IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Sugato Majumdar

CS/368/1994

IA NO: GA/1/1995(Old No: GA/1712/1995)

GA/2/1995(Old No: GA/1864/1995)

SUDHANSHU SINGHANIA
VS
THE EIMCO K.C.P. LTD.

For the Plaintiffs	:	Mr. Sankar Sarkar, Advocate, Mr. Tanmoy Sett, Advocate, Ms. Kalpana Singhania, Advocate, Ms. Twinkle. Kaur, Advocate, Mr. S. Singhania, Advocate
Hearing concluded on	:	21.06.2023
Judgment on	:	**23.06.2023**

<u>**Sugato Majumdar, J.:**</u>

The instant suit filed by the Plaintiff praying for decree for Rs.10,94,751/- along with interest and direction to render true accounts as well as other prayers against the Defendant company.

The sum and substance of the Plaintiff's case is that in December 1987 the Defendant agreed to hire the services of the Plaintiff as its agent for marketing its products in the eastern region of India on regular basis. On January 2, 1988 and agreement was entered into between the parties herein initially for a period of six months. The agreement was recorded by the Defendant in the later dated January 2, 1988. The initial period of six months was extended from time to time. Pursuant thereto the Plaintiff rendered its services to the Defendant in marketing its products in the eastern region of India. On November 17, 1990 the Defendant modified the terms and conditions of service of the Plaintiff with respect to the stipulation on payment of commission. In course of business a sum of Rs.8,97,558.27p became payable by the Defendant to the Plaintiff; apart from this father amount of Rs.98,200/- became payable on account of commission; Rs.23,442/- toward tax deduction at source and Rs.75,550.73p on account of interest on the principal amount. In spite of repeated demands the Defendant neglected and failed to decide amount to the Plaintiff. The agreement was entered into between the parties herein at the office of the Plaintiff at 227, Chittaranjan Avenue, Kolkata - 700006 within the jurisdiction of this Court. Having no alternative, the Plaintiff instituted the instant suit praying for recovery of money along with interest as prayed for.

The Defendant appeared in the suit and contested the same by filing written statement. The Defendant admitted the letter dated January 2, 1988. It is contention of the Defendant that it was merely professionally understood or agreed that the Plaintiff should market the Defendant's manufactured products on a job to job basis and on experimental basis for a period of six months only subject to payment of commission for service rendered depending upon the volume of business. Rates of commission, as pleaded in the written statement, differed according to the volume of business. It is admitted that the Plaintiff, from time to time, rendered service to the Defendant in marketing its products it is admitted that old account was settled up to March 15, 1993 and an amount of Rs.1,00,034/- was due and owing from the Defendant. Thereafter the Defendant, from time to time, made various payments aggregating to a sum of Rs.92,000/- leaving a balance sum of Rs.8,034/- outstanding as of November 26, 1993. The Defendant denied all the other allegations contained in the plaint.

On the basis of pleadings of the parties following issues were framed:

1. Is the suit maintainable?

2. Did the Plaintiff rendered services as pleaded in paragraph 9 of the plaint?

3. Is the Plaintiff entitled to his claim as per the agreement pleaded in paragraph 5 of the plaint, subsequently modified as pleaded in paragraph 8 thereof?

4. Is the Plaintiff entitled to get a decree, as prayed for?

5. To what relief/reliefs the Plaintiff is entitled to?

The Plaintiff examined himself as P.W.1. He was cross-examined. No witness was examined on behalf of the Defendant.

Various documents were produced on behalf of the Plaintiff which were exhibited and marked.

At the time of argument none appeared on behalf of the Defendant to argue the matter.

The Learned Counsel appearing for the Plaintiff submitted written notes of argument. It is argued that oral as well as documentary evidence established beyond of doubt and on preponderance of probabilities that the Plaintiff is entitled to the claim raised in this suit. The instant suit is related to commercial agreement between the parties. The Plaintiff was appointed as agent of the Defendant for sale of the laters' product. The suit was instituted in the year 1994, when The Commercial Courts Act 2015 was not introduced. Chapter XII Rule 1 of the Original Side Rules defined commercial suits. According to Rule 1, commercial suits include suits arising out of the ordinary transactions of merchants, bankers and traders and among others there relating to the construction of mercantile documents, export or import merchandise, affreightment, carriage of goods by land, insurance, banking and mercantile agency and mercantile usages and debts arising out of such transactions. Section 2 (1) (c) defines commercial dispute and the present case comes well within the ambit of commercial dispute, to be heard and disposed of by Commercial Division.

It is admitted in the written statement that the parties hereto entered into agreement and they had regular business transactions on commission basis.

Rate of commissions are also made out in the written statement. It is also admitted in the written statement that a sum of Rs.8,034/- was due owing and payable by the Defendant to the Plaintiff as on 26th November, 1993. Ext.-L being a letter dated 2nd September, 1993 shows that as on that date, a sum of Rs.6,00,000/- was payable by the Defendant to the Plaintiff. By way of subsequent business transactions, a further sum was payable by the Defendant to the Plaintiff. This is evidenced and proved by Ext. J, O, W, T, X, as well as by AA. It is further in evidence that the Plaintiff is entitled to a sum of Rs.23,442/- on account of tax deduction at source which was deducted but not paid into the Plaintiff's tax account. Ext.-BB is the demand notice dated August, 20, 1994 showing demand raised by the Plaintiff. Oral and documentary evidence adduced by the Plaintiff proved that the Plaintiff is entitled to a sum of Rs.10,94,751/- from the Defendant. There is no evidence on record to show that any amount, as such, was paid to the Plaintiff.

The Defendant did not adduce any evidence to disprove the case of the Plaintiff. Cross-examination did not make any discrepancy. Therefore, it is proved by preponderance of probabilities, on the basis of oral and documentary evidences that the Plaintiff is entitled to and the Defendant is liable to pay the Plaintiff a sum of Rs.10,94,751/-, with interest at a rate of 6% per annum from the date of institution of the suit, till recovery.

Court fees paid is correct.

Hence it is ordered that the Defendant shall pay a sum of Rs.10,94,751/- to the Plaintiff with interest at a rate of 6% per annum from the date of institution of the suit till recovery, within three months from the date of decree in case of default of which the Plaintiff shall put the decree on execution for recovery of the decretal amount.

Let decree be drawn up.

The suit stands disposed of, with pending applications, if any.

(Sugato Majumdar, J.)