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

% *Judgment Reserved on: 29.11.2017*
Judgment Pronounced on: 08 .01.2018

+ **RFA 29/2017**

M/S DEWAN CHAND CONTRACTORS & BUILDERS

..... Appellant/defendant.

Through: Mr. T.P.S.Kang and Mr. Pratap
Chandra Rana, Advocates.

versus

M/S AMAN SALES CORPORATION..... Respondent/plaintiff.

Through: Mr. Dharmendra Sharma and Mr.
Prashant Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. The challenge in this Regular First Appeal is the impugned judgment and decree dated 01.07.2016 passed by the court of learned Additional District Judge-1, North East District, Karkardooma Courts, Delhi (in short "Trial Court") in Civil Suit No.476363/2015 (Old No.63/2014) by which the suit of the respondent/plaintiff for recovery of Rs.3,52,309/- was decreed against appellant/ defendant with interest @ 24% p.a. from the date of filing the suit till its realization along with the costs of the suit. The trial court has also imposed exemplary cost of Rs.50,000/- on the appellant-defendant.

2. The respondent/plaintiff had filed the suit under Order XXXVII of the Code of Civil Procedure, 1908 (in short “CPC”) for recovery of Rs.3,52,309/- against the appellant/defendant. However, by order dated 18.11.2014 the trial court has granted leave to defend the suit subject to deposit of Rs.76,000/- in the court.
3. The respondent claimed in the plaint to be a proprietary firm which had supplied building material to the appellant-firm at different sites in Delhi and Faridabad during the period from the year 2007-2013. The appellant was making part payment from time to time to the respondent. The respondent was maintaining a running account and there was a closing balance of Rs.3,52,309/- at the end of financial year 2013-2014. The appellant had made part payment of Rs.20,000/- through cheque which was dishonoured in June, 2013 for which the respondent has initiated an action under Section 138 of Negotiable of Instrument Act, 1881. The respondent also served the appellant with a legal notice dated 23.08.2013 to make the payment. The appellant sent a reply to the notice dated 04.09.2013 to the respondent. As the appellant did not make the payment, the respondent filed the suit for recovery on 06.06.2014. In the plaint the respondent had given the details of only six invoices in respect of the transactions that had taken place with the appellant during the financial year 2011-12 for a sum

Rs.56,057/-. He had given the details of outstanding amount at the end of 2010-11, 2011-12, 2012-13 & 2013-14.

4. In its written statement, the appellant had pleaded complete denial of the case of the respondent. It has denied having placed any order for supplying of building material to the respondent during the said period. It has denied the averments of the respondent of supplying the building material to the appellant from time to time against the Bills. The appellant has also disputed the correctness of six bills specifically pleaded in the plaint. It is pleaded that there was no business transactions or dealing by them of any kind with the respondent. The appellant has denied its liability to pay the claimed amount.
5. The respondent filed replication to the written statement of the appellant denying its allegations and reaffirming the averments made in the plaint.
6. On the pleadings of the parties, the trial court had framed the following issues on 19.02.2015:-
 1. Whether the plaintiff has concealed the material facts and if so, its effect? (OPD)
 2. Whether the valuation of the suit for the purpose of court fee is improper? (OPD).
 3. Whether the suit of the plaintiff is barred by limitation? (OPD).
 4. Whether the plaintiff is entitled for the recovery of Rs.3,52,309/- as claimed for? (OPP)
 5. Whether the plaintiff is entitled to any interest and if so at what rate for which period? (OPP)
 6. Relief.

