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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision : 15th January, 2018

+ **RFA 130/2007**

SANJAY MEHRA Appellant

Through : None.

versus

KORES INDIA LTD. Respondent

Through : None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. On 3rd January, 2018 the present appeal was called and none appeared for the parties. The matter is being called again today. None appears for the parties. On 7th August, 2007, the stay application was dismissed as the Appellant had submitted that he was not in a position to make any deposit.

2. The present appeal arises out of judgment/decreed dated 12th December, 2006. The suit filed by the Respondent/Plaintiff (*hereinafter*, '*Plaintiff*') is for recovery of Rs.11,59,381.44. The Plaintiff, a Manufacturer of stationery products claimed that it had supplied goods to the Appellant/Defendant (*hereinafter*, '*Defendant*') and a running account was maintained between the parties. The supplies made during the year 1991-92 and 1992-93 are the subject matter of the present appeal.

3. It is the case of the Plaintiff that though the payments for purchases were made, the ST-1 forms were not submitted despite repeated requests. In

view of the non-submission of ST-I forms, the Plaintiff was forced to deposit a sum of Rs.3,90,150/- and Rs.6,45,012/- with the Sales Tax Authorities (*hereinafter*, 'Authorities') for the years 1991-92 and 1992-93, respectively. It is this amount that the Plaintiff seeks recovery of from the Defendant.

4. The following issues were framed vide order dated 31st May, 2004 by the learned Trial court:

- "1. Whether the plaintiff is entitled to decree for a sum of Rs.11,59,381.44 alongwith interest @ 12% p.a.? OPP.*
- 2. Whether the suit is barred by limitation? OPD.*
- 3. Whether there is no cause of action? OPD.*
- 4. Relief."*

5. The primary defence of the Defendant was that the sales tax forms pertained to the year 1991-92 but the suit for recovery was filed only in the year 2001. Hence, the Defendant claimed that the suit was barred by limitation. The Plaintiff relied upon Article 55 of the Limitation Act, 1963, which reads as under:

<i>"Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
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<i>55. For compensation for the breach of any contract, express or implied not herein specially provided for</i>	<i>Three years</i>	<i>When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases."</i>
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6. The Plaintiff submitted that there was a continuing breach by the Defendant and that continuing breach ceased to exist only when the Plaintiff deposited the money with the Authorities in the year 2001. The Trial court relied upon the judgment in *Lloyed Bitumen Products Pvt. Ltd. Vs. Oil & Natural Gas Commission 1990 (3) CCC 398*.

7. The Trial court specifically notes that the non-giving of the ST-1 forms, which is an admitted position, was a statutory obligation of the Defendant which was discharged by the Plaintiff only in the year 2001. Hence, the suit was well within limitation.

8. On Issue No. 1, the learned Trial court held that the Defendant had admitted categorically in his cross examination that all the bills/invoices bore his signatures, barring a few. The non-supply of ST-1 forms was also admitted. The stand of the Defendant's witness was that the ST-1 forms were not liable to be given qua the material supplied to him. The relevant part of the cross examination is set out herein below:

"It is correct that I had dealing with plaintiff company. I used to receive stationary goods and made payment thereof. All the bills Ex.PW1/1 (1-217 collectively) bear my signature except bill no.57396, 57749, 58384, 58385, 58443, 58542, 58939, 58971, 59007, 59496, 59918, 60213, 60312, 60314, 60356, 60402.

.....
I have not yet supplied ST form for the bills on which I have admitted my signature as ST form was not due on the material mentioned in the bills.

.....
It is wrong to suggest that I had not paid the payment of the entire bills by which I received the goods. It is correct that if the dealer does not give ST 1 form to the company, company has to pay the sales tax."

9. The Trial court, finds that the invoices clearly mentioned that all the goods were sold against sales tax forms. The relevant extract of the invoices reads as under:

“We hereby certify that our registration certificate under the Delhi Sales Tax Act 1957 is in force on the date on which the sale of the goods specified in this bill/cash memorandum is made by us and that the transaction of sale covered by this bill/cash memorandum has been effected by us in the regular course of our business.”

10. No evidence was led by the Defendant to substantiate the plea that ST-1 forms were deposited with the Authorities. Since the Plaintiff had been forced to pay the sales tax of Rs.10,35,162/-, due to the default of the Defendant, the Trial court held that the Plaintiff is entitled to recover the said sum. The Trial court, therefore, awarded the said sum along with interest @ 9% since 1st October, 2001 till realization.

11. A perusal of the records reveals that the pleadings and the evidence has been properly appreciated by the learned Trial court. The admissions by the witness of the Defendant, both in the pleadings and in the cross-examination, clearly point to the fact that there was default by the Defendant in depositing the sales tax on the purchases made by him and on handing over of the ST-1 forms. The statutory obligation of the Defendant having been discharged by the Plaintiff, the Plaintiff is entitled to recover the said amount from the Defendant. There is no illegality in the impugned order. The suit has been rightly decreed in the favour of the Plaintiff. There is no appearance on behalf of the Appellant. The impugned judgment and decree passed by the Trial court are upheld.

12. The appeal is accordingly, dismissed on merits.

**PRATHIBA M. SINGH, J.
JUDGE**

JANUARY 15, 2018

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