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

% *Judgment reserved on: 09.01.2015*
Judgment delivered on :14.01.2015

\+ CS(OS) 149/2009

SHRI RAM PRATAP GOEL ..... Plaintiff

Through Mr.A.K.Jain, Advocate.

versus

M/S MANU ENTERPRISES & ORS ..... Defendants

Through Mr.R.S.Kansotia, Advocate. Mr.S.P.Singh Choudhary and Mr.Uddav Pratap, Advocate for Objectors.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The present suit is a suit for recovery of Rs.23,50,462.17 of which Rs.18,22,492/- is the principle figure and the balance amount is interest calculated @ 24% per annum.

2 The plaintiff Ram Pratap Goel is the sole proprietor of M/s Rajit Textiles, E-16/607, located Near Water Tank, Main Tank Road, Karol

Bagh, New Delhi. He had business dealings with the deceased Manoj Kumar @ Manu who was the sole proprietor of M/s Manu Brothers and carrying on business under the said name from 6393, Street No.3, Block No.7, Dev Nagar, Karol Bagh, New Delhi.

3 Plaintiff was supplying clothes for fabrication of garments on credit basis to the deceased who used to issue post dated cheques for discharge of his liability. Manoj Kumar @ Manu died on 11.10.2007 and on the date of his death he owed Rs.20,22,492/- to the plaintiff. Defendant no.1 Kiran Khorwal, the wife of the deceased and defendant no.2 Jitender Kumar, brother of the deceased, are liable to pay this sum of Rs.18,22,492/- to the plaintiff along with interest. After the death of the deceased Manoj Kumar a sum of Rs.2,00,000/- had been received by the plaintiff through seven different transactions i.e. a sum of Rs.1,00,000/-, Rs.15,000/-, Rs.20,000/-, Rs.10,000/-, Rs.15,000/-, Rs.15,000/- and Rs.25,000/- which was paid by defendant no.1 through defendant no.2 vide receipts dated 19.10.2007, 24.10.2007, 28.10.2007, 31.10.2007, 01.11.2007, 05.11.2007 and 08.11.2007 duly acknowledged by the defendant no.2.

4 Written statement was filed by all the defendants disputing these

contentions. It was not denied that the parties had business dealings with one another and the plaintiff used to supply fabrics to the defendant Manoj Kumar who was the sole proprietor of M/s Manu Brothers. Submission was that after the death of Manoj Kumar the firm M/s Manu Brothers was reconstituted as M/s Manu Enterprises. There was no privity of contract between the plaintiff and the newly constituted firm M/s Manu Enterprises. No amount was due to the plaintiff as all payments had been made to the plaintiff in cash.

5 Replication was also filed.

6 Learned counsel for the plaintiff under instructions states that he is not pressing his claim against defendant nos.4 and 5 (minors at the time of filing of the suit.). He also does not press his claim against defendant no.3 who has since expired. He rests his claim only upon defendant nos.1 and 2.

7 On the pleadings of the parties, on 03.8.2009 the following issues were framed:

i. Does the plaintiff disclose a cause of action: OPD

ii. Is the suit not maintainable against the Defendants 4 and 5 in the absence of the plaintiff seeking permission under Order

XXXII Rule 3 CPC? OPD

iii. Is the plaintiff entitled to recover Rs.18,22,492/- from the defendants as claimed? OPP

iv. In the event of the plaintiff succeeding in Issue No.3 is he entitled to interest and to what amount? OPP

v. Relief.

ISSUE NO. (ii)

8 Issue no.ii has not been pressed. This has been noted supra. It is disposed of accordingly.

9 The findings on the remaining issues read herein as under:

ISSUE NO. (i)

10 The onus to discharge this issue was on the defendant. Para 23 of the plaint has described the cause of action. The defendant has not disputed that the parties had business dealings with one another. Cause of action is clearly decipherable. This issue is decided in favour of the plaintiff and against the defendant.

ISSUE NOS. (iii) & (iv)

11 Both these issues shall be decided together. On behalf of the plaintiff PW-1 i.e. the plaintiff Ram Pratap Goel had entered the witness

box. He had proved his affidavit by way of evidence as Ex.PW-1/A reiterating the averments made in his plaint. He relied upon 67 documents which included his statement of account proved as Ex.PW-1/1 and Ex.PW-1/2. Invoices/bills issued by plaintiff have been proved as Ex.PW-1/3 to Ex.PW-1/35; they are w.e.f. 10.10.2007 to 19.01.2008. Blank cheques issued by the deceased (seven in number) duly signed by the deceased Manoj Kumar have been proved as Ex.P-1 (collectively). Balance sheet was proved as Ex.PW-1/50 The statement of account maintained by the defendant in Keshav Sehkari Bank in the name of M/s Manu Brothers has also been exhibited through the testimony of PW-3 as Ex.DW-3/1 (collectively).

12 In his cross-examination PW-1 reiterated the averments that PW-1 was supplying goods to the defendant which were purchased by him. He denied the suggestion that defendant nos.1 and 2 have no connection with Manu Brothers. He admitted that he had received only a sum of Rs.2,00,000/- in cash after the demise of Manoj Kumar. No further amount has been received by him. He stated that the personal diary (Ex.DW-1/2) of Manoj Kumar produced by the defendant in Court is a

fabricated document which has been created by the defendants after the demise of Manoj Kumar.

13 The defendant had produced three witnesses in defence of whom DW-1 Jamman Lal (defendant no.3) has since expired; his testimony could not be completed and as such both counsels for the parties fairly concede that his evidence may not be read in evidence.

