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

+ **CS(OS) 2013/2015**

HARISH DHALLA Plaintiff
Through Mr R.K.Singla, Advocate

versus

RAJESH LUTHRA Defendant
Through None

% Date of Decision: 05th October, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for recovery of a total sum of Rs.1,05,96,187/- (Rupees One Crore Five Lacs Ninety Six Thousand One Hundred Eighty Seven Only) along with pendente lite and future interest @ 18% p.a.
2. It is stated in the plaint that the plaintiff is engaged in the business of selling jewellery.
3. It is the case of the plaintiff that the defendant had, on various occasions, purchased jewellery articles from the plaintiff. He states that, however, since the beginning the defendant had been irregular in making payments to the plaintiff against the aforementioned

purchases. The details of the purchases made by the defendant are reproduced hereinbelow:

Sr no	Date	Invoice no	Amount in Rs
i.	25.08.2010	053	19,94,356.00
ii.	31.08.2010	054	26,64,662.00
iii.	19.10.2010	055	20,15,150.00
iv.	01.02.2011	062	7,28,792.00
v.	04.06.2011	068	30,86,857.00
vi.	12.08.2011	070	7,89,543.00
vii.	12.08.2011	071	27,64,890.00
viii	12.08.2011	072	25,22,302.00

4. Learned counsel for the plaintiff states that till date the defendant has paid only the following amounts to the plaintiff with respect to his outstanding dues and the same have been admitted by the defendant: -

Sr no	Date	Cheque No	Amount in Rs
i.	22.09.2010	970265	10,00,000.00
ii.	21.10.2010	970266	10,00,000.00
iii.	25.01.2011	970270	10,00,000.00
iv.	04.03.2011	RTGS	10,00,000.00
v.	28.04.2011	023819	10,00,000.00
vi.	10.08.2011	061900	10,00,000.00
vii.	01.10.2011	RTGS	10,00,000.00
viii.	12.01.2012	204534	10,00,000.00

ix.	10.04.2013	526089	3,85,000.00
x.	29.04.2013	RTGS	5,00,000.00
xi.	16.07.2013	RTGS	4,01,000.00

5. Learned counsel for the plaintiff states that the aforementioned amounts have been duly confirmed and signed by the defendant and/or his authorized representative in the statement of accounts maintained by the plaintiff during the course of his business.

6. Learned counsel for the plaintiff states that a principal sum of Rs.63,10,552/- (Rupees Sixty-Three Lacs Ten Thousand Five Hundred Fifty-Two Only) and interest of Rs.42,85,635/- (Rupees Fourty Two Lacs Eighty-Five Thousand Six Hundred and Thirty-Five Only) is still outstanding against the defendant and the same has not been paid, even though repeated requests have been made by the plaintiff.

7. On 08th June, 2015 the plaintiff sent a legal notice to the defendant, demanding the payment of his outstanding dues. He states that despite notice being served upon the defendant on 09th June, 2015, he has still not paid his outstanding dues and has instead sent a false and frivolous reply to the legal notice dated 23rd June, 2015.

8. The defendant initially entered appearance and also filed his written statement. In his written statement, the defendant has stated that he had returned the goods equaling to the outstanding dues, i.e. Rs. 63,10,552/-, vide invoices dated 08th April, 2015, 18th April, 2015 and 30th April, 2015.

9. On 25th November, 2016, when the matter was listed for

framing issues, none appeared for the defendant and the following issues were framed by the learned predecessor of this Court:-

“i. Whether the plaintiff is entitled to the relief claimed?

ii. Relief”

10. The plaintiff has filed its evidence by way of affidavit of Mr. Harish Dhalla (PW1) and Ms. Yogita, Sr. Assistant, Department of Trades & Taxes, Vyapar Bhawan (PW2).

11. Mr. Harish Dhalla (PW1) has proved amongst others, the following documents: -

- (i) Invoices issued by the plaintiff to the defendant, as mentioned in para 3 and exhibited as Ex. PW1/1 to Ex. PW1/8.
- (ii) Statements of accounts of the defendant exhibited as Ex. PW1/9.
- (iii) Confirmation of the accounts signed by the defendant exhibited as Ex. PW1/11 to Ex. PW1/12.
- (iv) Legal notice dated 08th June, 2015 exhibited as Ex. PW1/13 sent by the plaintiff to the defendant.
- (v) Reply to the legal notice sent by the defendant to the plaintiff dated 23rd June, 2015 exhibited as Ex. PW1/16.

12. Ms. Yogita, Sr. Assistant, Department of Trades & Taxes, Vyapar Bhawan (PW2) has proved the Purchase Return of the firm of the plaintiff and the same is exhibited as Ex. PW2/1 (Colly).

13. The defendant cross examined the PW1 before the Joint Registrar on 13th October, 2017. However, the defendant did not

appear before the Joint Registrar either on 20th July, 2018 or 19th September, 2018. Consequently, vide order dated 03rd October, 2018, he was proceeded *ex-parte*.

14. Having perused the paper book, this Court finds that the plaintiff has proved his invoices, statement of accounts and legal notice. The plaintiff has also proved the confirmation of his accounts.

15. However, the defendant has not led any evidence to prove his defence that he had returned the jewellery in question vide three invoices dated 08th April, 2015, 18th April, 2015 and 30th April, 2015. It is pertinent to mention that the defence of return of jewellery items has not even been taken by the defendant in his reply dated 23rd June, 2015 to the plaintiff's legal notice. Consequently, the defence of the defendant is not reflected in the contemporaneous correspondence.

16. Accordingly, the present suit is decreed in favour of the plaintiff and against the defendant for a sum of Rs.1,05,96,187/- (Rupees One Crore Five Lacs Ninety-Six Thousand One Hundred Eighty-Seven Only) along with interest *pendente lite* and future @ 8% per annum. This Court may mention that it is awarding the interest @ 8% per annum as that is the normal rate at which the banks are lending monies now-a-days.

17. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

OCTOBER 05, 2018

KA/rs