

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

CS 153 of 2014

M/s. Sree Bishan Das Iron Works

Versus

Basant Saha

Mr. Arnab Mukherjee

Mr. B. K. Upadhyay

Mr. S. Pyne

.....For the Plaintiff

Mr. A. Bose

.....For the defendant

Heard on : 26.09.2022

Judgment on : 10.11.2022

Krishna Rao, J.:

The plaintiff has filed the instant suit praying for a decree for a sum of Rs. 75,88,812/- along with interest. The plaintiff is a partnership firm and the defendant deals in a scrap iron. Sometimes in the year 2005, the defendant had informed the plaintiff that the defendant is owner of several plots at Howrah being premises no. 18 and 18A G.T. Road, District – Howrah and had entered into an agreement with M/s. Bhagwati Plasto

Works (P) Ltd. for developing the said land by constructing building thereon. The plaintiff had agreed to purchase some plots in the said project and had paid an advance of Rs. 32,00,000/- to the defendant. After receipt of the advance amount, the defendant had assured the plaintiff that a deed of conveyance would be registered as early as possible. Even after the assurance and receipt of the advance amount, the defendant failed to come forward for registration of sale deed in favour of the plaintiff. As the defendant has neither registered the deed nor has returned the amount to the plaintiff, the plaintiff had made a complaint to the police authority on 27.04.2012. The defendant had approached the plaintiff and requested some time to repayment of the amount and also agreed that the defendant will pay the said amount along with interest.

The defendant in writing admitted to pay Rs. 20,00,000/- towards interest and Rs. 10,00,000/- as compensation to the plaintiff firm in addition to the principal amount. The defendant had also issued three account payee cheques in favour of the plaintiff, for an amount of Rs. 10,00,000/- dt. 02.08.2012, Rs. 10,00,000/- dt. 04.08.2012 and Rs. 12,00,000/- dt. 06.08.2012. It is the further case of the plaintiff that the aforementioned cheques were issued by the defendant to the plaintiff with regard to the principal amount and the defendant informed the plaintiff that the balance amount of the Rs. 30,00,000/- has aforesaid shall be paid within 6 to 8 months. The plaintiff had presented the said cheques for encashment but all the cheques have been dishonoured with the endorsement insufficient fund. The plaintiff issued legal notice to the

defendant calling upon the defendant for payment of an amount of Rs. 62,00,000/- along with interest. On receipt of the notice, the Counsel for the defendant had sent a reply informing that the defendant is out of station and he would be available last week of December, 2013 and after getting the instructions from the defendant, he will give reply in detailed to the plaintiff. It is further case of the plaintiff that thereafter neither the defendant has given any reply nor had paid the said amount to the plaintiff and accordingly the plaintiff has filed the instant suit.

After receipt of the writ of summons of the instant suit, the defendant had entered appearance but had not filed written statement and subsequently the defendant had filed an application being GA 2 of 2014 praying for extension of time to file of written statement. In spite of filing the application, the defendant has not proceeded with the said application and accordingly vide order dt. 11.07.2022, this Court had dismissed the interlocutory application for non-prosecution. As the defendant has not filed written statement accordingly the suit was posted as undefended suit.

To prove the case of the plaintiff, the plaintiff had examined one witness namely Jagdish Parshad Goel being the one of the partner for the plaintiff firm. During his examination, the plaintiff has exhibited altogether nine (9) exhibits being Exhibits – ‘A’ to Exhibit – ‘I’.

Exhibit- A : A letter of authorization authorized by the firm to the witness Shri Jagdish Parshad Goel to depose before this Court on behalf of the plaintiff firm.

Exhibit – B : Confirmation letter issued by the defendant to the plaintiff regarding receipt of Rs. 32,00,000/-.

Exhibit – C : Confirmation of account of Rs. 32,00,000/-.

Exhibit – D : Vide letter dt. 10.06.2011 issued by the plaintiff to the defendant confirming that the plaintiff has received the confirmation from the defendant.

Exhibit – E : The confirmation of account with respect of Rs. 32,00,000/-.

Exhibit – F : An undertaking submitted by the defendant to the plaintiff regarding payment of interest and compensation dt. 07.05.2012.

Exhibit – G (Collectively) : Cheque of Rs. 50,000/- dt. 26.03.2014, for an amount of Rs. 50,000/-, cheque dt. 04.08.2012 for an amount of Rs. 10,00,000/-, cheque dt. 02.08.2012 for an amount of Rs. 10,00,000/- and cheque of Rs. 12,00,000/- dt. 06.08.2012.

Exhibit – H : The legal notice sent by the plaintiff to the defendant dt. 30.11.2013 along with acknowledgement card, copy of the reply sent by the Counsel for the defendant dt. 16.12.2013.

Exhibit-‘B’ to Exhibit –‘E’ proves that the plaintiff has paid an amount of Rs. 32,00,000/- to the defendant and the defendant had acknowledged the same. Exhibit – ‘F’ on the basis of which the plaintiff is claiming that the defendant has given an undertaking that the defendant has agreed to pay Rs. 20,00,000/- as interest and Rs. 10,00,000/- as compensation cannot be

said to be proved as the scrap of paper only reveals that interest of Rs. 20,00,000/- and cash Rs. 10,00,000/- total Rs. 30,00,000/- , the said Exhibit – F does not say that the said amount which is mentioned in the said exhibit is interest in connection with the principal amount or the compensation as claimed by the plaintiff. Exhibit – ‘G’ containing four cheques out of which two cheques of Rs. 10,00,000/- and one cheque is Rs. 12,00,000/- dt. 02.08.2012, 04.08.2012 and 06.08.2012 total amounting to Rs. 32,00,000/- but the plaintiff has also exhibited one cheque of IDBI Bank dt. 26.03.2014 which the plaintiff has neither described in the plaint nor there is any averment that the defendant has issued the said cheque to the plaintiff. It is also surprise that the said cheque is dt. 26.03.2014 i.e. after the legal notice but it is the specific case of plaintiff that the defendant has not paid any amount to the plaintiff.

After going through the pleadings, the evidence and the documents relied by the plaintiff, it is find that the transaction between the plaintiff and the defendant was made in the year 2005 and subsequently the defendant had issued the said cheque to the plaintiff on 06.08.2012 which was dishonoured with the reasons insufficient funds. As per Exhibit – ‘H’, the plaintiff had issued legal notice to the defendant on 30.11.2013 and the Counsel for the defendant had sent a reply on 16.12.2013, after 16.12.2013 there is no correspondence between the plaintiff and the defendant. As per the record, the plaintiff has filed the suit in the month of March, 2014 and was presented before this Court on 21.04.2014, thus the suit is within time as prescribed under law.

After considering the plaint, statement of witness and exhibits this Court finds that the plaintiff is able to prove that the plaintiff has paid Rs. 32,00,000/- to the defendant but the defendant has not returned the said amount to the plaintiff. The plaintiff is entitle to get a decree for a sum of Rs. 32,00,000/- (Rupees thirty two lakhs only) along with interest @ 12% per annum with effect from 1st April, 2006 i.e. confirmation of account dt. 01.04.2007 (Exhibit-C) till realization of the decreetal amount.

The defendant is directed to pay an amount of Rs. 32,00,000/- along with interest within sixty (60) days from date.

CS 153 of 2014 is allowed. Decree be drawn accordingly.

(Krishna Rao, J.)