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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 2356/2009

Judgment dated 09.07.2014

ANANT RAJ INDUSTRIES LIMITED Plaintiff

Through: Ms.Biji Rajesh for Mr.Gaurang Kanth, Advocate

versus

M/S BHARAT CERAMICS & ANR. F+ Defendant

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for recovery of Rs.43,44,754/- along with *pendente lite* and future interest.
2. Summons were issued in the suit to the defendants on 11.12.2009 and on 26.2.2010. Defendant no.1 entered appearance on 11.8.2010 and filed the written statement. Summons were issued to defendant no.2 on several dates and since defendant no.2 refused to accept summons, defendant no.2 was proceeded *ex parte* on 29.7.2013. It may be noticed that none appeared on behalf of defendant no.1 and the counsel for defendant no.1 had sought discharge by filing I.A.4201/2014. Consequently, defendant no.1 was also proceeded *ex parte* on 24.4.2014.
3. As per the plaint, the plaintiff carries on the business of manufacturing and sale of Romano tiles for kitchens, bathrooms, floor tiles and wall tiles. In the year 2002, defendant no.1 had approached the plaintiff for taking distributorship of the plaintiff company; on assurance from defendant no.2, plaintiff company started supplying goods to defendant no.1 and since then the defendant no.1 had been purchasing tiles of various sizes

and varieties from the plaintiff company from time to time against the bills. As per clause 14 of the invoices, in case of default the defendant was liable to pay interest @27% per annum with quarterly rests as also in terms of clause 16, all disputes were subject to Delhi jurisdiction.

4. It is the case of the plaintiff that defendant no.1 was making payments in part till the year 2008 thereafter a total sum of Rs.47,24,599/- became outstanding from defendant no.1 as per the account maintained by plaintiff.
5. Counsel for the plaintiff further submits that on 22.10.2008 another sum of Rs.5,41,463/- was paid by the defendant no.1 to the plaintiff. According to the plaint, defendant no.2, who happens to be the brother of defendant no.1, had agreed to stand as a guarantor for the due payment which was to be made by the defendant no.1 and he had undertaken and assured the plaintiff that defendant no.1 would clear all the outstanding dues by 31.3.2009. Thereafter another part payment was made by the defendant no.1 on 22.4.2009 in the sum of Rs.1.50 lacs and another sum of Rs.1.50 lacs was received by the plaintiff on 12.11.2009, leaving a balance of Rs.43,44,754/- which includes interest @ 18% from 22.4.2009 till 15.11.2009.
6. Plaintiff has filed the affidavit by way of evidence of Mr.Manoj Pahwa. Mr.Manoj Pahwa was authorized to file the present suit by Board Resolution dated 27.7.2006, which has been exhibited as **Ex.PW-1/I**. As per the evidence of PW-1 on the following dates purchase orders were placed on the plaintiffs by the defendant no.1:

[purchase orders dated 24.12.2005, 18.11.2005, 10.10.2005, 08.10.2005, 17.09.2005, 01.09.2005, 22.08.2005, 17.08.2005, 09.08.2005, 08.08.2005, 14.12.2006, 24.08.2006, 08.08.2006, 22.07.2006, 19.07.2006, 03.07.2006, 10.06.2006, 06.06.2006,

30.05.2006, 20.05.2006, 05.05.2006, 25.04.2006, 19.04. 2006, 21.02.2006, 08.02.2006, 31.01.2006, 02.01.2006, 15.11.2007, 23.10.2007, 29.09.2007, 14.09.2007, 14.06.2007, 04.05.2007, 23.04.2007, 04.04.2007, 21.03.2007, 05.03.2007, 07.02.2007, 19.06.2007, undated, and 06.04.2007].

7. The said purchaser orders have been collectively exhibited as ***Ex.PW-1/2***.
8. PW-1 has deposed that as and when the defendant No. 1 placed such purchase orders, the plaintiff had supplied the goods, as requested by the defendant No. 1 in order to enable the defendant No.1 to further distribute the tiles in the State of Karnataka. The material in the case of outstanding bills was dispatched through sealed containers of Container Corporation of India and the Container No. and Seal No. is mentioned on all the bills so dispatched. Further, in all such cases the freight was “to pay” and as such the recipient of goods itself paid the freight to the Container Corporation of India before getting the material unloaded. A truck was used to come to the plaintiff’s factory by which the goods were taken to the yard for loading the containers.
9. PW-1 has also deposed that in pursuance to the supply of the goods to the defendant No.1 by the plaintiff, as requested by defendant No.1, the plaintiff time and again, raised bills for such supply. The original bills i.e. invoice number 2711 dated 13.11.2006, invoice number 2750 dated 15.11.2006, invoice number 0003129 dated 16.12.2006, invoice number 0003206 dated 23.12.2006, invoice number 0003342 dated 03.01.2007, invoice number 0003422 dated 11.01.2007, invoice number 0003579 dated 25.01.2007, invoice number 0003741 dated 09.02.2007, invoice number 0004012 dated 05.03.2007, invoice number 0004018 dated 06.03.2007, invoice number 0004238 dated 22.03.2007, invoice number