7. In order to prove its case, the respondent examined its proprietor Sh. Vijay Sharma as PW1. On the other hand, Sh. Vikram Kumar, partner of the appellant-firm stepped into the witness box as DW1. It is worthwhile to mention that during the evidence stage the respondent was permitted by the court to file additional documents including several invoices and copies of statement of accounts subject to payment of costs of Rs.2,000/- which was accepted by learned counsel for the appellant.
8. After hearing both the learned counsel for the parties, the trial court has decreed the suit of the respondent for recovery of Rs.3,52,309/- along with interest @ 24% p.a. from the date of filing the suit till its realisation with costs of the suit. The trial court has also burdened the appellant with compensatory and exemplary costs of Rs.50,000/-.
9. I have heard the learned counsel for the parties and carefully perused the record. The issue for consideration before this Court is whether in the facts and circumstances of the case, the respondent is entitled for recovery of Rs.3,52,309/- from the appellant with interest.
10. In its written statement the appellant had denied all the facts pleaded by the respondent in the plaint. The appellant has denied having placed any order for supplying the building material by the respondent or having received any material from the respondent. Admittedly, a notice dated 23.08.2013 Ex.PW1/3 was got issued by the respondent through its counsel

to the appellant alleging supply of building material to them at Delhi and Faridabad sites, outstanding dues of Rs.3,62,309/- as on 31.03.2013 and dishonouring of one out of the two cheques of Rs.20,000/- each issued by the appellant to the respondent. The appellant was called upon to make the payment of cheque of Rs.20,000/-. It was also mentioned that total liability against the appellant was Rs.3,62,309/- till 31.03.2013. Admittedly the appellant sent a reply to the notice on 04.09.2013, Ex.PW1/5 through its counsel to the learned counsel for the respondent. In its reply to notice, the appellant has admitted that they were having business relations for the last 5-6 years. It is also admitted that the respondent had been a regular building material supplier at construction sites of the appellant. It is further admitted that the respondent had supplied the construction material to the appellant as per its requirement at its sites at Faridabad and in Delhi. However, it is pleaded in the reply to notice that for the last few months the construction material supplied by the respondent was of sub-standard quality and it was not up to the mark and many times objections were raised which were acknowledged by the respondent. It is also pleaded that the respondent had assured that goods would be replaced to the satisfaction of the appellant and on repeated requests of the respondent, the appellant in good faith issued two post dated cheques of Rs.20,000/- each and the respondent

had presented the cheques without replacing the defective construction material.

11. The respondent has tendered in evidence all carbon copies of invoices during the financial year of 2007-08 which are Ex.PW1/7 and PW1/9 (collectively), invoices issued during the financial year 2008-09 (Ex.PW1/12 & PW1/14 collectively), invoices issued during the financial year 2009-10 (Ex.PW1/17 & Ex.PW1/19 collectively), invoices issued during the financial year of 2010-11 (PW1/22 collectively) and invoices issued during the financial year 2011-2012 (Ex.PW1/1 & Ex.PW1/24 collectively).
12. The respondent has also tendered in evidence copies of statement of accounts of the appellant for the financial year 2007-08 (Ex.PW1/8 and Ex.PW1/10 collectively), account statement for the financial year 2008-09 (PW1/13 & Ex.PW1/15 collectively), account statement for the financial year 2009-10 (Ex.PW1/18 & Ex.PW1/20 collectively), statement of accounts for the financial year 2010-11 (Ex.PW1/23 & Ex.PW1/25 collectively), statement of accounts for the financial year 2011-12 (Ex.PW1/27 & Ex.PW1/28) and account statement for the financial year 2012-13 (Ex.PW1/30 and Ex.PW1/31).
13. The respondent has also tendered in evidence his income tax return Ex.PW1/6, audited account statement Ex.PW1/11 and certain other documents.

