

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

% Order delivered on: 19th January, 2015

+ **CS (OS) No. 1833/2013**

M/s DARCL LOGISTICS LTD Plaintiff
Through Mr. Manu Beri, Adv.
versus

SHIV-VANI OIL & GAS EXPLORATION SERVICES LTD
.....Defendant
Through Mrs. Zartab Anwar, Adv. with
Mr. Surjeet Singh Malhotra, Adv

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The plaintiff has filed the present suit under Order XXXVII CPC for recovery of Rs.35,58,348/- along with interest @ 18% per annum against the defendant.
2. Brief facts of the case are that the plaintiff is *inter alia* engaged in the business of transporting goods by road all over India for both private and public sector companies through a network of its branches spread all over India. The defendant company is engaged in the business of drilling, oil and gas exploration etc.
3. It is stated that the defendant company approached the plaintiff company for transportation of drill pipes, chemicals etc. by road to various destinations in India vide various work orders for July, 2012 to September, 2012. The plaintiff company accordingly provided the freight rates for transporting the consignments/goods to various destinations to the defendant company and the defendant

company accepted/approved the freight rates and other terms and conditions vide various e-mails of the plaintiff. The payment of freight was agreed within 30 days from the date of the submission of the bills to the defendant company.

4. Accordingly the plaintiff company executed the transportation of the consignments to and from various destinations across India, details of the mails vide which the work orders were placed are mentioned in para 10 of the plaint. It is stated that the material was transported in a safe and sound condition to the destinations and the receipt of the material in safe and sound condition was duly acknowledged by the respective parties.

5. It is further stated that pursuant to the delivery of the goods/consignment to the destination, the plaintiff company raised various bills to the defendant company totalling to Rs.38,26,170/- out of which an amount of Rs.7,10,800/- was paid on account by the defendant to the plaintiff company for transportation. However, total amount of Rs.31,15,370/- is still due to the plaintiff company from the defendant company, details of the outstanding amount are mentioned in a chart in para 10 of the plaint.

6. The plaintiff company demanded the payment of outstanding amount from the defendant company through various e-mails and personal visits which was duly acknowledged by the defendant company and also promised to pay the aforesaid amount. The plaintiff company sought confirmation of the outstanding amount from the defendant company and on 13th February, 2013 the defendant company duly acknowledged the payment due i.e. the

principal amount of Rs. 31,15,170/- and confirmed that the bills were sent to Mumbai for payment.

7. Since the payment was not forthcoming, in spite of demand by the plaintiff, acknowledgment of debt by the defendant and promises in writing by the defendant company to pay, the plaintiff issued a legal notice dated 22nd June, 2013 to the defendant company to pay the outstanding amount of Rs. 31,15,370/- with interest @ 18% per annum. However, no payment of the said amount due or any reply to the legal notice was received by the plaintiff company from the defendant company. Consequently, the plaintiff filed this present suit.

8. The defendant was served on 21st October, 2013 and memo of appearance was filed on 29th October, 2013. An application being I.A. No. 10540/2014 under Order XXXVII Rule 3(5) CPC seeking grant of leave to defend the suit has been filed by the defendant wherein it was stated that the defendant has got good defence to contest the suit on merits.

9. Along with the application the defendant has also filed affidavit cum reply to the application for summons of judgment filed by the plaintiff contending that:-

- (i) Though the rates were agreed, but the plaintiff in each bill started claiming excess amounts, for which the defendant raised objections from time to time and the matter remained unsettled. The defendant requested the plaintiff for reconciliation of accounts however, the plaintiff failed to do the same.

- (ii) The payment of freight was agreed within 30 days from the date of not only submission of bills, but also plaintiff has to submit the POD to the defendant, thus there are variation in the amounts mentioned in the bills.
- (iii) The plaintiff had not transported the material in agreed period which resulted in delay in rig operations causing heavy financial loss to the defendant by way of deduction of amounts as liquidated damages by its client. The plaintiff has referred to e-mails but there is no acknowledgment of amounts by the defendant.
- (iv) The suit is not maintainable under Order XXXVII CPC as there is no written contract between the plaintiff and defendant with regard to the alleged amount due, as such the summary suit is not maintainable in law and the same to be converted as a regular suit.

