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

+ <u>CS(OS) No.1389/2013</u>

<u>Date of Decision: 21th July, 2015</u>

<u>IN THE MATTER OF</u>
GAJINDER LOOND . ..... Plaintiff
Through: Mr. Muneesh Malhotra, Advocate with Mr. Achin Mittal, Advocate

versus

ZEDAK INDUSTRIES & ORS. .... Defendants
Through : Defendants *ex parte*.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

<u>HIMA KOHLI, J</u>. (Oral)

1. The plaintiff has instituted the present summary suit under Order XXXVII CPC praying *inter alia* for recovery of a sum of ₹35,30,031/- against the defendant, along with future and *pendente lite* interest @ 24% p.a.

2. The relevant facts of the case, as set out in the plaint, are that the plaintiff has various business ventures in Delhi and the NCR region. He provides state of the art technology to multi-national companies in poultry business and makes retail supplies to various stores in the NCR region of Delhi. In the year 2012, the plaintiff had decided to make forays in the business of frozen meats and with the said idea, he decided to purchase three vehicles (make : Mahindra Bolero) for transportation, distribution and

supply of the products in Delhi and the NCR region. For the said purpose, the plaintiff had planned to install stainless steel containers and a refrigeration system on the chassis of the aforesaid vehicles as per the international standard and specifications.

3. Learned counsel for the plaintiff states that the defendant No.2 is the sole proprietor of the defendant No.1/firm and it is the defendant No.3 (son of the defendant No.2), who manages the day-to-day affairs of the proprietorship firm. Defendant No.2 had gathered information about the plaintiff's plans to install stainless steel containers and refrigeration systems on the vehicles purchased by him and he represented to the plaintiff that they were in the business of body manufacturing over delivery vehicles and would be willing to undertake the said work for him. After some negotiations that took place at the plaintiff's residence, the defendants had submitted two quotations-cum-invoices, both dated 28.3.2012. The first invoice bearing No.1102/3/ZI was raised by the defendants for fixing refrigeration units of "Thermoking" make as per specifications, on the three Bolero vehicles @ ₹3,15,000/- per vehicle + taxes, totaling to a sum of ₹10,69,031/-. Based on the said invoice, the plaintiff had placed a purchase order on the defendants for purchasing three Thermoking refrigeration units and, as demanded, had paid 100% advance against the said invoice, vide cheque No.200034 dated

4.4.2012 drawn on Indian Overseas Bank in favour of the defendant no.1. The said cheque was duly cleared on 13.4.2012, as per a certificate dated 8.8.2013 issued by the plaintiff's banker, i.e., Indian Overseas Bank, Greater Kailash, Part-II, New Delhi Branch, that has been filed along with the List of Documents.

4. Coming to the second quotation-cum invoice No.1103/3/ZI dated 28.3.2012 prepared by the defendants for fabrication of refrigeration units and stainless steel racks, as per the specifications that were agreed upon, they quoted a sum of ₹12,11,569/- for undertaking the said job, which was duly accepted by the plaintiff. At the time of placing the order, the plaintiff had paid 50% advance of the performa invoice, to the defendants, i.e., a sum of ₹6.00 lacs, vide cheque No.200038 dated 4.4.2012 drawn in favour of the defendant no.1 and the said cheque was duly cleared on 10.4.2012, as per the certificate dated 8.8.2013 issued by the plaintiff's banker, i.e., Indian Overseas Bank, Greater Kailash-II, New Delhi, that has been filed along with the List of Documents. Sometime later, the defendants had approached the plaintiff requesting for release of the balance payment raised in the second invoice. Since completion of the fabrication work was getting delayed, to avoid any further delay, the plaintiff had paid a sum of ₹6,55,000/- to the defendants through five cheques drawn on Indian Overseas Bank in favour of the defendant No.2 that were duly encashed in

the following manner :

Sr.No.	Amount (₹)	Dates of issuance	Dates of clearance of cheques
1.	4,00,000/-	16.7.2012	21.7.2012
2.	45,000/-	25.10.2012	10.11.2012
3.	1,00,000/-	1.12.2012	5.12.2012
4.	75,000/-	1.1.2013	1.1.2013
5.	35,000/-	4.1.2013	4.1.2013

5. The plaintiff claims that after receiving 100% payment against the two invoices raised by the defendants, totaling to a sum of ₹23,24,031/- along with the delivery of three vehicles to the defendants for fitment of the refrigeration units, they started avoiding his telephone calls and failed to adhere to various deadlines, as promised from time to time. The plaintiff kept on approaching the defendants from time to time requesting them to complete the fabrication work at the earliest and handover the three vehicles, but to no avail. The defendants neither responded to the phone calls made to them, nor to the e-mails sent to them. Finally, after much persuasion by the plaintiff, the defendants provided the specifications of the units and the stainless steel racks proposed to be installed on the vehicles, on 1.3.2013, but even thereafter, they were unable to perform the required work.

6. Getting worried on account of sheer lack of response from the defendants, the plaintiff visited their Faridabad address, but to his surprise, could not find the three Bolero vehicles parked there. It is stated that before

shifting the vehicles from the Faridabad address, the defendants did not give any intimation to the plaintiff, much less seek his permission. After making several enquiries, the plaintiff visited the defendants at their Ballabhgarh address, where he found the three Bolero vehicles stationed, but without any fabrication work undertaken for installing the refrigeration units and stainless steel racks, as ordered. Left with no option, on 17.4.2013 with the assistance of the local police, the plaintiff engaged a crane and had the three Bolero vehicles towed and taken back to Delhi. At the time of lifting the vehicles, the plaintiff discovered that the keys of the two of the vehicles had been misplaced by the defendants, the batteries of two vehicles were missing and one of the vehicles was being used by them for their personal purposes. It has been stated by the plaintiff that for bringing the vehicles back to Delhi, he had to spend a sum of ₹9,000/- to engage the services of a crane. He had incurred a further sum of ₹5.00 lacs for getting the duplicate car keys prepared, the missing batteries replaced and on account of the delayed insurance and registration of the three vehicles.