14 Defendant no.2 was the wife of deceased Manoj Kumar. She has filed her evidence by way of affidavit and proved it as Ex.DW-2/A. Her categorical averment on oath is that the present suit was a false litigation as the entire payment which was due and payable to the plaintiff has since been made. She admitted that post dated blank cheques used to be given by her husband to the plaintiff but she denied that Rs.22,22,492/- was due and payable at the time of the death of her husband. She on oath stated that Ex.DW-1/2 (the personal diary of Manoj Kumar) clearly showed that he had made all payments to the plaintiff and no amount was due to the plaintiff. The statement of account of Keshav Sehkari Bank in the name of M/s Manu Brothers was proved as Ex.DW-1/1. This was w.e.f. 03.04.2006 upto 13.12.2007; last transaction with the

plaintiff (Rajit Textile) was dated 11.10.2007 i.e. prior to the date of the death of the defendant. This entry dated 11.10.2007 is a payment in the sum of Rs.1 lac made to the plaintiff. There is no dispute upon this transaction. Submission of the defendants that a sum of Rs.3,91,700/- has been paid to the plaintiff out of which only Rs. 2 lacs has been admitted by him is not substantiated by any document.

15 DW-2 was subjected to a lengthy cross-examination. She admitted that her husband was murdered. She admitted that her husband and the plaintiff used to have business dealings. She admitted that at the time when the transactions were entered into between her husband and the plaintiff M/s Manu Brothers used to purchase goods against blank cheques which were handed over to the plaintiff to be presented to the bank when asked. She admitted the signatures of her father-in-law on Ex.PW-1/36 and Ex.PW-1/42 which are letters on the letter head of the plaintiff dated 19.10.2007, 24.10.2007, 28.10.2007, 31.10.2007, 01.11.2007, 05.11.2007, 08.11.2007 (evidencing repayment of Rs.2,00,000/- to the plaintiff on signatures of her father-in-law). She admitted that her husband had his bank account at Keshav Sehkari Bank.

She stated that as per her re-collection, after the death of her husband more than Rs.5-6 lacs had been paid to the plaintiff but she did not know exact dues of the plaintiff. She admitted that a sum of Rs.2,00,000/- was paid to the plaintiff through her brother-in-law. She denied that any further payment is due to the plaintiff.

16 This evidence both oral and documentary as adduced above clearly show that the parties had business dealings. The statement of account filed by the plaintiff (Ex.PW-1/1 and Ex.PW-1/2) the balance sheet (Ex.Pw-1/50) further shows that as on the date of death of Manoj Kumar, 11.10.2007) as sum of Rs.22,22,492/- was due and payable from the defendant to the plaintiff. A sum of Rs.2,00,000/- has since been paid which is evident from Ex.PW-1/36 to Ex.PW-1/42. These are seven receipts evidencing repayment of Rs.1,00,000/-, Rs.15,000/-, Rs.20,000/-, Rs.10,000/-, Rs.15,000/-, Rs.15,000/- and Rs.25,000/- all after the death of Manoj Kumar i.e. between 19.10.2007 and 08.11.2007 duly admitted by DW-2 as having been signed by her father-in-law. This position is also admitted by the plaintiff. The statements of account filed by the plaintiff of M/s Manu Brothers and thereafter of

M/s Manu Enterprises (Ex.PW-1/1 and Ex.PW-1/2) maintained with Keshav Sehkari Bank do not reflect any payment by the defendant to the plaintiff after the demise of Manoj Kumar i.e. after 11.10.2007. In fact this position is not disputed and has been admitted by the defendant. It is admitted that after the demise of Manoj Kumar the statement of accounts do not reflect any payment except a sum of Rs.2,00,000/- which is evidenced through Ex.PW-1/36 to Ex.PW-1/42. The personal diary of the deceased Ex.DW-1/2 which had come up for the first time in the evidence of the defendants appears to be fabricated and connived; there is otherwise no explanation as to why this document had not seen the light of the day in the pleadings of the defendants.

17 Record thus clearly shows that after 11.10.2007 apart from a payment of Rs.2,00,000/- no other further payment had been made by the defendant to the plaintiff. A sum of Rs.18,22,492/- is clearly due and payable by the defendant to the plaintiff.

18 As stated supra, defendant no.1 is the wife of deceased Manoj Kumar and defendant no.2 is his brother. The relationship is not disputed. The fact that this business was earlier being carried out by

Manoj Kumar under the name of M/s Manu Brothers and it has then been taken over by M/s Manu Enterprises is also admitted. Defendant no.1 being the wife of the deceased Manoj Kumar has inherited the estate of her husband. Defendant no.2 is his brother who is now carrying on the same business under the name and style of M/s Manu Enterprises (earlier it was M/s Manu Brothers) The liability to pay this amount of Rs.18,22,942/- is to be borne by both defendant nos.1 and 2. A decree in the sum of Rs.18,22,942/- is accordingly passed in favour of the plaintiff and against the defendant nos.1 and 2.

19 The plaintiff is also entitled to interest. There is no stipulated interest; however, keeping in view the fact that this is a business transaction and the parties had commercial dealings inter se; but also noting the fact that Manoj Kumar has since expired and the liability is now upon his widow and his brother interest @ 9% per annum would suffice i.e. w.e.f. from the date of filing of the suit till the date of realization. It is ordered accordingly. Both the issues are disposed of.

<u>RELEF:</u>

20 Suit of the plaintiff is decreed in the aforenoted terms. Cost of Rs.25,000/- are also awarded in favaour of the plaintiff.

INDERMEET KAUR, J

JANUARY 14, 2014/ndn