

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

% Order delivered on: 23rd November, 2015

+ **CS (OS) No.2857/2014**

SRIRAM COMPOUNDS PVT. LTD.Plaintiff
Through Mr. H.K.Chaturvedi, Adv.

versus

SANJAI GUPTA & ORS. Defendants
Through Defendants are ex parte.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiff has filed a summary suit under Order XXXVII CPC for recovery of a sum of Rs.21,80,596/- along with pendent lite and future interest @ 24% per annum.

2. Brief facts of the case as per plaint are that the plaintiff is a private limited company registered under the provisions of the Companies Act, 1956. Defendant Nos. 1 to 3 are the partners of M/s Shivam Industries having their factory at Sector-A, Plot No.301, 325, Pitampur, District Dhar, Madhya Pradesh. Defendant No.4 is a partnership firm and is being prosecuted through defendant No.1.

3. It is averred in the plaint that the defendants purchased materials from the plaintiff against purchase order No.SRG/SH/04 dated 6th November, 2008 for which the plaintiff raised invoice No. 383 dated 17th November, 2008 and invoice No.400 dated 27th November, 2008 for a total sum of Rs.15,76,380/-. Out of the aforesaid principal amount of Rs.15,76,380/-, the defendants had made a part payment through

online transactions of Rs.3,00,000/- in two parts i.e. Rs.2,00,000/- on 28th December, 2008 and Rs.1,00,000/- on 12th January, 2009 which has already been adjusted. On 31st March, 2009 the plaintiff further had given a discount of Rs.16,100/- to the defendants. Hence, a sum of Rs.12,60,280/- [Rs.15,76,380/- (Principal Amount) – Rs.3,16,100/- (Adjusted Amount)] is due and recoverable from the defendants with interest @ 24% per annum.

4. Thereafter, the defendants in discharge of their liabilities issued 7 cheques on two occasions. On the first occasion, the defendants issued 4 cheques along with a covering letter dated 20th March, 2009 bearing Nos. 611351 dated 25th April, 2009 for Rs.2,00,000/-, 611352 dated 19th May, 2009 for Rs.2,00,000/-, 611353 dated 10th June, 2009 for Rs.2,18,007/- and 611354 dated 20th June, 2009 for Rs.1,42,273/- all drawn on Union Bank of India, Sindhi Colony, Indore-452001. On the second occasion, the defendants further issued 3 more post dated cheques i.e. 603241 dated 7th May, 2011 for Rs.2,00,000/-, 603242 dated 9th May, 2011 for Rs.2,00,000/- and 603243 dated 10th May, 2011 for Rs.1,00,000/- all drawn on Union Bank of India, Sindhi Colony, Indore-452001 in favour of the plaintiff.

5. The plaintiff presented the said cheques issued on the first occasion for encashment to its banker but all the cheques were returned unpaid vide Memo(s) dated 15th July, 2009, 15th July, 2009, 19th June, 2006 and 30th June, 2006 with the remarks 'insufficient funds'. The plaintiff also presented the cheques issued on the second occasion by the defendants with its bankers which were also returned unpaid vide memo dated 12th May, 2011.

6. Thereafter, the plaintiff issued legal notices dated 24th July, 2009 and 14th July, 2009 under Section 138 of the Negotiable Instruments Act, 1881 to M/s Shivam Industries. However, the defendants despite receiving the legal notice failed to make the payment of the unpaid cheques. The plaintiff also filed a complaint under Section 138 Negotiable Instruments Act, 1881 against the defendants which is pending in the court of Chief Judicial Magistrate, Gautam Budh Nagar.

7. It is further stated that the defendants admitted its liability vide email dated 26th October, 2012 for Rs.15,10,280/- payable by them to the plaintiff as under:-

Admitted amount (as per email dated 26 th October, 2012 of the defendant)	Rs.15,10,280/-
Interest on the above @24% p.a. on principal amount (as per invoice dated 17 th November,2008 and 27 th November,2008) (Interest from 26 th October, 2012 to 1 st September, 2014)	Rs.6,70,316/-
Total	Rs.21,80,596/-

8. When the matter was listed before the Court, no one appeared on behalf of the defendants nor an application for leave to defend was filed and consequently, they were proceeded *ex parte* vide order dated 24th February, 2015.

9. Thereafter, Mr. Sameer Kaushik working as Manager Legal of the plaintiff Company filed his affidavit wherein he deposed that as per email dated 26th October, 2012 sent by Shivam Industries to him as well

as to the plaintiff Company and also to the Board of Directors, the defendants admitted its total payable amount of a sum of Rs. 15,10,280/- as full and final amount. The plaintiff Company, in view of the full and final settlement amount as admitted by the defendants did not re-file its 4 criminal complaints under Section 138 of Negotiable Instruments Act, 1881 before the competent court after receiving the original complaint from the Gautam Budh Nagar court. The original 4 complaints along with original cheques and other original documents have been filed as per order dated 24th February, 2015.

10. He deposed that as per the plaintiff's books of accounts maintained against the defendants, a sum of Rs.32,32,868/- is payable by the defendants as on 15th May, 2015. However, the suit has been filed on the basis of admitted amount of Rs.15,10,280/- as per email dated 26th October, 2012 and interest has been calculated on the above admitted amount of Rs.15,10,280/- from 26th October, 2012 @ 24% p.a. as per invoices of the plaintiff.

11. He further deposed that as per email dated 23rd October, 2012 through which the defendants emailed 6 scanned copies of demand drafts totalling to Rs.13,60,280/- which was immediately replied and objected by the plaintiff through him vide his email dated 26th October, 2012 sent to the defendants in which he specifically pointed out "*The amount in the trailing mail is not the amount of settlement agreed by Mr. Sanjai Gupta and Mr. Aas Mohd. Advocate*". Thereafter, he reminded the defendants that Rs.13,60,280/- was not the amount which was settled. The full and final settled amount of Rs.15,10,280/- was admitted by the defendants vide email dated 26th October, 2012 wherein the defendants emailed 2 more demand drafts of Rs.15,10,280/- which was agreed to be handed over by the defendants

to the plaintiff on 4th November, 2012. However, the defendants backed out from the settlement.

12. Mr. Sameer Kaushik also filed his additional affidavit dated 19th November, 2015 wherein he deposed that the defendants as per their settlement with the plaintiff got prepared 8 demand drafts for the amount of Rs.15,10,280/- which was exactly the same amount of the settlement. He also deposed that the plaintiff Company has only received the scanned copies of all the 8 demand drafts from the defendants and till date no original demand drafts have been received by the plaintiff Company from the defendants. Thus, original demand drafts have not been placed on records.

13. The plaintiff has filed original documents pertaining to the complaints filed by him under Section 138 Negotiable Instruments Act, 1881 against the defendants as well as the legal notices issued to the defendants. Besides, the plaintiff has also placed on record the original cheques issued by the defendants to the plaintiff.

14. The claim raised by the plaintiff is uncontested. In view of the above, the suit of the plaintiff is decreed for a sum of Rs. 21,80,596/- against the defendants. The plaintiff is also entitled for pendent lite and future interest @ 12% per annum from the date of filing of the suit till the date of payment as the rate of interest @ 24% claimed by the plaintiff in the plaint is on the higher side.

15. The plaintiff is also entitled for costs.

16. Decree be drawn accordingly.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 23, 2015