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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 9th August,, 2018

Date of decision : 7th September, 2018

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CS (OS) 3789/2014, I.As. 14043/2016, 14131/2016 & 9555/2018

**DIGILIFE DISTRIBUTION AND MARKETING
SERVICES LTD**

..... Plaintiff

Through: Mr. Raghavendra S. Srivastava and
Ms. Komal Mundhra, Advocates with
Mr. Prabhar Tiwari, AR in person.
(M:9674323070)

versus

**M/S STALCO CONSULTANCY & SYSTEMS
PVT. LTD. & ANR.**

.... Defendants

Through: Mr. Niraj Gupta and Mr. Umair
Ahmad Siddiqui, Advocates.
(M:98102788849)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The Plaintiff is a wholly owned subsidiary company of M/s HCL Infosystems Ltd. and is engaged in the business of importing, distributing, selling and servicing of various products and accessories. The Defendants were appointed as resale/distribution cum stockists of the Plaintiff's goods. Agreements dated 26th November, 2012 and 29th October, 2012 were entered into with M/s. Stalco Consultancy & System Pvt. Ltd.- Defendant No.1 and M/s. Sylvesa Infotech Pvt. Ltd. - the Defendant No. 2.
2. Various goods were supplied by the Plaintiff to the Defendants. There was an outstanding sum of Rs.4,36,15,896/- in respect of the Defendant

No.2 and a sum of Rs.1,67,72,614/- in respect of the Defendant No.1. Cheques were issued by the Defendants, which were dishonoured. A complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed. Settlement Agreement dated 20th August, 2014 was entered into after the filing of the said complaints. As per the said Settlement Agreement, the Defendant Nos.1 & 2 together agreed to pay a total sum of Rs 5,29,88,515/-. The schedule for payment of the said amount was recorded as under:

<i>"Installment</i>	<i>Amount to be paid</i>	<i>Payment Schedule</i>
	15,00,000/-	Within Two Weeks of recording the settlement by the Hon'ble Court
<i>Ist Installment</i>	1,71,62,838.00	Within 3 months from the date of recording the settlement by the Hon'ble Court
<i>IInd Installment</i>	1,71,62,838.00	4 th to 6 th months from the date of recording the settlement by the Hon'ble Court
<i>IIIrd Installment</i>	1,71,62,838.00	7 th to 9 th months from the date of recording the settlement by the Hon'ble Court
<i>Total</i>	5,29,88,515.00	
<i>Final Payment</i>	If due to default, any amount is unpaid, the said amount shall be paid with interest @ 12%	10 th to 12 th months from the date of recording the settlement by the Hon'ble Court

3. On 21st August, 2014 the following order was passed by the Ld. Magistrate dealing with the complaint under Section 138:

"21.08.2014

Present : Sh. R. K. Goel, Ld. Counsel for complainant along with AR of complainant.

Sh. Neeraj Gupta, Ld. Counsel for accused.

Exemption application moved on behalf of the accused. In view of the contents of the application, the same is allowed for today only.

Ld. Counsel for the complainant has filed settlement deed. Ld. Counsel for the accused has filed Extract of Minutes of Meeting of Board of Directors of accused company. Same is taken on record.

On request of Ld. Counsel for complainant put up on 04.09.2014.”

4. The matter was thereafter listed before the concerned Court on 4th September, 2014 on which date, the following order was passed.

“04.09.2014

Present: Sh. R.K. Goal, Ld. Counsel for complainant.

Sh. Neeraj Gupta, Ld. Counsel, for accused.

File perused.

*In view of the judgment passed by Hon'ble Supreme Court in **Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr., CrI. Appeal No. 2287 of 2009, passed on 01.08.2014**¹, this court has no jurisdiction to try the present complaint as the bank of the accused is situated outside the territorial jurisdiction of this court. Vide the said judgment the Hon'ble Apex Court has observed in para 19 as under:*

“.....We clarify that the Complainant is statutorily bound to comply with Section 177 etc.

¹ *hereinafter Dashrath (supra)*

of the CrPC and therefore the place or situs where the Section 138 Complaint is to be filed is not of his choosing. The territorial jurisdiction is restricted to the Court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn".

It was further observed in para 20 as under:

".....Consequent on considerable consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged Accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the Complaint will be maintainable only at the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of Complaint cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the Court ordinarily possessing territorial jurisdiction, as now clarified, to the Court where it is presently pending. All other complaints (obviously including those where the accused/respondent has not been properly served) shall be returned to the Complainant for filing in the proper court, in consonance with our exposition of the law. If such Complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the Initial or prior filing was itself time barred."

