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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(COMM) 1201/2016, IA No.6328/2012 (u/O XXXVII R-3(5) CPC) & IA No.13556/2012 (u/O XII R-6 CPC)

MOHD KAMIL

..... Plaintiff

Through: Mr. Avinash Trivedi & Ms. Ritika Trivedi, Advs.

Versus

ZETA LEATHER EXPORTS

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.02.2018

1. The plaintiff instituted this suit under Order XXXVII of the CPC for recovery of Rs.30,57,936 as unpaid balance price of raw leather sold, supplied and delivered by the plaintiff to the defendant.
2. The suit was entertained and summons for appearance and upon the defendant entering appearance, summons for judgment were issued to the defendant and the defendant has filed leave to defend application being IA No.6328/2012.
3. The plaintiff has also filed IA No.13556/2012 under Order XII Rule 6 CPC for a decree on admissions.
4. Upon enhancement of the minimum pecuniary jurisdiction of this Court, the suit, vide order dated 6th January, 2016, was ordered to be transferred to the Subordinate Court. The learned District Judge however vide order dated 19th May, 2016 transferred back the suit to this Court, reasoning the suit to be a commercial suit and not liable to be transferred.
5. None appeared for the defendant while the suit was pending before the District Court and none appeared for the defendant when the suit was

transferred back to this Court.

6. Vide order dated 29th August, 2016, Court Notice was ordered to be issued to the defendant and the counsel earlier appearing before this Court. In response to the said Court Notice, Mr. Rajat Aneja, Advocate who had filed leave to defend application on behalf of the defendant appeared and stated that he had attempted to contact the defendant but was unable to do so and even the defendant had not been instructing.

7. The Court Notice sent to the defendant directly was received back unserved owing to the defendant being no longer available at the address.

8. Mr. Rajat Aneja, Advocate on 2nd March, 2017 also stated that if he was able to contact the defendant or finds the new address of the defendant, he will intimate the same. No such intimation has been given till now.

9. The counsel for the plaintiff states that the premises in which the defendant, at the time of institution of the suit was situated is learnt to have been seized and sold by the Bank and the plaintiff has filed an application giving a fresh particulars of the defendant.

10. The said application is not listed today.

11. Though the counsel for the plaintiff states that the leave to defend application of the defendant does not disclose any ground for leave to defend and in fact the defendant in the Statement of Account annexed to the application for leave to defend has admitted liability in the sum of Rs.16,00,000/- but it is felt that there is no need to go into the said aspects. The suit being under Order XXXVII of the CPC, the defendant, who has not been granted leave to defend till now, was in the same position as the plaintiff and if has not chosen to pursue the application for leave to defend,

the said application has to be dismissed in default.

12. Accordingly, IA No.6328/2012 of the defendant for leave to defend is dismissed in default.

13. The claim of the plaintiff in the suit is on the basis of dishonoured cheques and the claim is found to be within time. The counsel for the plaintiff on enquiry states that all the cheques, for a total sum of Rs.30,57,936/- as detailed in para no.4 of the plaint, have been filed before this Court in original along with documents of dishonour thereof.

14. The plaintiff is thus found entitled to a decree.

15. In view of the above, IA No.13556/2012 under Order XII Rule 6 of the CPC is infructuous and is disposed of.

16. The plaintiff has also claimed interest at the rate of 20% per annum with effect from 1st November, 2010 to 30th April, 2011 amounting to Rs.3,05,794/-.

17. However, it is deemed appropriate to grant interest, instead of at the rate of 20% per annum, at the rate of 11% per annum.

18. Accordingly, a decree is passed in favour of the plaintiff and against the defendant for recovery of Rs.30,57,936/- with interest at the rate of 11% per annum with effect from 1st November, 2010 till the date of payment / realization.

19. The plaintiff shall also be entitled to costs of the suit.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

FEBRUARY 08, 2018/‘gsr’..

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