14. It is worth to note here that when these documents referred in para Nos.11,12 and 13 above were tendered in evidence by the respondent and exhibited, no objection was taken by the appellant.
15. In his cross-examination, PW1 testified that orders were placed on them by the appellant verbally and on telephone and no written order was given. It was suggested in the cross-examination of PW1 by the appellant that no verbal orders were placed by the appellant and story of placing the orders of building material by the appellant orally and telephonically is false. This suggestion given to PW1 is obviously contrary to the stand taken by the appellant while replying to the notice Ex.PW1/5. In cross-examination of PW1, the appellant has not disputed the correctness of the account statements placed on record by the respondent or any entry therein as Ex.PW1/8, Ex.PW1/10, Ex.PW1/13, Ex.PW1/15, Ex. PW1/18, Ex.PW1/20, Ex.PW1/23, Ex.PW1/25, Ex.PW1/27, Ex.PW1/28, Ex.PW1/30 and Ex.PW1/31. The only suggestion given was that out of these account statements Ex.PW1/13, Ex.PW1/15, Ex.PW1/18, Ex.PW1/20, Ex.PW1/23, Ex.PW1/25, Ex.PW1/30 and Ex.PW1/31 are not the confirmed statement of accounts on the part of the appellant.
16. The appellant has also given the suggestion to PW1 with regard to documents (other than invoices and account statement) Ex.PW1/6, Ex.PW1/11, Ex.PW1/16, Ex.PW1/21, Ex.PW1/26,

Ex.PW1/29, Ex.PW1/32 to be fabricated one. The appellant has not challenged specifically issuance and correctness of invoices Ex.PW1/7, PW1/9, Ex.PW1/12, Ex.PW1/14, Ex.PW1/17, Ex.PW1/19, Ex.PW1/22 and Ex.PW1/24. It is also not suggested in cross-examination of PW1 that the building material contained in these invoices Ex.PW1/7, Ex.PW1/9, Ex.PW1/12, Ex.PW14, Ex.PW1/17, Ex.PW1/19, Ex.PW1/22 and Ex.PW1/24 were not supplied to the appellant. In the cross-examination of the PW1, the appellant has also not suggested that the entries in the copies of account statement Ex.PW1/8, Ex.PW1/10, Ex.PW1/13, Ex.PW1/15, Ex.PW1/18, Ex.PW1/20, Ex.PW1/23, Ex.PW1/25, Ex.PW1/27, Ex.PW1/28, Ex.PW1/30, Ex.PW1/31 are false or fabricated or any of the entry therein was incorrect.

17. The testimony of partner of the appellant-firm Vikram Kumar DW1 is interesting to note. DW1 has admitted that all the orders were placed on verbal basis by their work site staff from time to time. He admitted that Project Managers at various sites used to place verbal orders for supply of the building material. However, he stated that if there is a defective material involved, then the person supplying the material is bound to replace it. He stated that the material is received at site by the Store Keeper generally. He stated that at many occasions material sent by the respondent was found defective and required replacement and it was the job of the Project Manager to intimate the respondent

regarding the defective supply. He admitted that he had given two cheques to respondent in the year 2013. He further added that these cheques were given to the respondent subject to replacement of the defective material.

18. The appellant had taken completely contradictory and inconsistent stand regarding the transactions which had taken place with the respondent, payment made, outstanding liability and placing of the orders for supplying of the building material and receipt of the building material. As noticed earlier, in its written statement, the appellant has pleaded that there was no dealing with the respondent at any point of time and he has completely disputed entering into transactions with the respondent and receipt of building material at its sites at any point of time. The stand taken by the appellant is totally contradictory to the stand taken by them in their admitted reply of the legal notice Ex.PW1/5. In reply to legal notice Ex.PW1/5 the appellant had admitted that there were business relations for the last 5 to 6 years between them. They admitted that the respondent has been a regular building material supplier at construction sites of the appellant. The appellant has also admitted that respondent had supplied the construction material to the appellant as per its requirement at different sites in Delhi and Faridabad. Issuance of two cheques of Rs.20,000/- each to respondent were also admitted but appellant added that these

were issued subject to replacement of the sub-standard material supplied by the respondent.

