



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

% **Reserved on : 17.10.2023**
Pronounced on: 09.11.2023

+ **CS(COMM) 468/2022, I.A. 10604/2022 and I.A. 18757/2022**

IN THE MATTER OF:

BOSCH LIMITED

..... Plaintiff

Through: Mr. Anirudh Bakhru, Ms. Apurva Bhutani, Mr. Naqeeb Nawab and Ms. Pragya Choudhary, Advocates.

versus

**MR. ABHAY KUMAR JHA TRADING AS ELKOSTA SECURITY
SYSTEMS INDIA**

..... Defendant

Through: Mr. Jitendra Kr Jha and Mr. Jitender Rathi, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

I.A. No.20630/2022 (filed under Order XXXVII Rule 3(5) read with Section 151 CPC)

1. The defendant seeks leave to defend as well as to place on record its objections on account of limitation.
2. Before entering into the merits of the contentions of the parties, it is deemed apposite to note the factual matrix of the case briefly.
3. Plaintiff has instituted the captioned summary suit thereby seeking recovery of Rs.2,81,92,694.16/-. Plaintiff has claimed that it is running a



business of manufacturing, marketing and distribution of business technology, diesel and gasoline fuel injection systems etc. The defendant had approached it for the purchase of application development and upgradation of its software systems.

Apparently, the parties entered into various business transactions with each other but for the present case, only following three business transactions are relevant:-

Invoice Date	Invoice No.	Description	Invoice Amount (in INR)	Amount Due (in INR)
20.04.2017	5290019389	Service – E license	97,75,000.00/-	95,65,060.80
25.04.2017	5290019479	Material	30,37,499.95/-	30,37,499.95/-
28.04.2017	5290019570	Service-extended warranty	23,00,000.00/-	23,00,000.00/-
Total			1,51,12,499.95/-	1,49,02,560.75/-

4. Plaintiff further claims that the defendant has not only received the services of the plaintiff and made use of the same without any complaint regarding the quality, but it has also received and acknowledged the aforesaid invoices raised by the plaintiff, which indicate the uncontested nature of the plaintiff's claim. Furthermore, according to the plaintiff, defendant wrote as many as three emails dated 27.11.2017, 14.03.2018 and 20.04.2018, wherein it sought time for making payments to the plaintiff, which clearly establish the liability of the defendant. Plaintiff has stated that



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the outstanding amount payable by the defendant is as tabulated hereinbelow:

Invoice No.	Amount due (in INR)	Amount due date	Interest @ 18%	Total
5290019389	95,65,060.80/-	19.06.2017	55,95,560.5/-	1,80,83,992.21/-
5290019479	30,37,499.95/-	24.06.2017	26,97,799.27/-	57,35,299.22/-
5290019570	23,00,000.00/-	28.05.2017	20,73,402/-	43,73,402.73/-
Grand Total				2,81,92,694.16/-

5. Defendant, on the other hand, has denied the claim. According to the defendant, as on 29.06.2017, it was liable to pay a sum of Rs.57.21 lacs to the plaintiff, which was paid by it through UTR No. SBINR52017062900034207. With this payment, the entire outstanding stood paid and hence the sums claimed under the suit invoices are not due and payable.

6. Defendant has not disputed the emails dated 27.11.2017, 14.03.2018, and 20.04.2018 and in its leave to defend chose to respond to the reference made by the plaintiff to such emails by stating that the same are a matter of record.

7. Besides merits, the defendant has objected to the maintainability of the suit on the ground of limitation and pecuniary jurisdiction of this court to entertain the suit. On pecuniary jurisdiction, it is argued that the principal claim amount of Rs.1,49,02,560.75/- has been inflated by adding pre-suit interest claim charged at an exorbitant and unjustified rate of 18% p.a., making the suit amount as Rs.2,81,92,694.16/-, to attract pecuniary



jurisdiction of this court.

