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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 1521/2014
SUNVOICE ELECTRONICS PVT LTD Plaintiff
Through Mr. Arun Aggarwal, Advocate
versus
LOTTEE ELECTRONICS LTD Defendant
Through None

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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13.08.2015

Plaintiff has filed the suit under Order 37 of Code of Civil Procedure, 1908 against the defendant for recovery of ₹35,42,709.55p together with the pendente lite and future interest @ 18% p.a. from the date of filing of the suit till the realization of the decretal amount and costs.

Plaintiff has alleged that pursuant to the purchase orders placed by the defendant, plaintiff supplied speakers to the defendant vide invoices/bills. Form 'C' was also issued by the defendant in respect of the supplies affected by the plaintiff to the defendant.

Plaintiff had been maintaining an account of the supply of goods and the payment receipts in its books in the name of the defendant. A sum of ₹31,21,330/- was due and outstanding against the defendant. On 19th December, 2013, defendant acknowledged and confirmed in writing its liability to pay a sum of ₹31,21,330/- to the plaintiff. However, the amount was not paid despite service of a demand notice dated 29th October, 2013. Plaintiff has claimed that the defendant was liable to pay the interest @ 18% p.a. from 6th July, 2013 i.e. the date of last supply for goods till the filing of the suit amounting to ₹4,21,379.55p. Thus, defendant was liable to pay

₹35,42,709.55 p as on the date of filing of the suit. Original bills, statement of account as well as letter dated 19th September, 2013, wherein, defendant had made endorsement to the effect that ₹31,21,330/- was the credit balance in their books which has been placed on record.

Vide order dated 11th February, 2015, the learned Joint Registrar had noted that the defendant was served on the first and the third address on 26th December, 2014 and 15th January, 2015 respectively. Despite service, defendant has not entered appearance within the stipulated period.

Order 37 (1) (3) of the CPC envisages that the defendant shall not defend the suit referred to in sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.

Order 37 (2) (3) of the CPC stipulates 10 days period for entering appearance either in person or by pleader.

Defendant has failed to enter appearance within the stipulated period of 10 days. Plaintiff is entitled to a decree as envisaged under Order 37 (2) (3). Accordingly, a decree is passed in favour of the plaintiff and against the defendant for a sum of ₹35,42,709.55p together with interest @18% p.a. from the date of filing of the suit till passing of decree, i.e. till today. Plaintiff shall also be entitled to costs.

A.K. PATHAK, J.

AUGUST 13, 2015/rs