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

\+ CS(COMM) 410/2016

SEO PAL ..... Plaintiff

Through: Mr. Sanjay Relan with Mr. Sushant Dahiya, Advocates.

versus

QUALITY RICE EXPORTS PVT LTD ..... Defendant

Through: Mr. Aslam with Mr. Balbir Singh, Advocates.

% Date of Decision: 29th August, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

I.A. No. 3621/2017

1. Present application has been filed under Order XIII-A read with Section 151 CPC.

2. The relevant facts of the present case are that the plaintiff is running a sole proprietorship firm under the name and style of "Banarsi Dass & Sons" as a grain merchant and commission agent from its office at 2376, Mandi Extension, Narela, Delhi-110040.

3. The defendant is a registered company having its registered office at Nial Bye-Pass Road, Patran, Distt. Patiala, Punjab.

4. On 5th April, 2014, the plaintiff/applicant filed the present suit for recovery of money due against the supplies of paddy made between 11th May, 2014 and 10th August, 2014 to the defendant company. It is the plaintiff's case that the defendant company has paid a sum of Rs. 1,25,00,000/- against the total supplies of Rs. 2,87,51,689.05, thus leaving a balance of Rs. 1,62,51,689.05/- as due and payable by the defendant. The plaintiff also claims interest @Rs.1.80% per month that is 21.6% per annum on the amount due.

5. The defendant was duly served on 17th June, 2016 but as it failed to file the written statement within the prescribed period, this Court struck off the right of the defendant to file the written statement vide order dated 2nd February, 2017.

6. The defendant also neither sought inspection of the documents nor filed the affidavit of admission and denial as contemplated under Order XI Rule 4 CPC as applicable to the commercial disputes.

7. Learned counsel for the plaintiff/applicant states that the plaintiff/applicant has filed the copies of the invoices raised against the defendant and GR receipts. He further states that the defendant was served with a legal notice dated 10th March, 2016, i.e., prior to filing of this suit. He contends that the defendant has acknowledged its liability vide a statement of account duly signed on defendant's behalf by one of its Director, Sh. Vineet which shows a debit balance of Rs. 1,62,51,689.05/-.

8. He lastly states that as per knowledge of the plaintiff/applicant, State Bank of Patiala has taken over the possession of the security/ factory/land and building of the defendant company and has initiated a process of auctioning the said assets of the defendant company.

9. Learned counsel for the defendant states that the plaintiff is not entitled to any relief in the present application filed under Order 8 Rule 10 CPC. In support of his submission, he relies upon the judgment of the Supreme Court in ***C.N. Ramappa Gowda Vs. C.C. Chandregowda (Dead) By LRs and Another, (2012) 5 SCC 265*** wherein it has been held as under:-

> *"25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect [Ed.: It would seem that it is the purpose of the procedure contemplated under Order 8 Rule 10 CPC upon non-filing of the written statement to expedite the trial and not penalise the defendant.] of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non-filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgment, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment and decree could not possibly be passed without requiring him to prove the facts pleaded in the plaint."*

10. Having heard learned counsel for the parties, this Court is of the view that the present case is a commercial dispute as defined under the

Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 (for short "Act, 2015"), as it is a dispute related to sale of goods as ordinary transaction of merchants/ traders. Also, as the issues have not been framed and oral evidence is yet to be recorded, the present application is maintainable.

11. Order XIII-A of the Act, 2015 empowers this Court to pass a summary judgment, without recording evidence, if it appears that the defendant has no real prospect of defending the claim.

12. In the opinion of this Court, the defendant has no real prospect of defending the claim as it has neither filed its written statement nor denied the documents of the plaintiff or filed reply to the present application.

13. This Court is also of the view that the judgment of the Supreme Court in ***C.N. Ramappa Gowda*** (supra) is inapplicable to the present case as the present application has been filed under Order XIII-A of the Act, 2015 and not under Order 8 Rule 10 CPC.

14. At this stage, the learned counsel for the defendant states that he be given an opportunity to file reply to the present application. However, a perusal of the order sheets reveals that twice copies of the present application had been served upon the learned counsel for defendant and he had twice stated before the Court that he did not wish to file any reply to the present applicati on. The relevant orders dated 21st April, 2017, 03rd July, 2017 and 04th July, 2017 are reproduced hereinbelow:-

<u>"Order dated 21st April, 2017</u>

<u>IA No. 3621/2017 (for passing of the summary judgement) in CS(COMM) 410/2016</u>

Ld. counsel for defendant accepts notice of the application. Copy of the application supplied today in the court. Reply be filed within four weeks from today with advance copy to other side. Rejoinder, if any, be filed within next one week with advance copy to other side. Put up for completion of pleadings on the application on 3 rd July, 2017.

<u>Order dated 03rd July, 2017</u>

<u>IA No. 3621/2017 (For passing of the summary judgment in the suit)</u>

Learned counsel for the defendant submits that he does not wish to file the reply and shall address the arguments straightway. In view thereof, the matter be placed before the Hon'ble Court for further directions on the date fixed.

<u>Order dated 04th July, 2017</u>

<u>I.A. 3621/2017</u>

Learned counsel for the plaintiff is directed to supply another copy of the application to learned counsel for the defendant during the course of the day.

Since learned counsel for the defendant does not wish to file a reply-affidavit, list the present application for hearing and disposal on 28th August, 2017."

15. Further, there is a statement of accounts duly acknowledged and signed for and on behalf of the defendant by one of its Director Sh. Vineet, which shows an admitted debit balance of Rs.1,62,51,689.05/- payable to the plaintiff.

16. However, this Court is of the view that the plaintiff is not entitled to pendente lite and future interest @Rs.1.80% per month, i.e., 21.6% per annum as the said rate of interest is usurious. Keeping in view the bank rate of interest, the defendant is directed to pay pendente lite and future interest @ 9% per annum.

17. Consequently, the present suit is decreed for Rs. 1,62,51,689.05/- along with pendente lite and future interest @9% per annum simple interest from the date of legal notice dated 10th March, 2016 till realisation of the suit amount and along with cost of the suit. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

AUGUST 29, 2017
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