

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

+ **CS(OS) No. 754/2006**

% **17th September, 2015**

SH. VIJAY MITTAL Plaintiff
Through: Mr. Deepak Khadaria, Advocate.

versus

M/S BAJAJ PRODUCTS & ANR. Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Plaintiff Mr. Vijay Mittal, proprietor of M/s. Mittal Brothers has filed the present suit for recovery of Rs.26,34,832/- from the defendants. The defendant no.1/M/s Bajaj Products is the sole proprietorship firm of the defendant no.2/Mr. Vivek Bajaj. Amounts are claimed with respect to goods supplied by the plaintiff to the defendants being HR Plates, Rounds, Iron sheets etc.

2. The facts of the case are that the plaintiff during the period of March and April, 1999 supplied to the defendants HR Plates and Rounds in huge quantity as per the orders placed by the defendants. Goods were

supplied by the plaintiff to the premises of the defendant no.1 at A-5, DSIDC, Industrial Complex, Rohtak Road, Delhi. The invoices covering the delivery/supply of goods are nos. 002, 014 and 015 dated 28.05.1999, 12.07.1999 and 12.07.1999 for a sum of Rs.2,78,080/-, 1,63,552/- and 1,38,928/- respectively. Plaintiff claims that the defendants with respect to these invoices for the period from 16.06.2001 to 16.10.2003 made a total payment of Rs.2,70,000/-. Plaintiff also pleads that as per the term printed on the invoices, defendants had to pay interest at 30% per annum if the payment was not made within 7 days from the date of receipt of goods, and therefore, as on 31.10.2004 a total sum of Rs.18,22,201/- was due to the plaintiff from the defendants and which amount increased to Rs.19,51,728/- as on 31.01.2005 and on the date of suit increased to Rs.26,34,832/-.

3. The defendants, as per their written statement do not dispute the receipt of goods but claim that besides the amounts which the plaintiff stated in para 5 of the plaint as paid to the plaintiff, there were three other amounts which were paid by the defendants to the plaintiff being a sum of Rs.78,080/- on 03.07.1999 by cheque, a sum of Rs.25,000/- on 01.09.1999 again by cheque, and an amount of Rs.35,000/- on 06.03.2000 once again by cheque. Besides claiming adjustment of the dues for these three amounts,

defendants also claimed that defendant no.1 has returned goods worth Rs.1,50,000/- to the plaintiff and for which amount also adjustment was asked for in the suit amount. The defendants also plead that payment of Rs.8,000/- on 16.10.2003 was to be treated as final payment with no further amount to be due to the plaintiff. The defendants have denied that they are liable to pay interest at 30% per annum as claimed by the plaintiff.

4. Plaintiff in the replication filed by him admitted his mistake in not giving benefit to the defendants of the three amounts of Rs.78,080/-, Rs.25,000/- and Rs.35,000/- as stated in the written statement, and therefore, an amended replication was filed admitting receipt of these three amounts thereby reducing the amount claimed by the plaintiff from the defendants. In the replication plaintiff however denied that the plaintiff had received back goods worth Rs.1,50,000/- from the defendant no.1 as claimed by the defendants in their written statement.

5. The following issues were framed in the suit on 29.09.2008:-

- “1. Whether the suit filed by the plaintiff is barred by limitation?
OPP
2. Whether the suit filed by the plaintiff is sole proprietor of the firm? OPD

3. Whether the defendant has returned any goods having values of Rs.1,50,000/- to the plaintiff? OPD
4. Whether the plaintiff is entitled to a money decree in a sum of Rs.23,28,464/- as on 15.02.2007 as per the statement furnished by the plaintiff? OPP
5. Whether the plaintiff is entitled to any interest on the decreetal amount? If yes, at what rate? OPP
6. Relief.”

6. **Issue No.1**

Issue no.1 pertains to limitation and this issue has to be decided in favour of the plaintiff and against the defendants, inasmuch as, admittedly the last payment which was made by the defendants to the plaintiff is dated 16.10.2003, and therefore the suit had to be filed on or before 16.10.2006. The subject suit has been filed on 03.05.2006 i.e within a period of three years, and the suit is therefore within limitation. This issue is decided in favour of the plaintiff and against the defendants.

7. **Issue no.2**

So far as issue no.2 is concerned, plaintiff has led evidence to show that the plaintiff was the sole proprietor of the firm by leading evidence being the Dissolution Deed dated 31.3.1993 Ex.PW1/13 which

shows that on the dissolution of the erstwhile partnership firm of M/s Mittal Brothers, it was only the plaintiff who remained as a proprietor of the firm by taking all the assets and liabilities of the erstwhile firm M/s Mittal Brothers. In view of the Dissolution Deed Ex.PW1/13, issue no.2 is decided in favour of the plaintiff and against the defendants that the plaintiff is the sole proprietor of the firm M/s. Mittal Brothers and that M/s Mittal Brothers was not a partnership firm when the subject transactions were entered into with the defendants.

8. **Issue nos. 3, 4 and 5**

Issue nos. 3, 4 and 5 can be dealt with together because as per these issues it has to be decided that what is the amount which is due to the plaintiff as claimed in the present suit and what would be the rate of interest payable to the plaintiff on the balance amount due till the filing of the suit and thereafter.