Accordingly the present complaint is returned in

original to the complainant to file the same before the appropriate court. Documents be returned in original after taking certified copy of the same and thereafter file be consigned to record room after due compliance.”

5. Thus, in view of the pronouncement of the Supreme Court in ***Dashrath (supra)***, the complaint filed by the Plaintiff was returned for being filed in the appropriate court. After the complaint was returned for filing in the Court of appropriate jurisdiction, the Plaintiff approached the Defendants for the payments as per the Settlement Agreement, however, the payments were not made. The Plaintiff then issued a legal notice calling upon the Defendants to make the payments. However, in reply to the same on 18th November, 2014 the Defendants took the stand that the payments were to be made *within 2 weeks from the date of recording of settlement*. Since the recordal of settlement had not taken place and the complaint, was not re-presented in the Court of appropriate jurisdiction, the payment is not liable to be made.

6. According to the Plaintiff a sum of Rs.1,42,72,612/- was due from the Defendant No.1 and Rs.3,96,15,896/- was due from the Defendant No.2 coming to a total of Rs.5,38,88,509/-. Since the Defendants did not make the payments, the present suit under Order XXXVII CPC came to be filed. The suit was registered under Order XXXVII CPC and thereafter, summons for judgment was filed by the Plaintiff. The Defendants filed their leave to defend. The grounds taken in the leave to defend are similar to the reply to the legal notice i.e. since the settlement was not recorded, no payment is liable to be made. Submissions have been heard on behalf of both the parties.

7. Learned counsel for the Plaintiff has submitted that the Settlement Agreement having been entered in legal proceedings and the same having been filed before the Court where the Section 138 complaint was pending, and the said Court having been taken the agreement on record, the agreement is completely binding on the parties and the Defendants ought to be held to be bound down to the same. He submits that only because of the judgment of the Supreme Court, in *Dasrath (supra)* the complaint had been returned for re-presenting before the Court having appropriate jurisdiction, does not mean that the Settlement Agreement is set at naught. He submits that neither in the reply to the legal notice nor in the leave to defend do the Defendants challenge the existence of the Settlement Agreement. Thus, the amount due from the Defendants is an acknowledged debt, which is liable to be paid by them along with the interest.

8. The Defendants, on the other hand, submit that reading of the agreement clearly shows that the payments of instalments commences only after the Settlement Agreement is taken on record which did not happen. Thus, the Defendants cannot be blamed for the Plaintiff's mistake of not re-filing the complaint in the Court of competent jurisdiction.

9. During the course of oral arguments, as also the pleadings, the Defendants do not challenge the authenticity, existence and validity of the Settlement Agreement. It is clear that in the Section 138 complaint, the Defendants settled the disputes with the Plaintiff by executing the Settlement Agreement dated 20th August, 2014. The agreement is duly signed by all the parties and no challenge has been laid to the same. The Settlement Agreement was not just merely executed between the parties but was even filed on the court record. A perusal of the order dated 21st August,

2014 passed by the learned Metropolitan Magistrate (NI Act) clearly shows that the Court took the Settlement Deed on record. It was only due to the judgment of the Supreme Court passed, which came to be passed on 1st August, 2014, which was considered by the Ld. Magistrate, on 4th September, 2014 that the complaint was returned to the complainant.

10. In the reply to the notice issued on behalf of the Plaintiff, prior to the filing of the suit, the Defendants took the stand that the payments of instalments were to be started from the date of recording of the above settlement. The Defendants have clearly tried to take advantage of the technical default due to which the complaint got to be returned.

11. The Defendants neither in their reply, nor in the leave to defend dispute the existence of the Settlement Deed. Even in the course of oral arguments, learned counsel for the Defendants repeatedly tried to submit that if the settlement is taken on record now, the Defendants would commence making the payment, however, the Defendants would not pay any interest. This clearly shows that the Defendants are avoiding their liability to make the payment of a huge amount of money, which is admittedly due.

12. The Defendants took the advantage of the Settlement Deed due to the closure of the criminal complaint pending under Section 138 of the NI Act and are clearly choosing to escape from their responsibility of making payment. The entire sum due as per the settlement is an admitted debt, for which a suit under Order XXXVII CPC would clearly be maintainable. The effect of the Settlement Agreement being taken on record, is that it has been approved with the seal of the Court.

