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

+ RFA(COMM) 168/2023

M/S JAIRAM MARBLES

..... APPELLANT

Through: Mr. Praveen Kumar with Mr. Nitesh
Tiwari, Advocates.

versus

EVERSHINE MARBLES CO.

..... RESPONDENT

Through: None.

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Date of Decision: 11th August, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been preferred against the judgment and decree dated 28.05.2022 passed by Learned District Judge (Commercial Court) - 01, West, Tis Hazari Courts in Case no. *CIV DJ No. 610027/2016* in "Evershine Marbles Co. v. M/s Jairam Marbles".
2. By way of the impugned judgment, the learned Trial Court decreed the suit in favour of respondent/plaintiff and against appellant/defendant for a sum of Rs. 7,81,859/- along with interest @ 10 % per annum from 01.04.2012 till realization with cost.
3. Brief facts of the case are that appellant/defendant herein had business relations with respondent/plaintiff, wherein respondent/plaintiff used to supply marble to appellant/defendant as per the requirement and choice of appellant/defendant.



4. The respondent/plaintiff had supplied marbles to appellant/defendant vide three invoices, as under:

- i) Invoice dated 03.07.2011 amounting to Rs. 5,18,095/-
- ii) Invoice dated 23.07.2011 amounting to Rs. 7,55,764/-
- iii) Invoice dated 31.12.2011 amounting to Rs. 3,93,751/-

5. On supply of goods, the last invoice was returned by appellant/defendant on account that the material was not as per its specification. Consequently, respondent/plaintiff issued debit note for the same.

6. Appellant/defendant paid a sum of Rs. 5,00,000/- on 23rd August, 2011 towards the goods supplied, however, remaining amount was not paid. On account of the said default, respondent/plaintiff claimed an amount of Rs. 13,89,447/- by filing suit for recovery in the court of District Judge (Commercial Court), Tis Hazari Courts, West District, Delhi. The learned Trial Court by way of the impugned Judgment and Decree dated 28th May, 2022 decreed the suit for a sum of Rs. 7,81,859/- along with interest @ 10% p.a. in favour of the respondent/plaintiff. Thus, the present appeal has come to be filed on behalf of appellant/defendant.

7. It is the case on behalf of appellant/defendant that learned Trial Court has erred in decreeing the suit as the invoices were raised on 03.07.2011 and 23.07.2011. However, the suit was filed after expiry of 3 years on 25.07.2014. Thus, the suit of respondent/plaintiff was barred by limitation in terms of Article 14 of the Limitation Act, 1963 being beyond the period of 3 years from the date of delivery of goods i.e., 03.07.2011 and 23.07.2011 respectively as no fixed period of credit was agreed upon between the



parties.

8. Further, it is contended on behalf of appellant/defendant that no cause of action had arisen in Delhi and nothing was pleaded by respondent/plaintiff to show as to how the cause of action had arisen in Delhi. The appellant resides and works in Agra, Uttar Pradesh and the goods had also been supplied in Agra.

9. It is the case on behalf of appellant/defendant that the learned Trial Court failed to appreciate that no demand was raised by respondent/plaintiff till 26.01.2014 regarding the invoices dated 03.07.2011, 23.07.2011 and 31.12.2011 as appellant/defendant had paid the amount to the respondent/plaintiff and was willing to return the defective goods supplied by the respondent/plaintiff.

10. On the other hand, it is the case of respondent/plaintiff that the Judgment and Decree dated 28.05.2022 has been passed by the District Judge (Commercial Court) - 01, Tis Hazari Court, Delhi, so the appeal ought to have been filed under the provisions of Section 13 (1A) of the Commercial Courts Act, 2015. It is submitted that the present appeal is not maintainable as the same has been filed under the provisions of Order 43 Rule 1A (2) of the Code of Civil Procedure, 1908 ("CPC") and the provisions under which the appeal has been filed is not applicable to the Judgment and Decree dated 28.05.2022 passed by the Commercial Court.

11. It is submitted that the present appeal is time barred as after passing of the Judgment and Decree on 28.05.2022, appellant/defendant had applied for the certified copies of the same only on 20.08.2022 i.e., after 84 days of the passing of impugned Judgment and Decree. No medical documents have been filed with the present appeal to show the bad health of



appellant/defendant during the period from the day of the impugned Judgment and Decree dated 28.05.2022 till 20.08.2022 (total 84 days) when the certified copies were applied.

12. It is submitted on behalf of respondent/plaintiff that as per Section 13 (1A) of the Commercial Courts Act, an appeal can be filed within sixty days from the date of the judgment or order and as such, the application of the appellant/defendant for condonation of delay deserves dismissal as being filed on false and frivolous grounds.

