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

RESERVED ON : 7th SEPTEMBER, 2017
DECIDED ON : 20th SEPTEMBER, 2017

\+ **CS(OS) 1853/1998**

M/S GOYAL FASHIONS LTD. ..... Plaintiff
Through : Mr.Shankar Vaidialingam with Mr.Shivain Vaidialingam, Advocates.

VERSUS

M/S SHANTI VIJAY JEWELLERS &ANR. ..... Defendants
Through : None.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The present suit for recovery of ₹2,12,33,972/- has been preferred by M/s.Goyal Fashions Ltd. (hereinafter referred to as 'the plaintiff') against the defendants. Defendant No.2 (Manoj Godha) is stated to be the proprietor of M/s. Shanti Vijay Jewellers (defendant No.1).

2. Briefly stated, the facts as pleaded in the plaint are that in early 1992 Mukund Sharan Goyal, Director of plaintiff company came in contact with the defendants claimed to be an export organisation. At the request of defendant No.2, the plaintiff and another proprietorship firm M/s.Goyal Modes through Mukund Sharan Goyal were persuaded to place a certain sum of money as a deposit with defendant No.1 whose business was of procuring and manufacturing of jewellery. The defendants had initially requested that an amount of ₹1.50 crores be placed with them as a deposit on a monthly rate of

interest i.e. 18%. It is averred that the plaintiff paid as a deposit an amount of ₹1 crore to the defendant No.1 on 04.06.1992; it was telegraphically transferred in the defendant No.1's account with United Bank of India, Hotel Oberoi International Branch, Dr.Zakir Hussain Marg, New Delhi against cheque No.072508. The amount was duly received and was credited in the Current Account No.737 maintained by defendant No.1 with the said branch. It is further averred that M/s.Goyal Modes also paid a sum of ₹50 lacs to defendant No.1 firm on 24.06.1992 in similar circumstances. The present suit, however, pertains to the deposit of ₹1 crore with the defendant No.1. It is informed that for recovery of the balance of ₹50 lacs another suit i.e. CS(OS) No.1854/1998 was also filed. However, it has been transferred to District Court due to change in pecuniary jurisdiction on 22.11.2016. Subsequently, ₹35 lacs in all were returned out of ₹50 lacs paid by M/s. Goyal Modes on various dates. When the defendants failed to return the amount of ₹1 crore despite various reminders, in March / April, 1994, the defendants assured to refund the amount with interest in near future. A cheque bearing No.776501 dated 27.10.1994 was issued in favour of the plaintiff for a sum of ₹1 crore. However, on presentation, the said cheque was dishonoured with the remarks that the account had been closed. On 12.01.1996, the defendants forwarded a cheque No.346948 for a sum of ₹5 lacs as part payment vide a covering letter dated 12.01.1996 assuring to arrange the balance payment. This cheque too was dishonoured due to stoppage of payment by the drawer. Proceedings under Section 138 Negotiable Instruments Act were initiated against the defendants. The defendants failed to make the payment despite several reminders. Hence, the suit.

3. The suit is contested by the defendants. Besides taking preliminary objections regarding the plaintiff's locus standi to file the present suit; lack of privity of contract between the parties etc., on merits, it was contended that the claim raised by the plaintiff was false. In April, 1992 Mukund Sharan Goyal was introduced to defendant No.2 by one Subhash Barjatya who had commercial relationship with it (defendant No.2) regarding sale and purchase of his jewellery. Prior to that, the defendant No.2 had no relationship whatsoever with Mukund Sharan Goyal or his company. Mukund Sharan Goyal at the instance and behest of Subhash Barjatya transferred a sum of ₹1.5 crores telegraphically in the bank account of the defendant No.1. Mukund Sharan Goyal had some commercial interest and relationship with Subhash Barjatya as a result of which he (Mukund Sharan Goyal) unhesitantly agreed to pay ₹1.5 crores by cheque as security and finance for the Jewellery intended to be taken by Subhash Barjatya from defendant No.2. Subhash Barjatya took Jewellery worth ₹8.25 crores from the defendant No.2 on approval basis in pursuance of a clear understanding that as and when he (Subhash Barjatya) would sell those jewellery to a third party, he would deposit the sale price with the defendant No.2 and an equivalent amount would be disbursed to Mukund Sharan Goyal through Subhash Barjatya who had floated ₹1.5 crores as security amount. The commercial relationship which existed between Subhash Barjatya and Mukund Sharan Goyal was unknown to the defendants.