13. This court need not to venture into the question as to whether the said

taking on record would constitute a decree by the Court in terms of the settlement as the Plaintiff has not filed an execution but a suit under Order XXXVII CPC seeking implementation of the admitted Settlement Agreement.

14. The stand of the Defendants is dishonest and unscrupulous to say the least. In a suit under Order XXXVII CPC all that the Court needs to see is as to whether the Defendants have raised a triable issue or a substantial defence. The test laid down in ***IDBI Trusteeship Services Ltd. v. Hubtown Ltd.* 2017 (1) SCC 568** by the Supreme Court is as under:

“17. Accordingly, the principles stated in para 8 of Mechelec case [Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687] will now stand superseded, given the amendment of Order 37 Rule 3 and the binding decision of four Judges in Milkhiram case [Milkhiram (India) (P) Ltd. v. Chamanlal Bros., AIR 1965 SC 1698 : (1966) 68 Bom LR 36] , as follows:

17.1. If the defendant satisfies the court that he has a substantial defence, that is, a defence that is likely to succeed, the plaintiff is not entitled to leave to sign judgment, and the defendant is entitled to unconditional leave to defend the suit.

17.2. If the defendant raises triable issues indicating that he has a fair or reasonable defence, although not a positively good defence, the plaintiff is not entitled to sign judgment, and the defendant is ordinarily entitled to unconditional leave to defend.

17.3. Even if the defendant raises triable issues, if a doubt is left with the trial Judge about the defendant's good faith, or the genuineness of the triable issues, the trial Judge may impose conditions both as to time or mode of trial, as well as payment into court or furnishing security. Care must be taken to see that the object of the provisions to assist expeditious disposal

of commercial causes is not defeated. Care must also be taken to see that such triable issues are not shut out by unduly severe orders as to deposit or security.

17.4. If the defendant raises a defence which is plausible but improbable, the trial Judge may impose conditions as to time or mode of trial, as well as payment into court, or furnishing security. As such a defence does not raise triable issues, conditions as to deposit or security or both can extend to the entire principal sum together with such interest as the court feels the justice of the case requires.

17.5. If the defendant has no substantial defence and/or raises no genuine triable issues, and the court finds such defence to be frivolous or vexatious, then leave to defend the suit shall be refused, and the plaintiff is entitled to judgment forthwith.

17.6. If any part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, leave to defend the suit, (even if triable issues or a substantial defence is raised), shall not be granted unless the amount so admitted to be due is deposited by the defendant in court.”

15. The Defendants have not only enjoyed the entire sum which was to be paid to the Plaintiff since 2014, but even as of 2018, when submissions were heard in the matter, the Defendants were not willing to make the payment. Repeatedly, the matter was adjourned on various occasions including on 16th July, 2018, 18th July, 2018 and 24th July, 2018 and finally on 9th August, 2018 the submissions were heard and the judgment was reserved. On all these occasions, learned counsel for the Defendants had taken the stand, that if the settlement is recorded now, the payments would be as per the instalments in the Settlement Agreement and even now the Defendants are not willing to make the entire payment at one go. The Defendants

categorically asserted before the Court that no interest is liable to be paid by them.

16. After judgment was reserved, Defendants have sought to rely on escrow agreements dated 19th June, 2013 and 7th December, 2012. Firstly, both of these escrow agreements were not relied upon by the Defendants in oral arguments, and it is impermissible to rely on them in written submissions. Be that as it may, a perusal of the said escrow agreements also shows that the same have been only signed by the Defendants and not by the Plaintiff. In any event, these escrow agreements were prior to the Settlement Agreement, which supersedes the escrow agreements.

17. Under these circumstances, this Court has no option but to decree the suit along with a higher rate of interest. The suit is accordingly decreed for a sum of Rs.5,38,88,509/- along with interest @18% per annum from the expiry of 9 months' period from date of settlement i.e. on 20th August, 2014. Thus, the interest @ 18% per annum shall be payable on the entire principal sum from 20th May, 2015 till date. The payments shall be made within 8 weeks failing which the Plaintiff is free to execute the decree. If the payment is not made in eight weeks, interest would then be payable by the Defendants @ 24% per annum on the decretal amount. Costs of Rs. 1 lakh would also be payable by the Defendants to the Plaintiff within eight weeks.

18. Suit is disposed of. All pending I.As. also stand disposed of. Decree sheet be drawn up.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 7, 2018/dk