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

Date of Decision: 29th November, 2023.

\+ CS(COMM) 154/2022 & I.As. 3888/2022, 3889/2022

M R PIPES PVT LTD ..... Plaintiff

Through: Mr. Rajesh Mahendru, Advocate.

versus

RCC ECO BUILD SYSTEMS LTD ..... Defendant

Through: Ms. Amrita Panda, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

I.A. 5968/2022 *(u/Order XXXVII Rule 3(5) of the Code of Civil Procedure, 1908, for leave to defend the captioned suit)*

1. This judgment deals with a monetary suit under Order XXXVII of Code of Civil Procedure, 1908 [*hereinafter* "***CPC***"] raising a commercial dispute under Section 2(1)(c) of Commercial Courts Act, 2015 for unpaid sale of goods. On 10th March, 2022, this Court issued summons and concurrently passed an interim order restraining creation of third-party rights on two properties of the Defendant located in Agra. Upon summons being served, the Defendant entered appearance in the time stipulated under the provisions of Order XXXVII of CPC. On 05th April, 2022, this Court directed for issuance of summons for judgment to the Defendant in Form 4A of Appendix B of CPC. In response, Defendant has applied seeking leave to defend the instant under Order XXXVII Rule 3(5) of CPC raising certain triable issues and

certain jurisdictional objections on maintainability. This judgment shall ascertain if the Defendant should be afforded an opportunity to defend the suit and if any conditions are required to be imposed.

BACKGROUND AND PLAINTIFF'S CONTENTIONS:

2. The background facts and Plaintiff's contentions emerging from the plaint are as under:

2.1. The Plaintiff is a company engaged in the business of distribution and sale of steel pipes, shuttering and other material. They are a distributor of APL Apollo Tubes Ltd., who are the original equipment manufacturers of various pipes and tubes. In the month of November, 2018, Defendant placed orders for purchase of 'M S Pipes & Tubes' of various descriptions against which supplies were made. The details of invoices raised by the Plaintiff on the Defendant for the period from 14th November, 2018 to 16th January, 2019 have been listed in paragraph no. 4 of the plaint and are extracted hereinbelow:

"S.N.	*INVOICE NO.*	*DATED*	*AMOUNT*
1.	*309*	*14.11.2018*	*RS.11,40,576/-*
2.	*310*	*14.11.2018*	*RS.11,13,539/-*
3.	*316*	*17.11.2018*	*RS.8,99,160/-*
4.	*347*	*07.12.2018*	*RS.8,97,390/-*
4.	*353*	*11.12.2018*	*RS.9,79,636/-*
6.	*363*	*15.12.2018*	*RS.14,23,552/-*
7.	*364*	*15.12.2018*	*RS.14,24,921/-*
8.	*381*	*25.12.2018*	*RS.11,73,864/-*
9.	*382*	*25.12.2018*	*RS.11,92,307 /-*
10.	*387*	*29.12.2018*	*RS.11,00,965/-*
11.	*388*	*29.12.2018*	*RS.2,69,740/-*
12.	*389*	*29.12.2018*	*RS.8,34,369/-*

13.	*395*	*07.01.2019*	*RS.1,91,426/-*
14.	*396*	*07.01.2019*	*RS.12,40,239/-*
15.	*405*	*16.01.2019*	*RS.14.84,101/-*
		Total	***RS.1,53,65,785/-"***

2.2. The Plaintiff supplied the goods valued at Rs.1,53,65,785/- to the Defendant, however, no payments were received despite repeated requests and reminders. Subsequently, the Defendant issued a Cheque bearing no. 000610 dated 30th May, 2019, for Rs.1,53,65,785/- drawn on HDFC Bank, Gurgaon, in favour of the Plaintiff, at the Plaintiff's office in Delhi. However, the cheque was subsequently dishonoured due to 'insufficient funds' when presented for payment on 31st May, 2019.

