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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 3492/2012

M/S F.C.M.L. DISTRIBUTOR PVT LTD

.... Plaintiff

Through : Mr. S. P. Mehta, Adv.

versus

KASHISH COUNTRY RESORTS LTD

..... Defendant

Through :

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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17.09.2015

Plaintiff has filed this suit against the defendant for recovery of ₹21,36,461/- along with pendente lite and future interest @ 18% per annum.

Plaintiff has filed the suit through its managing director Mr. Nirmal Khandelwal, who has been authorized to do so vide Board Resolution dated 8th August, 2012 of the plaintiff. The plaintiff is engaged in the business of supplying wide range of fixtures and fittings, hardware goods, bathroom and kitchen fittings etc. Pursuant to the order received from the defendant, plaintiff supplied material worth ₹17,40,461/- to the defendant vide bill numbers 93 to 98, all dated 1st January, 2011 for ₹1,10,510.15, ₹1,20,538/-, 10,23,752/- and ₹4,85,661/-. Defendant paid only ₹1,00,000/- leaving behind an amount of ₹16,40,461/- as due and payable, which remained unpaid despite repeated requests of the plaintiff. As on the date of filing of

the suit, ₹4,96,000/- was payable towards interest @ 18% per annum, thus, total amount of ₹21,36,461/- was payable by the defendant.

Despite service, defendant did not participate in the proceedings. Right of the defendant to file written statement has been closed vide order dated 19th July, 2013, inasmuch as defendant was proceeded against ex-parte vide order dated 20th May, 2014.

Plaintiff has lead ex-parte evidence. Affidavit of Mr. Nirmal Khandelwal Ex.PW-1/A has been filed. Documents relied upon by the plaintiff are Ex.PW-1/1 to Ex.PW-1/10.

PW-1 has corroborated the averments made in the plaint. Memorandum and articles of Association has been proved as Ex.PW-1/1. Copy of Board Resolution has been proved as Ex.PW-1/2. Copies of bills have been proved as Ex.PW-1/3 to Ex.PW-1/6. Copy of notice under Order 12 Rule 8 CPC served by the plaintiff on the defendant together with courier receipt and affidavit of service has been proved as Ex.PW-1/7 (Colly). Postal receipts have been proved as Ex.PW-1/8 (Colly). Computerized statement of account has been proved as Ex.PW-1/9. Certificate under section 65-B of Evidence Act has been proved as Ex.PW-1/10. Demand notice dated 29th June, 2012 along with courier receipts have been proved as

Ex.PW-1/11 (Colly).

From the evidence adduced by the plaintiff, I am satisfied that plaintiff has succeeded in proving that it had supplied goods worth ₹17,40,461/- to the defendant on 1st January, 2011 vide the bills, detailed herein above. A sum of ₹16,40,461/- is outstanding towards the supplies, which the defendant has failed to pay despite demands.

Admittedly, there is no specific agreed rate of interest payable by the defendant. However, present being commercial transaction, defendant is liable to pay interest since it had deprived the plaintiff its legal dues inasmuch as the amount was retained by the defendant for its own benefit. I am of the view that it would be justified as per the prevalent rate of interest the plaintiff is awarded interest @ 12% per annum.

Accordingly, I pass a decree in favour of the plaintiff and against the defendant in the sum of ₹16,46,461/- together with interest @ 12% per annum with effect from 1st January, 2011 till realization of the decretal. Plaintiff shall also be entitled to costs of the proceedings.

A.K. PATHAK, J.

SEPTEMBER 17, 2015

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