4. It is further averred that Subhash Barjatya paid a sum of ₹2.25 crores through pay orders as advance for the jewellery taken by him. As and when Subhash Barjatya used to advance the security amount from third party having sold certain jewellery, the defendant No.2 used to pay back the equivalent amount through Subhash Barjatya to the plaintiff after making necessary adjustment. A sum of ₹1,74,40,000/- had already been paid to Subhash Barjatya by defendant No.2 towards the amount of ₹2.25 crores paid by him. Subhash Barjatya, however, did not return the jewellery taken by him. It prompted the defendant No.2 to institute suit No.2396/1997 against Subhash Barjatya, Mukund Sharan Goyal and the plaintiff.

5. It is further averred that two cheques for a sum of ₹5 lacs each in the name of M/s.Goyal Fashion (P) Ltd. and M/s.Goyal Modes, Jaipur were obtained under misrepresentation by Mukund Sharan Goyal.

6. In the replication, the plaintiff denied the averments in the written statement.

7. On the basis of the pleadings of the parties and the documents on record following issues were framed by an order dated 21.09.2004 :

> *"1. Whether the amount of rupees one crore paid by the plaintiff to the defendant no.1 on 4.6.1992 was an interest bearing deposit or was by way of security deposit as contended by the defendants? OPP*
> *2. Whether the plaintiff is entitled to interest on the above amount of rupees one crore from the defendants and if so at what rate? OPP*

3. Whether the present suit is bad for non-joinder of necessary parties? OPD
4. Whether the plaintiff is entitled to recover the suit amount of Rs.2,12,33,972/- from the defendants? OPP
5. Whether the plaintiff is entitled to an interest? OPP
6. Relief."

8. By an order dated 06.11.2007, following additional issue was framed :

> "*Whether the suit of the plaintiff is barred by time? OPD*"

9. To establish its case, the plaintiff examined PW-1 (Mukund Sharan Goyal) and other witnesses - PW-2 (Arun Jain), PW-3 (Naresh Taneja) and PW-4 (Vivek Kishore Saxena). Defendant No.2 examined himself as DW-1 (Manoj Godha) and witnesses - DW-2 (Anil Kumar Sharma) & DW-3 (Tejender Singh Datta).

10. When the case was fixed for final disposal, none appeared on behalf of the defendants to address arguments. After hearing arguments addressed by learned counsel for the plaintiff, the judgment was reserved. Subsequently, learned defence counsel appeared and placed on record written submissions. Issue-wise findings are as under :

Issues No.1 & 4

11. On perusal of the pleadings of the parties and the documents on record, it stands established that ₹1 crore were telegraphically transferred by the plaintiff in the bank account of the

defendant No.1 on 04.06.1992. In the written statement, the defendants have categorically admitted the receipt of payment of ₹1.5 crore by cheque from the plaintiff. Their only plea is that this payment of ₹1.5 crore was received as a security and finance for the jewellery intended to be taken by Subhash Barjatya from defendant No.2. This fact has been denied by the plaintiff. No worthwhile evidence has come on record to substantiate the defendants' plea that ₹1.5 crore were received as security and finance for the jewellery intended to be taken by Subhash Barjatya. No such document has been placed on record by the defendants to show if any jewellery was taken for any specific value by Subhash Barjatya. Subhash Barjatya is not a party in the present proceedings. It is relevant to note that the defendants had instituted civil proceedings bearing No.2396/1997 i.e. suit for injunction against Subhash Barjatya, proprietor, Precious Arts & Jewels, Hotel Maurya, New Delhi; Mukund Goyal, Goyal Fashions Pvt. Ltd. through its Director Mukund Goyal and M/s.Goyal Modes through its proprietor, Ashish Goyal on 11.11.1997. Copy of the plaint in the said suit No.2396/1997 (New No.312/2003) is on record. The said suit was contested by Subhash Barjatya and defendants No.2 to 4 therein. The written statements filed by the said defendants are on record. The said suit was dismissed by a judgment and decree dated 04.04.2005. It was challenged in RFA 674/2005. This Court by an order dated 22.09.2008 ordered to delete defendants No.2 to 4 therein from the array of parties as there was no privity of contract between the plaintiff and defendants No.2 to 4 therein. The suit dismissed vide order dated 04.04.2005 was restored and the Trial Court was requested to grant an opportunity to the plaintiff therein to file adequate Court fee and to amend para 27 of the plaint pertaining to valuation of the suit for the purpose of court fee and jurisdiction. Undisputedly, the plaintiff therein did not take any steps in terms of the said order dated 22.09.2008. He did not opt to amend the suit or to file Court fee. No plausible explanation has been offered by the defendants as to why the contentions raised in the said suit were not taken to logical conclusions.

