

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

+ CS(OS) 748/2014

Decided on : 28.01.2015

IN THE MATTER OF:

M/S MINDA NEXGENTECH LIMITED

..... Plaintiff

Through: Mr. Chander Shekhar Yadav, Advocate
with Mr. Narinder Kumar, Advocate

versus

TUSHAR KANTI GHOSH

..... Defendant

Through: Mr. Bimal Chakrabarti, Advocate

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.(Oral)

1. The plaintiff has instituted the present suit under Order XXXVII of the CPC, praying *inter alia* for a decree of a sum of ₹24,45,900.16, against the defendant, alongwith interest thereon.

2. On 14.03.2014, summons were issued to the defendant in the prescribed format. As per the records, the defendant, who is a resident of Burdwan, West Bengal, was served with the summons in the suit on 16.06.2014. However, the defendant did not file the memo of appearance within the prescribed period of ten days. Instead, he filed a written statement on 08.07.2014. On 12.09.2014, when counsel for the

defendant had appeared before the learned Joint Registrar, it was pointed out to him that the present suit is a summary suit instituted under Order XXXVII of the CPC and as per the prescribed procedure, a written statement could not have been filed in the case. At the request of learned counsel for the defendant, who had sought an adjournment to obtain instructions from his client, the case was adjourned to 09.12.2014. On 09.12.2014, counsel for the defendant was again accommodated and the case was adjourned to today.

3. The record reveals that the defendant had finally filed the memo of appearance on 04.12.2014, but without filing an application under Order XXXVII Rule 7 CPC, for this Court to examine if there was sufficient cause shown by him for condoning the delay on his part in entering appearance or for applying for leave to defend the suit. Even after three opportunities were granted to the defendant to make compliances, he did not elect to file an application under Order XXXVII Rule 7 CPC. The position remains the same today.

4. Learned counsel for the defendant submits that he has filed an application under Section 5 of the Limitation Act only this morning and he seeks an adjournment on the ground that it will not be on record today. The aforesaid request is declined. Learned counsel ought to have been mindful of the fact that the plaintiff has filed a summary suit for

recovery of monies which has to be proceeded with step by step, strictly in accordance with the provisions of Order XXXVII CPC. If the defendant did not file the memo of appearance within the prescribed timeline, then he ought to have taken steps to file an application for seeking condonation of delay by showing sufficient cause for entering appearance belatedly and that too, within a reasonable time.

5. Here is a case, where the defendant was served with the summons in the suit on 16.06.2014. The prescribed period of ten days available to the defendant for filing the memo of appearance, would have lapsed on 27.06.2014. 27.06.2014 having fallen during the summer vacations, and the court having reopened after the summer vacations on 01.07.2014, the memo of appearance could have been filed by the defendant on 01.07.2014. However, the said memo of appearance has been filed by the defendant after lapse of five months and three days, if reckoned from 01.07.2014 and that too, without filing an application under Order XXXVII Rule 7 CPC, for seeking condonation of delay. On three earlier occasions, learned counsel for the defendant was duly advised about the adverse consequences of filing a written statement in a summary suit and of failing to enter appearance by filing the memo of appearance in accordance with law, but to no avail. The court cannot be expected to keep waiting unendingly for the defendant to take necessary

steps to contest the suit in the manner laid down in the CPC. Since the defendant has failed to take steps in the suit by adhering to the timeline prescribed under XXXVII CPC, the Court has no option but to proceed to hear arguments on the merits of the case and pass appropriate orders, as envisaged under Rule 6 of Order XXXVII CPC.

6. The brief facts of the case as stated in the plaint are that the plaintiff is a company registered under the Companies Act and is engaged in the manufacture, sale and installation of various equipments, i.e., solar lighting equipments, including solar lantern, solar street lights etc. The suit has been instituted by the plaintiff through Mr.Arun Kumar Malik, who has been authorised to do so by a Resolution of the Board of Directors of the plaintiff/company passed on 16.11.2013. The certified copy of the said Resolution has been filed by the plaintiff.