00023 dated 05.04.2007, invoice number dated 00246 dated 24.04.2007, invoice number 00394 dated 08.05.2007, invoice number 00744 dated 16.06.2007, invoice number 01055 dated 20.07.2007, invoice number 01216 dated 26.08.2007, invoice number 01561 dated 03.10.2007, invoice number 01809 dated 24.10.2007 were raised by the plaintiff on defendant No.1. PW-1 has deposed that it is an admitted fact that the said invoices were received by the defendant No.1 and it is pertinent to note that the terms and conditions which govern the said transactions were annexed to the same. The original bills raised by the plaintiff on defendant No.1 are exhibited as ***Ex. PW1/3 (Colly.)***.

10. PW-1 has also deposed that both defendant No.1 and defendant No. 2 were part of these transactions and in fact while raising bills on the plaintiff vis-à-vis expenses with regard to advertising and marketing, defendant No. 2 regularly used to sign on such bills. The Original of the Bill dated 19.02.2008 signed by defendant No. 2 is exhibited as ***Ex.PW1/4***.
11. PW-1 has also deposed that vide reminder letter dated 19.02.2008 of the plaintiff, the defendant No.1 was requested to certify and confirm the balance outstanding as Rs.56,89,033/- in favour of the plaintiff, in the statement of accounts which had been enclosed in the letter. PW-1 has also deposed that the letter dated 19.02.2008 was signed in his presence and he can identify the signature of Mr.S.P.Sethi, General Manager, Accounts. The plaintiff's reminder letter dated 19.02.2008 is exhibited as ***Ex.PW1/5***.
12. PW-1 has further deposed that on 19.02.2008 the defendants acknowledged that an amount of approximately Rs.55.0 lakhs was outstanding and agreed to clear the same within a maximum period of 3 months. The acknowledgment dated 19.02.2008 was signed by Mr.Aman

Sarin of behalf of the plaintiff and defendant No.2 in his presence and he can identify the signatures of Mr.Aman Sarin and defendant No.2. The true copy of the acknowledgment dated 19.02.2008 signed by defendant No. 2 is exhibited as **Ex. PW1/6**.

13. PW-1 has also deposed that the plaintiff company approached the defendant No.1 on telephone to clear the payments. It is also deposed that the defendant No.1 requested the plaintiff to grant a personal meeting in the plaintiff's Delhi office. Defendant No.1 admitted the outstanding amount i.e. when the outstanding was Rs.51,39,033/-and signed and stamped the statement of account on 14.04.2008. It is deposed that the statement of accounts was signed by the defendant No.1 in his presence and he can identify the signatures of the defendant No.1. The statement of account signed by the defendant No.1 on 14.04.2008 has been exhibited as **Ex.PW1/7**. Pursuant to this, a meeting was held in the plaintiff's office at Delhi wherein the defendants admitting the outstanding amount, had undertaken to make payments in a given schedule. It is deposed that it was assured to the plaintiff that there would be no further delay in the payment and the same would be made on time.
14. PW-1 has deposed that the schedule for making the payment as agreed upon by the parties is as follows:

i)	06.08.2008	Rs. 5 lacs
ii)	18.08.2008	Rs. 10 lacs
iii)	28.08.2008	Rs. 5 lacs
iv)	08.09.2008	Rs. 5 lacs
v)	18.09.3008	Rs. 5 lacs
vi)	28.09.2008	Rs. 5 lacs
vii)	08.10.2008	Rs. 5 lacs
viii)	20.10.2008	Balance Payment