2.3. Upon being informed of the aforementioned circumstances, the Defendant requested additional time to fulfil the payment obligation. In response, the Plaintiff refrained from initiating criminal proceedings, aiming to preserve their ongoing relationship. Nevertheless, it was mutually agreed that the Defendants would incur an interest charge of 18% per annum on the outstanding amount. This rate not only aligns with customary trade practices but is also sanctioned under Sections 80 and 117 of the Negotiable Instruments Act, 1881 [*hereinafter* "***Negotiable Instruments Act***"]. Consequently, the application of this interest rate to the outstanding balance, spanning from 01st June, 2019, to 15th February, 2022, entitles the Plaintiff to a pre-suit interest total of Rs. 74,90,819/-. Accordingly, the total amount recoverable from the Defendant as on the date of filing the suit stands at Rs. 2,28,56,604/-.

2.4. The invoices in-question, issued by the Plaintiff, were inclusive of an

18% Goods and Services Tax [*hereinafter* "***GST***"] and the tax/GST component was duly remitted to the relevant authorities. These details were promptly communicated to the Defendant, in line with the relevant GST regulations. Under these regulations, the Defendant, as the purchaser, had the option to raise any disputes regarding the quality and quantity of goods within a 30-day period. Failure to raise such disputes within this timeframe results in the implicit acceptance of the invoice and entitles the Defendant to claim the GST input credit of the invoice. In this instance, the Defendant's lack of objection within the specified period is deemed as an acceptance of the invoices. Moreover, according to Sale of Goods Act, 1930, the Defendant is now barred from raising objections against the invoice due to the substantial period that has elapsed since the issuance of the invoices.

2.5. Plaintiff served a legal notice on the Defendant on 06th December, 2021, demanding the payment, however, the Defendant failed to comply.

DEFENDANT'S GROUNDS SEEKING LEAVE:

3. Ms. Amrita Panda, counsel for the Applicant/ Defendant raises the following contentions:

3.1. ***Lack of territorial jurisdiction***: This Court lacks territorial jurisdiction to entertain the present suit for the following reasons:

3.1.1. The Defendant does not reside or work for gain within the jurisdiction of this Court. As per settled law, the location of the Plaintiff's office has no bearing on the territorial jurisdiction.

3.1.2. The cheque in-question was not issued in Delhi. Defendant's office as well as the bank upon which the cheque was drawn, is located in Gurgaon. Nonetheless, as per Plaintiff's own admission, the suit has been instituted under Section 2(1)(c)(xviii) of the Commercial Courts Act, i.e., out of an agreement for sale of goods. The sale transaction has not been effected in Delhi.

3.1.3. The Plaintiff's assertion that the transaction occurred in Delhi is inaccurate. The invoices issued by APL Apollo Tubes Limited, clearly indicates that the goods in question were dispatched from Bulandshahr, Uttar Pradesh, and were consigned to and received in Agra, Uttar Pradesh. These goods were intended for later use by the Defendant at their site in Ambala, as is evident from the invoices issued by the Plaintiff to the Defendant. It is important to note that the fact that the invoices were raised in Delhi pertains solely to GST/taxation purposes and does not confer territorial jurisdiction to this Court. The location of invoice issued for tax purposes should not be misconstrued as the location of the transaction itself.

3.1.4. Even if it is assumed that the parties mutually consented to submit themselves to the jurisdiction of the Courts in Delhi, such an agreement would not be legally binding. The fundamental principle of jurisdiction dictates that parties cannot, through mutual agreement, confer jurisdiction upon a Court that inherently lacks the jurisdiction to entertain the suit. The mere stipulation in the invoice stating that the parties agree to be "*subject to Delhi jurisdiction*" does not legally bind the Defendant. Jurisdiction is determined by law, not by the agreement of the parties, and cannot be altered by contractual terms if the Court otherwise lacks jurisdiction over the matter.