12. The plaintiff has also proved on record that cheque bearing No. 776501 dated 27.10.1994 in the sum of ₹1 crore (Ex.P1) was issued in favour of the M/s.Goyal Fashions Pvt. Ltd. Signatures on Ex.P1 have been admitted by the defendants, its contents, however, have been denied. It was not disclosed by the defendants as to how and under what circumstances, cheque (Ex.P1) was issued to the plaintiff. This cheque on presentation was dishonoured and the bank memo is mark 'B' as per which the account stood already 'closed'. The plaintiff has also filed on record letter dated 01.11.1994 (Ex.P2) received from the defendants informing that the cheque book bearing cheques No.826634, 826635, 826636 and 776501 was misplaced. Request was made to the plaintiff to divulge as to from where the cheque (Ex.P1) was procured to enable them to find out the whereabouts of the other cheques. No evidence has, however, emerged on record if any chequebook was ever misplaced by the defendants; no report to the bank or to the police was ever made in this regard. Apparently, the defendants though initially intended to return

the amount of ₹1 crore vide cheque Ex.P1 changed their mind and on presentation the cheque was dishonoured.

13. The plaintiff has further proved on record letter (Ex.P5) received from defendant No.1 on its letterhead. This is a covering letter enclosing cheque No.346948 in favour of the M/s.Goyal Fashions Pvt. Ltd. for a sum of ₹5 lacs as part payment of the amount given by the plaintiff. There is specific acknowledgement that after this payment, the balance amount payable stood ₹95 lacs. Assurance was given to arrange the repayment of the balance at the earliest. Signatures on Ex.P5 at appoint 'B' have not been denied though its contents have been challenged. Again, no credible evidence has emerged on record to infer as to how this letter came into existence falsely. It is a typed letter and bears signatures of defendant No.2 on behalf of the defendant No.1. Again, this cheque (Ex.P6) on presentation was dishonoured with the remark "payment stopped by the drawer". Signatures on the cheque Ex.P6 is not denied and feeble attempt was made by the defendant in evidence to show that this cheque was obtained by false misrepresentation to be shown to Subhash Barjatya. This explanation simply does not appeal to mind and cannot be believed.

14. PW-1 (Mukund Sharan Goyal) in his evidence by way of affidavit (Ex.PW-1/A) fully proved the contents of the plaint; he also proved various documents (Ex.P1 to Ex.P7). He was cross-examined at length, however, material facts deposed by him remained unchallenged and uncontroverted. No suggestion was put to the witness if ₹1.5 crore were paid by him at the behest of Subhash

Barjatya as security and finance for the jewellery intended to be taken by him (Subhash Barjatya) from defendant No.2. Conflicting and entirely inconsistent suggestion has been put to the witness stating that his son along with Subhash Barjatya had taken the jewellery worth ₹1 crore from the defendants against the amount which was transferred in the account of the defendant. No plea was taken by the defendants in the written statement if any jewellery had been purchased by Mukund Sharan Goyal's son, and if so, for what value and on which date. In the cross-examination, PW-1 categorically stated that he did not know Subhash Barjatya. He denied if he came into contact with defendant No.2 through him. The witness denied if Ex.P5 was a forged and fabricated document. He denied if Ex.P1 was stolen by the plaintiff or its employee from the office of the defendant and misused it by filling up of the figure of ₹1 crore. The witness categorically denied that since the plaintiff had already taken the jewellery against the amount of ₹1 crore in question, the amount was not reflected in the books of accounts of the plaintiff's company. No evidence has come either oral or documentary to show if at any time any jewellery was purchased for any consideration either by the plaintiff or his son from the defendant No.2 and the amount of ₹1 crore or ₹1.5 crores (in two cases) was adjusted towards the same.