15. PW-1 has also deposed that in spite of requesting for time to be granted the defendant No.1 did not comply with the terms agreed upon in the meeting and made a payment of Rs.5,41,463/- till 22.10.2008. On 08.11.2008, plaintiff once again called upon the defendant No.1 to clear the outstanding amount. It is deposed by PW-1 that the letter dated 08.11.2008 was signed in his presence and he can identify the signatures of Mr.S.P.Sethi, General Manager – Accounts. The true copy of the plaintiff's letter dated 08.11.2008 to the defendant No. 1 has been exhibited as *Ex.PW1/8*.
16. PW-1 has also deposed that on receiving the letter dated 8.11.2008 the defendant No.1 called upon the plaintiff and requested the plaintiff not to initiate any legal proceedings and requested for some more time to clear the payment. It is also deposed that defendant No.2 who had agreed to stand guarantee of the defendant No.1 also called the plaintiff and requested not to initiate any legal proceedings. It is next deposed that defendant No.2 undertook and assured the plaintiff that defendant No. 1 would clear all the outstanding dues by 31.03.2009.
17. PW-1 has next deposed that when no payments were made by the defendant No.1 as undertaken by the defendants, the plaintiff made repeated phone calls to the defendants but to his utter shock and surprise the defendants stopped taking calls of the plaintiff and did not respond to any messages left in the office of the defendants. It is deposed that the defendants were only trying to mislead and defraud the plaintiff without any intent of making the payment. It is also deposed that the defendants have cheated the plaintiff by making the plaintiff believe that the defendant No.1 will make the requisite payment and misrepresented the plaintiff to part with his goods to defendant No.1 as a matter of sale.

18. PW-1 has deposed that the defendant No. 1 is primarily based in Bangalore but also had a branch in Mysore. The defendant No.1's Mysore branch had an outstanding balance of Rs.50,105/- which was owed to the plaintiff. While the ledger account vis a vis the defendant No.1's Mysore branch was maintained separately, the same was transferred to the ledger account vis a vis the defendant No.1's Bangalore branch on 06.11.2009 and this is evident from the perusal of the statement of account for the year April 1, 2009 to March 31, 2010 of the defendant No. 1's Bangalore branch. The original ledger account vis-à-vis the defendant No.1's Mysore branch maintained by the plaintiff for the period 1.04.2007 to 31.03.2010 has been exhibited as **Ex.PW1/9 (Colly.)**.
19. PW-1 has also deposed that further on 12.11.2009, defendant No. 1 deposited a further Rs.1,50,000 in the plaintiff Company's account. The outstanding amount without interest owed to the plaintiff by defendant No.1 and defendant No.2 is Rs. 39,33,240/-. The original statement of accounts of the ledger account of the plaintiff vis a vis the defendant No. 1 for the period April 1, 2005 to March 25, 2014 have been exhibited as **Ex.PW1/10 (Colly.)**
20. PW-1 has further been deposed that time and again the plaintiff has requested defendant No.1 to release the outstanding amount but all in vain. It is also deposed that the plaintiff was constrained to send a legal notice dated 26.06.2009 to the defendants for clearing the outstanding dues. The said legal notice was duly received by the defendants. The original legal notice dated 26.06.2009 has been exhibited as **Ex.PW1/11**.
21. PW-1 has also deposed that the plaintiff after having given more than required time to clear the outstanding dues is constrained to initiate the present proceeding as the defendants have failed to clear the dues and refuses to respond to the plaintiff's phone calls and messages.

22. PW-1 has next deposed that the plaintiff is entitled to interest calculated at the rate of 18% per annum. It is also deposed that the defendants have wrongfully used and deprived the plaintiff, the use of Rs.40,33,135/- since 22.04.2009 and Rs.39,33,240/- since 12.11.2009 and the plaintiff is entitled for being compensated therefore. The deponent stated that the plaintiff is entitled to charge pendent lite and future interest @ 18% p.a. as per the terms of the bills. The deponent state that the plaintiff keeping the business relationship with the defendants in mind, is praying for interest @ 18%, as the defendants have failed to pay any money to the Plaintiff.
23. PW-1 has deposed that the following sums are due and payable by the defendants to the plaintiff:

i)	Principal amount	Rs. 39,33,240/-
ii)	Interest @18% p.a. from 22.04.2009 to 15.11.2009	Rs. 4,11,514/-
	Total:	Rs. 43,44,754/-

24. Counsel for the plaintiff submits that defendant no.2 had orally agreed to stand as a guarantor and had also signed on a note that approximately Rs.55.0 lacs are due and thus he is jointly and severally liable for the amounts due by defendant no.1 to the plaintiff.
25. I have heard counsel for the plaintiff and also perused the original documents, which have been placed on record; various invoices, challans showing that the goods were supplied by the plaintiff in the name of the defendant; and various purchase orders on the letter-head of the defendant no.1 have also been placed on record. Plaintiff has also filed a copy of the statement of account, wherein the defendant no.1 has admitted the balance to be Rs.51,39,033/- as on 14.4.2008. Various documents have also been placed on record to show that containers were dispatched containing goods as demanded by the defendant no.1. Resultantly, the present suit is

decreed in favour of the plaintiff and against the defendant no.1 with *pendente lite* and future interest @12%.

26. In the absence of any document to show that the defendant no.2 had agreed to stand as a guarantor, the suit qua defendant no.2 is dismissed.

G.S.SISTANI, J

JULY 09, 2014

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