3.2. ***Lack of pecuniary jurisdiction***: The Plaintiff has intentionally inflated the value of the suit in an effort to assert pecuniary jurisdiction for filing before this Court. The principal amount claimed as due is Rs. 1,53,65,785/-, yet the suit has been assigned a value of Rs. 2,28,56,604/-. This inflated figure includes an interest component calculated at 18% per annum, amounting to Rs. 74,90,819/-, from the alleged date of the dishonour of the cheque in-question. Crucially, there was no prior agreement between the parties regarding the payment of such interest. This application of an excessively high interest rate, is seemingly aimed at manipulating the suit's valuation to meet this Court's pecuniary jurisdiction – clearly in violation of the judgment of the Supreme Court in ***Abdul Hamid Shamsi v. Abdul Majid***.[1]

3.3. ***Triable issues***: The Defendant has raised several triable issues which require examination prior to rendering of judgment, which include the following:

3.3.1. The cheque in-question, upon which the Plaintiff's case is founded, was a blank cheque provided by the Defendant as security in November 2018. This was a condition set by the Plaintiff, who otherwise would not have supplied the goods. Plaintiff, taking undue advantage of the Defendant's trust, filled in the date on the blank cheque. This situation came to light when the Defendant was notified by the bank about the presentation of a cheque for Rs. 1,53,65,785 and subsequently, received a legal notice from the Plaintiff. The Defendant promptly conveyed their discontent to the Plaintiff regarding this action. Notably, the Plaintiff's decision not to initiate proceedings under Section 138 of the Negotiable Instruments Act against the Defendant suggests an acknowledgment of their own culpability in this matter.

3.3.2. The pipes supplied to the Defendant's factory in Agra were rusted and also had dents and bends in them. The Plaintiff had also not supplied the complete quantity of the goods as invoiced. These issues were raised contemporaneously with the Plaintiff's representatives who were informed of

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[1] (1988) 2 SCC 575.

such issues and the Plaintiff had agreed to make up for the same in subsequent supplies. Even in subsequent consignments, the material supplied, suffered from the same defects which was again informed to the Plaintiff. For this reason, the Defendant has stamped and signed its acknowledgment of the receipt of the goods in the first four tax invoices dated 13th, 14th and 16th November, 2018 and 02nd December, 2018, but for later invoices, its representatives were instructed not to acknowledge the receipts of subsequent deliveries unless the Plaintiff rectified the defects highlighted to them. The absence of Defendant's acknowledgment on certain receipts of APL Apollo Tubes Limited is duly borne out from the Plaintiff's relied upon documents. Defendant was unwilling to make complete payment until a joint verification was carried out by the parties, however, the Plaintiff refused to depute a representative for the same.

3.3.3. The Defendant had previously raised concerns about the issuance of e-way bills from Delhi, rather than from Uttar Pradesh, given that the goods were being supplied from Bulandshahr to Agra. Despite this discrepancy, the Plaintiff assured the Defendant that such a practice was merely for the purposes of the Plaintiff's internal accounting procedures. Relying on this explanation, the Defendant chose to place trust in the Plaintiff and refrained from further objecting to the matter.

3.4. The Defendant availed GST input credit against the invoices issued by the Plaintiff, under the assumption that the identified defects in the goods would be addressed and rectified by the Plaintiff. This action was taken in good faith, with the intention that the payments for these invoices would be made to the Plaintiff once the goods were confirmed to be in satisfactory condition. However, given the situation of the goods being faulty, the onus now shifts to the Plaintiff. It becomes the Plaintiff's responsibility to retract the GST invoices issued for these defective goods. The Defendant's initial acceptance of the invoices and the subsequent GST credit claim were contingent upon the expectation of receiving goods that met the agreed standards.

3.5. The invoices in-question cover the period from 14th November, 2018, to 16th January, 2019. Considering the dates on these invoices, the period for initiating legal action as prescribed by the statute of limitations has elapsed, rendering the current suit barred by limitation. Furthermore, it is pertinent to note that the cheque dated 30th May, 2019, does not constitute an acknowledgment of liability towards the Plaintiff. This is because the date on the said cheque was filled in by the Plaintiff themselves, not by the Defendant.