7. Immediately after collecting the vehicles from the premises of the defendants, the plaintiff served a legal notice dated 4.5.2013 calling upon them to refund a sum of ₹23,24,031/- received in terms of the quotations-cum-invoices raised on him and he further demanded a sum of ₹5.00 lacs towards the damage caused to the vehicles, with an additional sum of

₹50,000/- towards the loss of business and delay suffered by him. It is submitted that the said notices that were dispatched through registered AD post to the defendants at the addresses mentioned in the memo of parties, were returned unserved.

8. Based on the aforesaid facts, the plaintiff has instituted the present summary suit against the defendants praying *inter alia* for a decree of a sum of ₹35,30,231/- along with the future and pendente lite interest.

9. In the course of arguments, Mr. Malhotra, learned counsel for the plaintiff states that he may be permitted to confine the relief in the suit to the payments made to the defendants through duly encashed cheques issued from time to time, totaling to the undisputed sum of ₹23,24,031/- along with interest.

10. Summons were issued in the suit on 8.10.2013, returnable on 15.1.2014. It was noted in the order dated 15.1.2014 that the process issued against all the defendants at the addresses mentioned in the memo of parties were received back unserved with a report stating 'left the place'. In these circumstances, permission was sought by the counsel for the plaintiff to effect service on the defendants by substituted mode. Thereafter, the plaintiff had filed an application under Order V Rule 20 CPC for effecting service on the defendants through publication, which was duly allowed, vide order dated 29.5.2014. Pursuant thereto, defendants No.1 & 2 were served

through publication in the daily newspapers circulated in Faridabad and the defendant No.3 was served through publication in the daily newspaper circulated in Jharkhand. Despite service, none of the defendants have entered appearance in the suit or filed their memo of appearance within the stipulated period of ten days; nor did any counsel appear on their behalf.

11. Taking note of the aforesaid facts, vide order dated 20.3.2015, the learned Joint Registrar had directed that the case be placed before the Court on 21.5.2015. None had appeared for the defendants on the said date or even thereafter, nor were any steps taken by them to contest the suit. The position remains the same till date. The defendants having failed to contest the suit by entering appearance within the time prescribed in Order XXXVII Rule 3 CPC, learned counsel for the plaintiff states that his client is entitled to a decree under Order XXXVII Rule 2(3) CPC.

12. The Court has heard the learned counsel for the plaintiff, carefully examined the averments made in the plaint and perused the documents filed by the plaintiff. The plaintiff has narrated the circumstances in which he had issued seven cheques in favour of the defendants totaling to a sum of ₹23,24,031/-, towards purchase and fabrication of the refrigeration units and the stainless steel racks on the three vehicles handed over to them. The documents filed by the plaintiff include seven certificates dated 8.8.2013 issued by his banker, i.e., Indian Overseas Bank, certifying encashment of

the seven cheques on different dates. The said certificates substantiate the submission made by the counsel for the plaintiff that the defendants had duly received amounts from the plaintiff from time to time to undertake the fabrication work on the three vehicles. As per the plaintiff, despite receiving 100% payment, the defendants had failed to undertake the fabrication work by installing the refrigeration systems on the three Bolero vehicles provided by the plaintiff. The plaintiff has also filed two Performa Invoices dated 28.3.2012 issued by the defendants no. 1 and 2, copies of the invoices raised by the authorized dealer of Mahindra & Mahindra Ltd., i.e., Skyline Automobiles from whom he had purchased the three vehicles, the technical specifications forwarded by the defendant No.3 on behalf of defendants No.1 & 2 for undertaking the fabrication work, the bill of ₹9,000/- dated 17.4.2013 raised by the agency that had provided crane services to the plaintiff for towing the three vehicles from Ballabhgarh to Delhi, the bills raised on the plaintiff by the agency that had undertaken the repair work on the three vehicles and the cover notes for the vehicles issued by the Insurance company. The aforesaid documents when read collectively ratify the averments made in the plaint to the effect that the plaintiff is entitled to recover a sum of ₹23,24,031/- along with interest from the defendants on account of their failure to install the refrigeration units on the three Bolero vehicles, as per the Invoices raised by them.

13. Having regard to the facts and circumstances of the present case, as set out hereinabove, which have remained unrebutted by the defendants, who have failed to enter appearance, the same are accepted as true and correct. Accordingly, the present suit is decreed against the defendants No.1 & 2 and the plaintiff is held entitled to recover a sum of ₹23,24,031/- from them, w.e.f., the date of encashment of the respective cheques referred to in paras 3 & 4 of the plaint, along with *pendente lite* and future interest payable @ 12% per annum. If the defendants No.1 & 2 pay the decreetal amount to the plaintiff within three months from today, then the interest payable on the principal amount will be maintained @ 12% p.a., failing which the interest payable shall be raised to 18% per annum, till realization. The plaintiff is also awarded costs of the suit.

14. Decree sheet be drawn accordingly.

15. The suit is disposed of.

(HIMA KOHLI)
JUDGE

JULY 21, 2015
sk/ap