15. DW-1(Manoj Godha) in his affidavit (Ex.DW-1/A) did not claim if any jewellery was purchased by the plaintiff or his son and ₹1 crore was adjusted towards it. In the affidavit again the plea of the defendants was that ₹1.5 crore were paid by the plaintiff at the instance of Subhash Barjatya as a security for the jewellery intended

to be taken by him (Subhash Barjatya). In the cross-examination, DW-1 (Manoj Godha) admitted that till date he had not taken the steps to comply with the directions of this Court in RFA No. 674/2005. He further admitted that there was no dispute to the fact that ₹1 crore was paid to M/s. Shanti Vijay Jewellers by plaintiff somewhere in 1992. He volunteered to add that it was on the instructions of Subhash Barjatya. The defendants, however, did not bother to examine Subhash Barjatya as a witness to substantiate their plea. The defendants further admitted that Mukund Goyal met them for the first time in 1992. DW-1 further admitted his signatures on Ex.P5 at point 'B'. It was further admitted that this letter was given by him to Mukund Goyal. 'Stoppage of payment' of the cheque Ex.P6 is not denied. In the cross-examination, the witness further admitted his signatures on Ex.P1 though he claimed that this cheque was not issued to M/s.Goyal Fashions Pvt. Ltd. He admitted that he was aware that the cheque (Ex.P1) on presentation was dishonoured.

16. From the above discussion, there is not an iota of doubt that ₹1 crore were given to the defendants by the plaintiff on 04.06.1992. The cheque (Ex.P1) given by the defendants to return the amount, however, on presentation was dishonoured. Subsequent payment of ₹5 lacs by way of Ex.P6 also did not yield any result. Consequently, the entire payment of ₹1 crore has remained unpaid till date. The defence taken by the defendants that the said payment was given as a security has remained unproved and cannot be believed. The plaintiff is thus entitled for the sum of ₹1 crore from the defendants.

Issues No.2 & 5

17. Learned counsel for the plaintiff fairly admitted that there was no agreement in writing to pay any specific rate of interest over the payment of ₹1 crore given to the defendants on 04.06.1992. No evidence has come on record whatsoever if there was any agreement oral or in writing between the parties to pay interest on ₹1 crore taken from the plaintiff. The documents on record proved by the plaintiff do not reflect if any time the defendants had agreed to pay any interest to the plaintiff for the amount of ₹1 crore received. It is fairly admitted by the learned counsel for the plaintiff that the plaintiff can be denied of interest calculated before the filing of the present suit. Accordingly, the plaintiff is not entitled for any interest prior to the institution of the suit.

18. However, he shall be entitled to a reasonable rate of interest from the date of filing of the suit till its realisation. These issues are decided in favour of the defendants and against the plaintiff.

Issue No.3

19. It has not been explained as to how the suit is bad for non-joinder of necessary party. In the plaint, the plaintiff did not aver if Subhash Barjatya was privy to the contract. His presence was not required. The issue is decided in favour of the plaintiff and against the defendants.

Additional Issue

20. ₹1 crore were paid to the defendants on 04.06.1992. The plaintiff has proved on record issuance of cheque (Ex.P1) by the

defendants in the sum of ₹1 crore to clear the liability. This cheque in the name of the plaintiff is dated 27.10.1994 and on presentation, it was dishonoured. By issuance of this cheque, the defendants clearly acknowledged the liability to pay ₹1 crore to the plaintiff. Crucial document is Ex.P5 where there is specific acknowledgement on 12.01.1996 of the liability to pay ₹1 crore. A cheque for a sum of ₹5 lacs (Ex.P6) was issued in favour of M/s.Goyal Fashions Pvt. Ltd. as part payment. Again, it was dishonoured on presentation. No payment subsequent to that was made. Since there was clear admission / acknowledgment of the debt / liability, the present suit filed by the plaintiff is within limitation. The defendants have not produced on record any cogent evidence to prove if the suit filed by the plaintiff is barred by limitation. The issue is decided in favour of the plaintiff and against the defendants.

Relief

21. In the light of above discussion, the suit of the plaintiff is decreed in the sum of ₹1 crore with proportionate costs. The plaintiff shall be entitled to interest @ 6% per annum on the decreetal amount from the date of filing of the suit till its realisation. Decree-sheet be prepared accordingly.

(S.P.GARG)
JUDGE

SEPTEMBER 20, 2017 / *tr*