PLAINTIFF'S CONTENTIONS IN REJOINDER:

4. Mr. Rajesh Mahendru, counsel for the Plaintiff, controverts the contentions advanced by the Defendant's counsel. He submits that the suit is well within the limitation which period is to be calculated from the date of dishonour of the cheque in-question. There was no written complaint or notice whatsoever raised by the Defendant regarding the quality or non-supply of goods till date. This contention is therefore *ex-facie*, bereft of any merit and has only been raised to urge a triable issue when none exists. Further, the Court has the pecuniary jurisdiction as the suit value is above Rs. 2 crores, and the rate of interest has been applied as per the Negotiable Instruments Act and agreement between the parties.

ANALYSIS AND FINDINGS:

5. The legal framework for granting leave to defend in summary suits is

predicated on the nature and strength of the defence presented by the defendant. If the defendant demonstrates a substantial defence likely to succeed, they are entitled to unconditional leave to defend. In cases where the defence, though not robust, presents fair, *bona fide*, or reasonable triable issues, the defendant typically receives unconditional leave. However, when the genuineness or good faith of the triable issues is in doubt, the Court must balance the need for swift resolution of commercial disputes against the risk of dismissing legitimate issues, possibly imposing conditions on the trial or requiring security. For defences that appear plausible but improbable, more stringent conditions may be set. Finally, in instances where the defendant lacks a substantive defence or fails to present any credible triable issues, leave to defend is to be denied, streamlining the judicial process and preventing unwarranted delays. Keeping these principles in mind, the Court shall now proceed to deal with the objections raised by the Defendant.

5.1. ***Pecuniary jurisdiction:*** The total suit amount Rs. 2,28,56,604/-, incorporates a principal sum of Rs. 1,53,65,785/- and accrued interest of Rs. 74,90,819/-. This principal amount represents the total of the outstanding invoice amounts and is also the cheque amount, issued by the Defendant. The applied interest rate of 18% is not arbitrary but is in conformity with Sections 80 and 117 of the Negotiable Instruments Act which explicitly entitles a party to levy such an interest rate on the dishonoured cheque amount. This renders the Defendant's argument of an artificially enhanced suit amount baseless and unsubstantiated. The rate applied here is neither whimsical nor arbitrary; it is a statutory right that accrues upon the dishonour of a cheque. Furthermore, the precedent set by the Supreme Court in ***Abdul Hamid Shamsi*** specifically addresses situations where parties capriciously and arbitrarily inflate suit value. In the present case, the suit valuation consists of the total of the outstanding invoice amounts and a statutory rate of interest on the dishonoured cheque amount, thus aligning with legal provisions rather than arbitrary discretion. Consequently, the ***Abdul Hamid Shamsi*** ruling is inapplicable to the facts of the instant case.

5.2. ***Territorial jurisdiction***: The Plaintiff has anchored the suit within the framework of Section 20 of CPC relying on a 'cause of action'. A cause of action comprises a set of facts necessitating legal action, and a court must determine whether any part of the cause of action occurred within its jurisdiction. Defendant has failed to furnish any evidence to indicate that goods were dispatched from Agra. Per the e-way bills furnished by the Plaintiff, the goods were supplied from Delhi. This fact alone establishes that a portion of the cause of action has indeed arisen within the territorial confines of this Court, thereby providing a foundational basis for jurisdiction. Additionally, the obligation to make payment under the disputed invoices was part of the contract's performance, which was designated to occur in Delhi. The non-fulfilment of this contractual obligation, or the breach, transpired in Delhi. This breach further contributes to the cause of action within this Court's jurisdiction. Furthermore, the cheque issued by the Defendant was presented and dishonoured in Delhi. This event, being a critical component of the cause of action, also ties the jurisdiction firmly to Delhi. Based on these considerations – the supply of goods, the performance and breach of contract in Delhi, and the dishonour of the cheque in the same location – the Courts in Delhi are rightly vested with the jurisdiction to adjudicate this suit. The Defendant's contention regarding the lack of territorial jurisdiction is without merit. It fails to consider the multifaceted aspects of the cause of action that occurred in Delhi, each of which individually and collectively establish this Court's jurisdiction over the matter.

