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

Date of decision: 6th November, 2019

+ **CM (M) 1054/2019 & CM APPL. 31614/2019**

PURE MILK PRODUCTS PVT. LTD. Petitioner
Through: Mr. Rohan Thawani, Mr. Sunil Goyal
and Mr. Iqram Singh, Advocates.
(M:9810802319)

versus

M/S RAMSONS Respondent
Through: Mr. Sumit K. Batra, Mr. Shrey
Chathly and Mr. Kunal Yograj,
Advocates. (M:9910211045)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The case of the Petitioner/Defendant (*hereinafter*, “*Defendant*”) is that it had entered into a contract with the Defendant for supply of ghee with the Respondent/Plaintiff (*hereinafter*, “*Plaintiff*”). The Plaintiff, in turn, placed an order on M/s. Gujarat Cooperative Milk Marketing Federation Ltd., who supplied the products directly to the Defendant.
2. The case of the Plaintiff is that despite the supply being made, the outstanding amounts were not paid towards the said supply, hence the suit for recovery of the amounts due and payable. The case of the Defendant is that the Plaintiff did not make supply in accordance with the contract and the specifications and what was supplied was butter oil instead of ghee. After hearing the parties, the Trial Court framed the following issues:

“On the pleadings of the parties, following issues are framed.

- 1. Whether the plaintiff is entitled to a sum of Rs. 64,14,960/-from the defendant? OPP*
- 2. Whether the plaintiff is entitled to interest on the said amount, if so, at what rate and for which period? OPP.*
- 3. Whether the goods supplied by the plaintiff through Gujarat Co-operative Milk Marketing Federation are defective goods and not genuine? OPD*
- 4. Whether the courts at Delhi have no jurisdiction to try the present suit? OPD*
- 5. Relief*

No other issue is arises nor pressed nor onus of prove objected to.”

3. Insofar as the issues and the placing of onus are concerned, there is no dispute between the parties. However, after framing of issues, the Court observed as under:

“There is no denial in the written statement that the goods were received by the defendant. However, their basic defence is territorial jurisdiction and goods were defective i.e. not genuine and the onus to prove the two issues are upon the defendant, therefore, the defendant are called upon to lead the evidence at first stage and thereafter the plaintiff will be called upon the plaintiff to lead the evidence.

List of witnesses be filed by the parties within 15 days. The defendant shall supply, the copy of evidence by way of affidavit in advance to the other side two weeks prior to the next date of hearing.

Put up for DE on 03/09/2019.”

4. The above direction of the Trial Court that the Defendant would lead

evidence first is challenged before this Court. The submission of Id. counsel for the Defendant is that the first issue i.e. whether the Plaintiff is entitled to recovery of the sum of Rs.64,14,960/- is inbuilt with the question of whether the Plaintiff had, in fact, got the supplies effected in terms of the contract. It is only after the Plaintiff's onus is discharged that the Defendant's onus to prove Issue no.3 arises, and not before that. It is submitted that the case of the Plaintiff in the plaint has to be proved first and it is only thereafter that the Defendant has to establish its case in the written statement. It is thus submitted that the manner in which the Trial Court has directed that the Defendant would lead evidence first, is contrary to law.

5. Ld. counsel for the Plaintiff, on the other hand, submits that the assertion of the Defendant in the written statement is that instead of ghee, butter oil was supplied, accordingly, the onus has been rightly cast upon the Defendant, and the Defendant has been rightly asked to lead evidence first.

6. The present transaction is with regard to supply of goods by the Plaintiff and for recovery of the amounts allegedly due and payable. The Plaintiff first has the onus to prove as to whether the goods were supplied in accordance with the contract, and if so, whether any amount is due and payable and if so, to what extent. The Plaintiff has, in fact, relied upon the Certificate of Analysis by M/s AmulFed Dairy, in support of its contention that the products supplied were in accordance with the specifications and in accordance with the contract. If so, then there is no doubt that the Plaintiff has to establish the said certificate and also prove its case first. It is only, thereafter, that the Defendant would lead evidence to discharge its onus in respect of Issue no.3. Though in some cases there can be a reversal in leading of evidence, and the Defendant may be directed to lead evidence

first, this is not one such case.

7. It is, accordingly, directed that the Plaintiff shall lead evidence first in the suit, and after that, the Defendant will lead evidence in respect of the issues where the onus has been placed upon the Defendant.

8. With these observations, the petition and the pending application are disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 06, 2019/dk