19. The cross-examination of DW1, partner of the appellant-firm, indicates that he had taken the stand what they had replied to the respondent in the legal notice Ex.PW1/5. He admitted that all the orders were placed on verbal basis by their staff posted at the site from time to time and the Project Managers at various sites used to place verbal orders for supply of the building material. He has also deposed that if there was defective material involved, the person supplying the same is bound to replace. He has also taken the stand that on many occasions material sent by the respondent firm was defective and required replacement and he had given two cheques to the respondent in the year 2013 subject to replacement of the defective material.
20. The only defence taken by the appellant in reply to notice Ex.PW1/5 and by deposition of its partner DW1 is that some of the material supplied by the respondent was defective and required replacement. This stand was not taken by the appellant in its written statement. The appellant has not examined any of its staff member/employee/Project Manager to prove that building material received by them at any point of time was found defective and returned to the respondent firm. In its reply to legal notice Ex.PW1/5 and also in his deposition as DW1 particulars of the alleged supply of defective material by the respondent requiring replacement were not given. Therefore, the

appellant cannot be believed to say that some of the building material supplied by the respondent-firm at any point of time was found defective. Moreover, for want of pleadings regarding supply of defective material, the appellant cannot be believed to say so and his deposition on this point cannot be looked into.

21. The appellant has not disputed the carbon copies of the invoices tendered in evidence by the respondent specifically in the cross-examination of PW1. The correctness of the entries in the statement of accounts tendered in evidence by the respondent-plaintiff has also not been disputed in the cross-examination of PW1. Therefore, the trial court has rightly decided issues No.1,3 and 4 and came to the conclusion that the respondent is entitled to recover the suit amount of Rs.3,52,309/- from the appellant.
22. The Trial Court has awarded simple interest @ 24% p.a. on the decretal amount of Rs.3,52,309/- from the date of filing the suit till realization. In this regard, it would be relevant to refer a judgment of **Hon'ble Supreme Court** in **C.K. Sasankan Vs. Dhanalakshmi Bank Ltd., (2009) 11 SCC 60** and the Apex Court elaborated the principles and factors to be kept in mind by the adjudicating court while awarding interest under Section 24 of the Code of Civil Procedure, 1908 as under:-

“14. We are inclined to refer to the decision in *Clariant International Ltd. Vs. Securities & Exchange Board of India* (2004) 8 SCC 524 where it was held by this Court that the interest can be awarded in terms of an agreement or statutory provisions and it can also be awarded by reason of usage or trade having the force of law or on equitable considerations but the

same cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefore, for which a written demand is mandatory. It was further held that in the absence of any agreement or statutory provision or a mercantile usage, interest payable can be only at the market rate and such interest is payable upon establishment of totality of circumstances justifying exercise of such equitable jurisdiction. **It was also held that in ascertaining the rate of interest the courts of law can take judicial notice of both inflation as also a fall in the bank rate of interest.** The bank rate of interest both for commercial purposes and other purposes has been the subject-matter of statutory provisions as also the judge-made laws. In the said case reference was made to the decisions in *Kaushnuma Begum Vs. New India Assurance Co. Ltd*, *H.S. Ahammed Hussain Vs. Irfan Ahammed and United India Insurance Co. Ltd. Vs. Patricia Jean Mahajan* and **it was observed that even in cases of victims of motor vehicle accidents, the courts have upon taking note of the fall in the rate of interest held 9% interest to be reasonable. Direction to pay such a rate of interest is also found to be reasonable and fair as the plaintiff was deprived to utilize and roll its money in commercial transaction and kept out of it due to wrongful withholding of the same by the defendant.”**

23. Keeping in view the facts and circumstances of the case and decision of the Hon'ble Supreme Court in **C.K. Sasankan (supra)**, interest awarded by the Trial Court @ 24% p.a. is exorbitant. Demanding such high rate of interest is oppressive even in business transactions. It amounts to bloodsucking. In the facts and circumstances of the case it would be in the

interest of justice if the interest @ 9% p.a. from the date of filing the suit till realisation is awarded to the respondent on the principal amount of Rs.3,52,309/- against the appellant. Though the appellant had taken contradictory stand in written statement, still this court feels that it is not a proper case to burden the appellant with the compensatory and exemplary costs of Rs.50,000/-. However, the respondent shall be entitled to the cost of the suit.

24. Appeal is disposed of with no order as to costs.

(VINOD GOEL)
JUDGE

JANUARY 08, 2018