7. As per the averments made in the plaint, the defendant had approached the plaintiff for supply of 50 + 100 units of solar street lights of two different types and the plaintiff had agreed to supply the same to the defendant. Vide two invoices dated 29.12.2012 for ₹1,94,400.05 and dated 14.02.2013 for ₹25,51,000.11, the aforesaid goods were dispatched by the plaintiff from Delhi to the defendant at Burdwan and duly received against acknowledgement. In support of the said submission, learned counsel for the plaintiff draws the attention of the

Court to the documents filed with the plaint under index dated 28.02.2014, that include the carbon duplicate of the invoices dated 29.12.2012 and 14.02.2013 as also the way bills dated 29.12.2012 and 14.02.2013.

8. It has been further stated by learned counsel for the plaintiff that his client was maintaining a running account of the defendant in due course of business and as per the said statement of account, a sum of ₹24,45,900.16 was debited in the defendant's account for supply of goods. A copy of the statement of account duly certified by the plaintiff has been filed at page 9 of the list of documents, which reflects that an amount of ₹24,45,900.16 was due and payable by the defendant, as on 17.09.2013. The plaintiff claims to have repeatedly requested the defendant to clear the outstanding amount but he failed to make the payments.

9. Finally, when the representatives of the plaintiff met the defendant and requested him to release the outstanding payment, he had issued a letter dated 25.09.2013, admitting *inter alia* that there was an outstanding balance of ₹25,39,850.16 payable to the plaintiff (page 10 of the documents). It is averred in para 6 of the plaint that the aforesaid amount of ₹25,39,850.16 includes a sum of ₹93,950/-, an amount payable by the defendant to the plaintiff in respect of a different

transaction. Learned counsel for the plaintiff clarifies that the plaintiff has already taken steps to file a separate suit against the defendant for recovery of the said amount that is related to the other transaction and the relief in the present suit is confined to the amount payable against invoices dated 29.12.2012 and 14.02.2013.

10. It is contended by the counsel for the plaintiff that as the defendant has failed to pay any amount despite having admitted his liability, the plaintiff had written a letter dated 17.10.2013 to him, calling upon him to release the outstanding payment. In reply to the said letter, the defendant had sent a letter dated 21.10.2013, wherein he had assured the plaintiff that he intended to clear the said dues and had offered to pay the same in installments, with the last and final amount being cleared by him on or before 15.11.2013. Learned counsel states that the defendant did not adhere to the timeline that was suggested by him and has not paid a penny to the plaintiff till date, thus compelling it to institute the present suit.

11. The Court has heard the counsel for the plaintiff, perused the averments made in the plaint and examined the documents filed in support of the said averments. The pleas taken by the plaintiff remain uncontested in the absence of an application for leave to defend filed by the defendant.

12. The documents placed on record reveal that the defendant has himself admitted in the letter dated 25.09.2013, that his books of account reflect a credit balance of ₹25,39,850.16, payable to the plaintiff. This admission is considered sufficient for the plaintiff to maintain the present summary suit. Having perused the averments made in the plaint, wherein the plaintiff has explained the manner in which the orders were placed on it by the defendant and the manner in which the goods were dispatched to the defendant at Burdwan, West Bengal, alongwith the invoices raised for the goods supplied that have been duly acknowledged by him, this Court is satisfied that the present suit is liable to be decreed in favour of the plaintiff and against the defendant.

13. Accordingly, the suit is decreed in favour of the plaintiff and against the defendant for a sum of ₹24,45,900.16 with simple interest payable @ 9% per annum, from the date of institution of the suit till realization, alongwith costs. Decree sheet be drawn accordingly.

14. The suit is disposed of.

JANUARY 28, 2015
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(HIMA KOHLI)
JUDGE