10. There is no denial by the defendant that the endorsement made by the defendant on 13th February, 2013 which reads that "All above bills mentioned are sent to Bombay A/c for further reconciliation and payment", however the defendant is trying to justify that the said endorsement cannot be construed as an admission or acknowledgment of the alleged payment due.

11. Reply to the application on behalf of the plaintiff has been filed wherein it is stated that the defendant has acknowledged the debt payable to the plaintiff company and hence the summary suit is liable to decreed. Replication to the application has been filed by the defendant wherein the defendant has denied the assertions of the plaintiff.

12. From the pleading and document placed on record it is evident that the plaintiff company had rendered services to the defendant company. The defendant never raised any dispute with regard to the services and billing. The bills were duly acknowledged and admitted for payment but the defendant did not disburse the outstanding amount to the plaintiff company. The plaintiff had filed original proof of delivery along with freight bills raised to the defendant company with work order copies, consignment carbon copies, bills and delivery proofs with bill submission proofs. The defendant never informed the plaintiff of any wrong billing. The plaintiff had admittedly received an e-mail from Mr. Naveen Sharma of the defendant on 28th June, 2013 regarding conciliation of accounts. In reply the plaintiff sent complete ledger with balance outstanding to the defendant on 3rd July, 2013. After submitting the ledger, there was no reply received from the defendant and hence the plaintiff sent again e-mail on 22nd July, 2013 to confirm status of the outstanding amount, but defendant failed to give any reply.

13. It is the case of the plaintiff that there is no variation in amounts, all the bills have been made as per work order issued by defendant. The plaintiff delivered all the material/consignment to the defendant as per the advised transit time and the defendant never raised any objection or dispute with regard to the alleged delay. There was no report or intimation of damage to the consignment. The POD had been received clean and there had been no remark regarding alleged damage to the consignment. The defendant is raising false defence to wriggle out of its liability to pay the plaintiff.

14. As far as merit of the suit is concerned, the Supreme Court in ***M/s. Mechalec Engineers & Manufacturers v. M/s. Basic Equipment Corporation***, reported in 1977 SC 577 has evolved following principles after comprehensive review of the authorities on the subject:-

- a) If the defendant satisfies the Court that he has a good defence to the claim on its merits the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defence.
- b) If the defendant raises a triable issue indicating that he has a fair or bonafide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.
- c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend that is to say, although the affidavit does not positively and immediately make it clear that he had a defence, yet, shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.
- d) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.
- e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise

secured and give leave to the defendant on such condition and thereby show mercy to the defendant by enabling him to try to prove a defence.

15. It appears from the record that the plaintiff had written several e-mails and made several visits to the defendants for the clearance of the outstanding amount. The defendant had always confirmed the dues and have also issued balance confirmation letter categorically stating that bills have been submitted with them and sent to their Mumbai office for payment and till date no response has been received. There was no dispute with respect to the transportation services, delivery of consignments and bills raised. The reconciliation had been already done by the defendant but outstanding amount had not been paid. The present case is covered under the principles laid down in points (d) and (e) of the said decision of ***Mechalec Engineers & Manufacturers*** (supra). Therefore, the defendant has no defence in the instant summary suit and hence, the defendant is not entitled to leave to defend as it has failed to show any triable issue in the case.

16. In view of aforesaid reasons and facts and circumstances of present case, the application of the defendant for leave to defend i.e. I.A.No. 10540/2014 is accordingly dismissed. Consequently, in the absence of any defence, the plaintiff is entitled for relief.

17. Under these facts and circumstances, the plaintiff is entitled for a decree for recovery of amount of Rs 35,58,348/- along with interest @ 9% per annum instead of 18% interest as claimed by the plaintiff in terms of the prayer clause of the plaint from the date of filing of the suit till the date of payment.

18. The decree be drawn accordingly. The suit is disposed of.

(MANMOHAN SINGH)
JUDGE

JANUARY 19, 2015