58P together with *pendent lite* interest @ 8% from the date of filing of the suit, till realization. Decree-sheet be drawn up accordingly.

G.S.SISTANI, J

MAY 02, 2014 / cl