13. Regarding the issue of territorial jurisdiction, it is the contention of respondent/plaintiff that appellant/defendant had also filed an application under Order 7 Rule 11 CPC before the learned Trial Court and vide order dated 03.07.2017, the said issue of jurisdiction was decided in favour of the respondent/plaintiff and the application of the appellant/respondent filed under Order 7 Rule 11 was dismissed. As thereafter, appellant/respondent has not challenged the said order dated 03.07.2017, the same has attained finality. Appellant/respondent has concealed the said facts and tried to challenge the issue of jurisdiction to get favourable orders from this Court. It is further contended that in the invoices issued by the respondent to appellant/defendant, it is specifically mentioned that all the disputes shall be subject to Delhi jurisdiction.

14. Further, it is the case of respondent/plaintiff that appellant/defendant had filed the copy of its Ledger of Accounts maintained towards the respondent/plaintiff. In the said Ledger of Accounts, an amount of Rs.7,81,859/- had been shown as payable to respondent/plaintiff. The same amounted to the admission of the liability of appellant/respondent towards respondent/plaintiff.



15. We have heard learned counsel for the parties and have perused the record.

16. At the outset, it is to be noted that though the plea that suit of respondent/plaintiff was barred by limitation has been raised on behalf of appellant/defendant before this Court, yet, no such objection as regards limitation was ever raised by appellant/defendant before the learned Trial Court. In fact, no issue in this regard was raised by appellant/defendant in the suit proceedings. However, even otherwise, upon consideration of the said objection of limitation raised on behalf of appellant/defendant, the same is found without any merits.

17. It is undisputed that appellant/defendant had paid an amount of Rs. 5,00,000/- to the respondent herein on 23rd August, 2011. Entry to this effect is clearly made in the Ledger of Accounts of appellant/defendant that was produced before the learned Trial Court. However, there is nothing on record to show as to on what account and towards which invoice the said payment has been made. No details in this regard have been given in the Ledger of Accounts of appellant/defendant. In view thereof, it is clear that appellant/defendant has made payment towards the pending bills of respondent/plaintiff, as claimed in the suit proceedings, even till 23rd August, 2011. Ledger of Accounts of appellant/defendant from 01st April, 2011 to 31st March, 2012 is reproduced as hereunder for ready reference:

Jairam Marbles
05 Kallash Vihar, Bye-Pass Road
Agra



Evershine Marble Co., New Delhi

Lodger Account

1-Apr-2011 to 31-Mar-2012

Date	Particulars	Vch Type	Vch No.	Debit	Credit
5-7-2011	By Purchase- Marble Slab BEING PURCHASE MARBLE SLAB AG GR NO 479531 FROM EVERSHINE MARBLE CO AG BILL NO 202273 DATE 03.07.11 FORM 38 NO. 402350600	Purchase			5,18,695.00
20-7-2011	By Purchase- Marble Slab BEING PURCHASE MARBLE SLAB 657- 257 5 GRANITE SLAB 431.30 FROM EVERSHINE MARBLE CO AG BILL NO 202292 DATE 23.07.11 FORM 38 NO. 2011-2012/80144003300117	Purchase			7,55,764.00
23-8-2011	To Union Bank C/Ca/c 618505040000102 CH No. 6368 BY RTGS	Payment	321	5,00,000.00	
1-1-2012	By Purchase- Marble Slab BEING PURCHASE MARBLE SLAB 3078 SQFT FROM EVERSHINE MARBLE CO BILL NO 202251 DATE 31.12.11 FORM 38 NO. 01040200	Purchase			3,93,751.00
				5,00,000.00	16,67,610.00
				11,67,610.00	
				16,67,610.00	16,67,610.00
To	Closing Balance				

18. Even otherwise, this Court notes that the Ledger of Accounts of appellant/defendant itself showed that balance amount of Rs. 7,81,859/- was due and payable by appellant/defendant to respondent/plaintiff as on 31st March, 2013. The decree in the present case has been passed in favour of respondent herein for the principal amount of Rs. 7,81,859/- on the basis of the entries in the Ledger of Accounts of appellant/defendant. The said entries constituted a categorical acknowledgment of amounts payable by appellant to respondent herein. Thus, it cannot be said that the suit of respondent/plaintiff instituted on 25th July, 2014 was barred by limitation. The Ledger entries of appellant/defendant for the period from 01st April, 2012 to 31st March, 2013 and 01st April, 2013 to 31st March, 2014 are reproduced hereunder:

Jairam Marbles
05 Kailash Vihar, Bye-Pass Road
Agra



Evershine Marble Co., New Delhi

Ledger Account

1-Apr-2012 to 31-Mar-2013

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
1-4-2012	By Opening Balance				11,87,610.00
22-6-2012	To Purchase Return BEING PURCHASE RETURN MARBLE SLAB 3076 SQFT FROM EVERSHINE MARBLE CO. BILL NO 230333 DATE 01 12.11 FORM 38 NO. 01040200	Journal	28	3,93,751.00	
1-7-2012	By Freight Outward BEING AMOUNT FOR PURCHASE RET- URN AG BILL NO 2353 DATE 31.12.11	Journal	29		8,030.00
				3,93,751.00	11,75,610.00
				7,81,859.00	
	To Closing Balance			11,75,610.00	11,75,610.00

Jairam Marbles - (From 1-Apr-2013)

05 Kailash Vihar, Dye-Pass Road

Agra

Evershine Marble Co., New Delhi

Ledger Account

1-Apr-2012 to 31-Mar-2014

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
1-4-2013	By Opening Balance				7,81,859.00

19. Perusal of the aforesaid Ledger of Accounts maintained on behalf of appellant/defendant itself shows that appellant owed a sum of Rs. 7,81,859/- to respondent herein. The plea of appellant/defendant that it had paid certain amount in cash and that it had returned some material being defective, was not supported by any documentary evidence. The learned Trial Court has categorically observed that appellant herein did not mention any specific amount that had been paid in cash to respondent either in the written statement or in the Evidence Affidavit. It was only during cross-examination that appellant as DW-1 stated that he had paid Rs. 3 Lacs to 4 Lacs in cash to respondent. However, appellant admitted that he did not have any receipt to prove the same. Further, appellant had also failed to produce anything on record that it had ever communicated to respondent that there was any defective material supplied by it, except to the extent of goods supplied vide



invoice, Exhibit PW-1/3. In this regard, learned Trial Court has held as follows:

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14. Thus, as per the case of the parties, the only dispute remains to the extent of remaining payment of Ex. PW1/1 and Ex. PW1/2. Plaintiff stated he did not receive any further amount, while defendant claims he paid Rs. 3,00,000-4,00,000/- in cash and returned some material. Plaintiff in support of his case filed confirmation of accounts Ex. PW1/12, Mark B, Mark C and debit note Ex. PW1/7 to this effect. Defendant on the other hand produced their copy of ledger accounts and bank statement Mark A and Mark B. However, documents produced by both the parties tally to the extent of purchase of marble vide three invoices and receipt of payment of Rs. 5,00,000/- on 23.08.2011 through bank transfer. Even as per the ledger account filed by the defendant, there was an outstanding payment of Rs. 7,81,859/- as on 31.03.2013. There is no other payment shown to be credited to the plaintiffs account as per the ledger account or bank statement Mark A and Mark B. Thus, on the basis of the documents produced by both parties, defendant had to pay the outstanding amount of Rs. 7,81,859/-. Defendant had argued that some material was lying in his godown which was defective and had to be returned to the plaintiff and for the remaining dues he had made the payment in cash to the plaintiff. DW1 however, did not mention any specific amount which has been paid in cash to plaintiff either in WS, evidence affidavit but in cross examination, volunteered that he had paid Rs. 3,00,000-4,00,000/- in cash to the plaintiff but admitted that he did not have any receipt to prove the same. He denied the suggestion that there was no payment in cash and therefore he could not produce any receipt either with the written statement or in his evidence. There is no explanation why no such receipt if available, was produced either with the written statement or at the time of evidence or confronted with PW-1. This entire defence thus seems to be an after-thought as defendant has failed to make the said specific averment in his written statement and only made a vague assertion that he had made the remaining payment in cash without even specifying the amount or date or place of payment. He also failed to specify the amount which he was deducting on the grounds of defective material. He also failed to show any such entry in his own statement of account. There is also nothing on record, to suggest that defendant had ever communicated with plaintiff that there was any other defective material supplied by him save and except to extent of goods supplied vide invoice Ex. PW1/3.

... ..”



20. The plea of territorial jurisdiction raised on behalf of appellant/defendant is also found without any merits. It is contended on behalf of appellant/defendant that he was residing at Agra and had no office or sub-office in Delhi. It is further averred that respondent/plaintiff had supplied the material to appellant in Agra, thus, no cause of action had arisen in Delhi. However, perusal of the record shows that there was no cross-examination by appellant on the aspect that appellant had never approached the respondent/plaintiff at Delhi for purchase of goods. Besides, this Court notes that the invoices, Exhibit PW-1/1 and Exhibit PW-1/2, categorically mention that all the disputes shall be subject to Delhi jurisdiction. There is no evidence or any document on record to suggest that the terms of condition of the invoice were disputed by appellant at any point of time. Therefore, the learned Trial Court has rightly decided the issue of territorial jurisdiction against appellant herein.

21. In view of the aforesaid, no merit is found in the present appeal. The same is accordingly dismissed, along with the pending applications.

MINI PUSHKARNA, J

MANMOHAN, J

AUGUST 11, 2023

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