9. Before I discuss the issue with respect to the principal amount due to the plaintiff, let me turn to the aspect of rate of interest as claimed by the plaintiff at 30% per annum.

10. In my opinion, it cannot be held that there was an agreement between the parties for the defendants to pay interest at 30% per annum simply and merely because the plaintiff has printed in the bill/invoice that 30% interest per annum will be payable on the balance due. A unilateral statement of one party in the facts of this case cannot be taken as an agreement binding the parties. Also, rate of interest which is claimed by the plaintiff is usurious and in fact will be hit in spirit by the provisions of Usurious Loans Act, 1918 as applicable to Delhi. Further, a Division Bench of this Court in the judgment in the case of ***Pt. Munshi Ram Associates (P) LTD. Vs. Delhi Development Authority (DDA)***, 2010(3) Arb. Law Reporter 284 has held that courts have power to interfere with the rate of interest if the rate of interest charged is found to be unduly excessive and usurious.

Para 20 of the said judgment reads as under:-

“20. We are unequivocally of the view that the authority of an arbitrator to grant compound interest can only be under a contract as the applicable statutes, as interpreted by the Supreme Court, permitting grant of interest by an arbitrator being Section 29 of the old Act, Section 34 of the said Code r/w Section 41 of the old Act and Section 3 of the Interest Act do not permit specifically the grant of such compound interest. The position is thus same in respect of the authority to grant compound interest under the new Act and the old Act. We also make it clear that even where there is such a provision in the contract, the authority of the Court is not taken away not to grant such compound interest if it is in conflict

with or in violation of the public policy of India as observed in para 18.3 of State of Haryana & Ors. v. S.L.Arora & Company's case(supra). As for the facts of the present case are concerned, as already noticed, there is no contract for compound interest and thus compound interest cannot be awarded.” (underlining added)

11. I therefore hold that the plaintiff is not entitled to interest @ 30% per annum simple, and in my opinion, interest at 12% p.a. simple will meet the ends of justice.

12. As per the facts which are admitted in the amended replication of three additional payments having been received by the plaintiff, thus out of the original principal amount claimed of Rs.3,10,560/-, a sum of Rs.1,38,080 would have to be reduced and therefore, the principal amount will become Rs.1,72,480/-. This amount also is not an amount which is due on the specified date but this amount would be different amounts spread over different dates as per the statement of account which would be maintained by the plaintiff showing different dates of credits/payments, and after giving adjustment on different dates of various amounts, which have been paid by the defendants to the plaintiff, the net effect would be that though the principal amount of Rs.1,72,480/- would be due to the plaintiff from the defendants, in addition to this amount of Rs.1,72,480/-, interest at the end of different financial years ending on 31st March at 12% per annum

simple will become due. Since there are no such calculations available on record, I have asked the counsel for the plaintiff to give me a statement of account giving calculations as to the payment of interest at 12% p.a. simple and the amount due at the end of each financial year. This chart of calculations is filed in Court today and I have taken on record the chart filed in Court by the counsel for the plaintiff and the plaintiff will be bound by the statement that the chart of calculations contains the correct calculations of interest at 12% per annum. As per this chart, the amount of Rs.5,39,856/- will be due to the plaintiff from the defendants as on 31.5.2006.

13. Plaintiff therefore will be entitled to this amount of Rs.5,39,856/- with the *pendente lite* and future interest at 9% per annum simple till payment.

14. The defendants have failed to discharge the onus of issue no.3 that the defendants are entitled to adjustment of Rs.1,50,000/- on account of goods having been returned to the plaintiff for such amount inasmuch as except an oral statement of the defendants made during their evidence, no other evidence has been led on behalf of the defendants for this Court to believe that the defendant no.1 returned goods worth Rs.1,50,000/- to the plaintiff. It is also noted that in the cross-examination of the defendant DW1

Sh. Vivek Bajaj, and who is the defendant no.2 in the suit, it is admitted by Sh. Vivek Bajaj on 28.9.2012 that the defendants have not filed any document to show that any goods were returned to the plaintiff. The witness Sh. Vivek Bajaj also did not remember that if goods were returned to the plaintiff, such goods were returned on which date. It is also admitted by Sh. Vivek Bajaj that he does not remember if plaintiff gave any acknowledgement with respect to the goods allegedly returned by the defendants. The witness Sh. Vivek Bajaj also admitted that he does not remember as to whether the rebate claimed by the defendants on return of the goods to the plaintiff was returned to the Central Excise Department inasmuch as, if goods were returned, the defendants would have been entitled to claim credit entry with respect to the value of the goods from the Central Excise Department. For all these reasons it is held that the defendants have failed to prove that defendant no. 1 has returned goods worth Rs.1,50,000/- to the plaintiff. The defendants have also failed to prove as to how payment of Rs.8,000/- on 16.10.2003 was to be treated as a final payment because a self-serving statement of defendants cannot be held as discharging the onus of proof in this regard. Issue no.3 is therefore decided against the defendants and in favour of the plaintiff.

15. **Relief**

In view of the above, the suit of the plaintiff is decreed for a sum of Rs.5,39,856/- against the defendants and in favour of the plaintiff with interest thereon at 9% per annum simple from 1.6.2006 till the date of payment. Plaintiff is also held entitled to 1/3rd of the costs of the suit. Decree sheet be prepared.

SEPTEMBER 17, 2015
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VALMIKI J. MEHTA, J