

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

% **Judgment pronounced on: 17th November, 2015**

+ **CS (OS) No.723/2014**

M/S MISRA AUTOMATICS PVT LTD Plaintiff
Through Ms.Kalasi Rai, Adv.

versus

SATHYA MOORTHY Defendant
Through Defendant is *ex-parte*.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiff filed the suit for recovery of Rs.24,34,000/- along with interest @ 24% per annum.
2. The plaintiff is a company registered under the Companies Act, 1956 having its registered office at K-64-A, Hauz Khas Enclave, New Delhi-110016, engaged in the business of manufacturing all kinds of food products, i.e. Fresh fruits, Pulps etc. and exports the products to foreign countries more particularly to Japan & Spain.
3. The brief facts as per the plaint are as follows:-
 - i) The defendant approached the plaintiff and represented to the plaintiff that the defendant can arrange for supply of fresh mangoes and mango pulps. The defendant further assured that the supplies thereof shall be effective from May-June, 2011 along with advance payment thereof.
 - ii) Acting on such representation made by the defendant and believing such representation as true and correct the plaintiff advanced a sum of Rs.24,34,000/- through cheques.

- iii) The plaintiff on such representation of the defendant placed an order for delivery of said food products, for which the plaintiff made an advance payment of total amount of Rs.24,34,000/- through HDFC Bank cheques. The aforesaid cheque has been encashed by the defendant company and the same is recorded in the ledger account of the plaintiff company from 1st April 2011 to 31 March 2012 along with the HDFC Bank statement which are annexed as "Annexure B (Colly)". The relevant portion of the ledger is as follows:-
- (i) dated 28.04.2011, cheque vide no.436157 for Rs.10,000/-
 - (ii) dated 28.04.2011, cheque vide no.436158 for Rs.10,000/-
 - (iii) dated 28.04.2011, cheque vide no.436159 for Rs.10,000/-
 - (iv) dated 17.05.2011, cheque vide no.0395348 for Rs.5,00,000/-
 - (v) dated 15.05.2011, cheque vide no.0395345 for Rs.15,00,000/-
 - (vi) dated 01.06.2011, cheque vide no. 557562 for Rs.2,25,000/-
 - (vii) dated 12.07.2011, cheque vide no. 557581 for Rs.1,00,000/-
 - (viii) dated 12.08.2011, cheque vide no. 557597 for Rs.70,000/-
 - (ix) dated 11.11.2011, cheque vide no, 612196 for Rs.9,000/-
- iv) After receiving advance payment from the plaintiff through the aforesaid cheques, there was neither any supply of the products nor delivery thereof and the defendant maintained elongated silence. As such being tired of such deficiencies, the plaintiff issued several reminders through emails and letters but all such efforts went in vain as there was no response from the defendant company, regarding the supply

of food products as assured, regardless of receiving payment towards the same.

4. The plaintiff thereafter issued a notice to the defendant to refund the amount of Rs.24,34,000/- along with interest at the rate of 24% p.a. within a period of 15 days from the date of receipt of the said notice on 9th July 2013 annexed as "Annexure C". The said legal notice was returned back with the remark "No such person". As such, the plaintiff again reissued notice to the defendant on 1st August, 2013 annexed as "Annexure D", but the defendant paid no heed to the said notice and completely ignored the same.

5. The plaintiff thereafter left with no option but to file the suit against the defendant for recovery of Rs.24,34,000/- being the principal sum along with interest till now. The plaintiff is also entitled to pendente lite future interest thereon @ 24% p.a. till realization in full.

6. Despite of service, no one appeared on behalf of the defendant nor any written statement was filed. The defendant was proceeded *ex-parte* vide order dated 28th November, 2014. The plaintiff has produced the *ex-parte* evidence by way of affidavit of Mr. Muthu Kumar (PW-1) who is the Director of the plaintiff-company. He tendered his affidavit which is marked as Ex.PW-1/X. In the affidavit, he has reproduced his statement as stated in the plaint.

7. It has come on record that the cheques were encashed by the defendant-company and the same is recorded in the ledger account of the plaintiff-company from 1st April, 2011 to 31st March, 2012 along with the HDFC Bank statement. The original copy of the HDFC Bank Statement along with certificate is filed along with the affidavit as Ex.PW-1/1.

8. After receiving advance payment from the plaintiff through the aforesaid cheques, the defendants neither supplied nor delivered any products thereof.

9. The original copy of receipt of registered post of the said notice posted via India post is marked as Ex.PW-1/2. The said legal notice was returned back with the remarks "No such person". It was again re-issued to the defendant on 1st August, 2013. The original copy of receipt of registered post of the said reissued notice posted via India post is marked as Ex.PW-1/3. The true copies of email correspondence in support of the present suit with regard to the said supply of food product between the plaintiff company and the defendant, filed along with the affidavit are marked as Ex.PW-1/4 (Colly). The affidavit of Mr.Raj Misra (Ex.PW-2/X) under Section 65-B of the Evidence Act has also been filed.

10. As far as the invoking of territorial jurisdiction is concerned, the plaintiff in para 9 of the plaint has stated that this Court has jurisdiction as the cause of action accrued within the territorial limits of this Court. There is no rebuttal of the same. Thus, the testimony of PW-1 is taken as correct.

11. Under these circumstances, a decree is passed in favour of the plaintiff and against the defendant for a sum of Rs.24,34,000/- along with pendent lite and future interest @ 12% per annum from the date of filing of the suit till the date of payment. The plaintiff is also entitled for cost.

12. Decree be drawn accordingly.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 17, 2015