

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

% Decided on: 14th February, 2023

+ **RFA(COMM) 27/2023**

VIJAY AGGARWAL APPELLANT

Represented by: Mr. Rajeev Saxena, Mr. Sidhant
Luthra, Advs. with appellant in
person.

versus

M/S SHREE BALAJI FABRICS & ORS. RESPONDENT

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J. (ORAL)

CM APPL.7324/2023

Exemption allowed subject to just exception.

CM APPL.7323/2023 (delay)

1. By this application the appellant seeks condonation of delay of 38 days in filing the appeal.
2. For the reasons stated in the application the delay of 38 days in filing the appeal is condoned.
3. Application is disposed of.

RFA(COMM) 27/2023

1. Admit.
2. By this appeal, the appellant challenges the impugned judgment dated 27th September, 2022 whereby the suit filed by the appellant seeking

recovery of a sum of ₹2,32,277/- as principal amount and a sum of ₹1,14,547/- as interest @ 24 % per annum calculated from 3rd February, 2017 till 23rd February, 2019 along with pendent-lite and future interest, has been dismissed.

3. Claim of the appellant in the suit was that the appellant being the proprietor of M/s. Vijay Aggarwal and Company having its office at D-51, Sector A2, Tronica City, Loni, Ghaziabad is engaged in the business of manufacturing, selling the fabric, dress material and ladies suit etc. It is claimed in the plaint that the defendants got certain job work done and purchased certain fabrics of ladies suit, dress material, etc., for which the plaintiff raised the invoices; however, the defendants without raising any objection to the products as also the job work done to their satisfaction, did not make the necessary payments.

4. In response to the appellant's claim in the plaint, reply filed by the defendant in Para 3 specifically noted that the defendants have never dealt with the plaintiff in any manner whatsoever. The invoices annexed by the plaintiff with the suit in the name of defendants firm have never been acknowledged by the defendants or their agents. No credit note or demand letter has ever been received or acknowledged by the defendants and hence there being no business relationship between the plaintiff and the defendants, the defendants are not liable to pay any amount. Even in the admission/denial of documents, the defendant specifically denied the invoices. In the evidence by way of affidavit filed by the two partners of Shree Balaji Fabrics, it was stated that they had no business relationship with the plaintiff/appellant. It was claimed that the defendants are deeply rooted in the business of manufacturing, designing and selling fabrics for more than 40

years.

5. Learned counsel for the appellant contends that despite the appellant giving a legal notice, no reply was given by the defendants thereby not denying any business relationships. He further contends that the invoices were duly proved along with the Katcha receipts acknowledging receipt of the goods. The appellant also produced his statement of account in the Court and hence according to the appellant there was sufficient evidence on record to prove the business relationship between the plaintiff and defendants and that based on the invoices, the appellant has supplied the goods and performed the job work, for which no payment was received.

6. In view of the fact that the defendant denied any business relationship with the appellant as also the invoices raised, the onus was on the appellant to prove their entire case. Merely because no reply was given to the legal notice issued by the plaintiff would not be an admission of the contents of the notice issued by the appellant to the defendants. Though the appellant claims to have proved the 6 invoices raised when goods were supplied and job work was done, however it may be noted that in his deposition the appellant Vijay Aggarwal who appeared in the witness box stated that he is not the one who had raised the invoices and thus the learned District Judge (Commercial Court) held that the invoices having been raised by one Mukesh who was Accountant of the appellant has not entered the witness box, hence the invoices were not proved. Further, the appellant has not proved any acknowledgement of the goods supplied and job work done as he had placed on record some Katcha receipts which have no value in the eyes of law. Further, it has also not been proved as to who signed the said receipts when the goods were purportedly received.

7. Learned counsel for the appellant also heavily relies on the claim of the defendants that this tactic of the appellant was an arm twisting. Mere use of the word “arm twisting” does not amount to acknowledgement of the liability. There being no acknowledgement of a business relationship much less the liability, the onus was on the appellant to prove that the goods were duly supplied against the invoices raised; which in view of the evidence as noted above, the appellant has failed to prove and thereby has not succeeded in discharging the onus put on the appellant. Consequently, we find no ground to interfere with the impugned judgment.

8. Appeal is dismissed.

9. Judgment be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

FEBRUARY 14, 2023
‘ga’