

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

% Decided on: 18th September, 2019

+ **CS(OS) 304/2017**

SH. RAJ KUMAR GUPTA Plaintiff
Represented by: Mr.Avinash Kapoor, Advocate.

versus

M/S HYTHRO POWER CORPORATION
LTD & ORS Defendants
Represented by: None.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J. (ORAL)

I.A. 5811/2018 (exemption)

Allowed, subject to all just exceptions.

CS(OS) 304/2017

1. By this suit under Order XXXVII CPC the plaintiff seeks a decree of recovery of a sum of ₹11,12,49,455/- from the defendants along with the interest pendente-lite and future besides cost.
2. Summons in the suit were issued to defendant No.1 in the prescribed performa under Order XXXVII CPC on 30th November, 2017 returnable for 22nd January, 2018 when the office report indicated that the defendant No.1 was unserved as the premises was sealed. Plaintiff despite efforts could not trace the fresh address of defendant No.1 and hence filed an application seeking service of defendant No.1 through substituted service. In the meantime, plaintiff also sought to serve defendant No.1 through its email

address and fresh summons were also sent by ordinary and speed post which were received back unserved.

3. Finally the defendant No.1 was directed to be served by way of publication vide order dated 21st May, 2019. Publication in this regard was carried out in 'The Times of India', English edition having circulation in Delhi however, despite publication none has entered appearance on behalf of defendant No.1 hence the suit is liable to be decreed in favour of the plaintiff and against the defendant.

4. Plaintiff has sought recovery of a sum of ₹11,12,49,455/- from the defendants on the claim that the plaintiff who was the sole proprietor of M/s Dharuv International and engaged in the business of supply and marketing of steel plates, steel angles and steel channels etc. was approached by the defendant Nos.2 and 3 being the Directors of defendant No.1 company for supply of raw material which was duly supplied by the plaintiff against invoices raised from time to time. The invoices on the basis of which the goods were supplied have been placed on record. Despite delivery of goods the defendant No.1 failed to make the payments. Plaintiff has also placed on record invoices, purchase order, receipt showing delivery of goods at the various sites like HVPNL, Railways, PGMS and factories of defendants where their works were being carried out. Despite having received the money from the government agencies it is claimed that the defendant No.1 did not make payments to the plaintiff however, made a balance confirmation of the same to the plaintiff. Plaintiff sent a letter to the defendant No.1 with regard to its outstanding balance as on 31st March, 2015, copy whereof has been placed on record at page 296 indicating the closing balance as on 31st March, 2015 as ₹11,12,49,455/- which was duly

accepted on behalf of the defendant No.1. In addition to this acknowledgment the plaintiff also placed on record various invoices of the supply of the goods coupled with the rates of supply and the amount due. As regards the interest component only in some of the retail invoices of the plaintiff an interest @18% per annum, if payment is not made within seven days from the date of delivery, has been mentioned. Considering that the said rate of interest of 18% has not been mentioned consistently in all the invoices, this Court deems it fit to grant interest @9% from the date of filing of the suit till realization.

5. Consequently, the suit is decreed in favour of the plaintiff and against the defendant No.1 directing the defendant No.1 to pay a sum of ₹11,12,49,455/- based on the acceptance of the balance due as on 31st March, 2015 with an interest @9% from the date of filing of the suit till realization.

6. Plaintiff has also sought for the cost and in the absence of any other evidence being placed on record, the requisite court fees of ₹10,88,500/- having been deposited by the plaintiff the said amount is decreed in favour of the plaintiff and against the defendants as cost.

7. Suit is disposed of. Decree sheet be drawn accordingly.

I.A. 5810/2018 (under Order V Rule 20 CPC)

Application is dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 18, 2019
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