5.3. ***Triable issues:*** The Court finds Defendant's claim regarding defective and short-supply of goods, wholly unconvincing and unsubstantiated. Defendant has specifically acknowledged receipt of the goods in four tax invoices. In respect of other invoices, the receipt of goods is not denied, but it is contended that since there were some defective supplies, acknowledgment was not endorsed. Further, there is also an unspecific and vague allegation of short supply without giving any particulars. Crucially, there is a complete absence of formal complaints or written communications from the Defendant prior to this lawsuit. This lack of documentation is highly unusual in commercial transactions, where discrepancies in quality or quantity are typically reported promptly and formally. The Defendant's failure to provide any evidence of such communication prior to the initiation of legal action casts significant doubt on the authenticity and timing of their alleged claims of defective or incomplete deliveries. Significantly, Defendant's allegations are falsified by their own action of utilisation of the goods and also the input tax credit of GST levied on the invoices. This action inherently implies acceptance of the goods as invoiced. If the goods were indeed defective or not supplied as per the agreement, the Defendant ought to have raised the dispute and refrained from claiming such credits until the issues were resolved. The act of claiming GST input credit, therefore, contradicts their contention of defective and incomplete supply. Rather it indicates that the Defendant had accepted the goods without any demur or protest. The Defendant has concededly never rejected or returned such goods. Rather, the goods as discussed have been utilised by the Defendant. The glaring inconsistency in the conduct, discredits the defence put forward by the Defendant.

6. The Court concludes that the defence raised by the Defendant concerning defective and short-supply of goods is without merit and appears to be a post-facto fabrication rather than a genuine grievance. The combined weight of the absence of timely formal complaints, availing of GST input tax credits without reservations, and the lack of consistent communication regarding alleged defects or short supply, lead to the inevitable conclusion that the plea of defective and short-supply is a sham. Therefore, the Court finds no triable issue in the Defendant's claims and rejects their contentions as unfounded.

7. The Defendant's contention that the cheque in-question was issued as a mere security is also entirely vague and has no basis. It is admitted that the cheque was signed and handed over to the Defendant. Even Defendant's defence that the cheque was provided as a security, is of no consequence, as the very purpose of such a security would be to ensure payment against obligations against the invoices raised by the Plaintiff, which admittedly remain unpaid. Furthermore, there is a complete absence of any agreement or evidence to support the notion that the cheque was not meant to be presented or encashed. The issuance of a blank cheque, by its very nature, implies an authorization to fill in the necessary details and present it for payment as required. The act of issuing a blank cheque, especially in a commercial context, is generally understood as a commitment to fulfil a financial obligation. The failure to honour the payment as per the terms of the cheque directly brings the case within the ambit of Order XXXVII of CPC.

8. As regards the plea of limitation, again the Court finds no merit in the same. The cheque in-question, for payment towards the outstanding dues, was

dishonoured on 31st May, 2019 and the suit was filed within the period of limitation calculated from the said date. Even otherwise the first invoice was raised on 14th November, 2018 and the last one being on 16th January, 2019. If the three years' period of limitation is to be calculated from the first invoice, the limitation would expire on 13th November, 2021. The Plaintiff would then be entitled to the benefit of Supreme Court's order dated 10th January, 2022, in Suo Motu Writ (Civil) No. 3/2020 titled ***In Re: Cognizance for Extension of Limitation***, which had excluded the period from 15th March, 2020 to 28th February, 2022 from computation of limitation and provided a window of 90 days to parties to file their action, in cases, where limitation had expired in the aforesaid period, commencing from 01st March, 2022. If the said period is taken into account, the present suit is evidently within the period of limitation.

9. In view of the above, the Court finds no ground for the Defendant to be granted the leave to defend and accordingly, the application is dismissed.

CS(COMM) 154/2022

10. In terms of the above, the suit is decreed in favour of the Plaintiff and against the Defendant for an amount of Rs. 2,28,56,604/-. Plaintiff is also entitled to *pendente lite* and future interest at the rate of 10% per annum besides costs. A certificate of the counsel fee be filed within a period of one week from date of uploading of this judgment.

11. Suit is decreed in above terms. Registry is directed to draw up a decree sheet.

12. Suit and pending applications are disposed of.

SANJEEV NARULA, J

NOVEMBER 29, 2023/as