8. On limitation, the defendant has contended that even if benefit of the orders passed by the Supreme Court in *Re: Cognizance for Extension of Limitation*, as claimed by the plaintiff, is made available to it, the suit filed on 30.05.2022 was time barred. Defendant has argued that the plaintiff had 90 days to file the suit from 01.03.2022, which expired on 29.05.2022. The suit was filed on the 30.05.2022, which was beyond the time and that too without the court fee and under objections and the same could not count as a legal filing. Defendant has further argued that court fee was paid by the plaintiff, as late as 07.07.2022, and that the suit was re-filed on 11.07.2022, by which time the suit was already late and no amount of ameliorative steps taken by the plaintiff could have cured the most fatal defect of limitation.

9. Law pertaining to the rules for deciding leave to defend, as laid down, in several judicial decisions, is very lucid and straight. Existence of triable issue raised by a defendant in its leave to defend will enure to its benefit and it would be entitled to contest and defend the suit. The overriding consideration is the nature of defence raised by the defendant. The defence should not be a moonshine and existence of triable issue would not merely mean a bald denial in the leave to defend of the pleadings of the suit. Defendant must project a plausible defence.

10. Applying the well etched out yardstick to the present case, the defence raised by the defendant does not hold together. The only defence raised by the defendant is that it had paid a sum of Rs.57.21 lacs to the plaintiff on 29.06.2017, towards clearing its entire liability. Defendant wants the court to believe that with this payment the invoices dated 20.04.2017, 25.04.2017 & 28.04.2017, also stood settled since the said invoices pre-date the date of



payment of Rs.57.21 lacs. If this were true, then defendant's emails dated 27.11.2017, 14.03.2018 and 20.04.2018, wherein it wrote to the plaintiff that it would clear the dues soon, can't be explained. In its leave to defend, the defendant has not denied the emails and has rather stated that the said emails are a matter of record however, no explanation is offered on the context of the said emails i.e., assuring the plaintiff of the payments. If on 29.06.2017 entire outstanding had been cleared, then assurances made in the said emails of making payments do not make sense. As stated above, in the leave to defend, on the one hand, the said emails have been admitted but in the same breath it is denied that by virtue of the said emails the defendant acknowledged its liability towards the plaintiff. The denial is bald and unsubstantiated. No explanation is offered to explain how the said emails do not amount to an acknowledgment. If there was some plausible explanation offered, the court may have been permitted the defendant to contest the suit by granting leave to defend, but surely not on the basis of a bald denial. Though, it was orally argued that the said emails pertained to invoices other than the invoices in question and hence do not amount to acknowledgment of liability pertaining to the said invoices. This argument does not add up since the three emails have been issued after 29.06.2017, on which date, the defendant, as per its own case, had settled all outstanding dues of the plaintiff, as pleaded in the leave to defend. In any case, oral submissions are not backed by pleadings in the leave to defend. There is not a whisper of an explanation, as discussed above.

11. On the aspect of limitation, defendant has raised multiple contentions. It was contended that as per plaintiff's case the three invoices became payable on 19.06.2017, 24.06.2017 and 28.05.2017, as per the time for



payment mentioned in each of the said invoices. Counting from the said due dates, the three years limitation period to claim these invoices would run out on 18.06.2020, 23.06.2020 and 27.05.2020. It is argued that, as such, the suit filed on 30.05.2022 was beyond the limitation period of three years for each of the invoices. Plaintiff, on the other hand, contended that the defendant acknowledged its debt vide its email dated 20.04.2018 and the limitation therefore would begin to run from the said date. In the normal circumstances, the three years period expired on 27.05.2020-for the latest of the three invoices dated 28.05.2017, but on account of orders passed by the Supreme Court in Re: Cognizance for Extension of Limitation, the time period from 15.03.2020 till 28.02.2022 would stand excluded. The said Supreme Court order further provided benefit of another 90 days thereafter i.e., from 01.03.2022 till 01.06.2022 to file the suit. The order further stipulated that in the event, if the actual balance period of limitation remaining in the case as on 01.03.2022 was more than 90 days, the benefit of a longer period would be given. On the strength of the aforesaid decision, it was contended that insofar as the first invoice is concerned, the last date for payment was 19.06.2017 and the limitation was to expire on 18.06.2020. Excluding the period from 15.03.2020 to 18.06.2020, the period of limitation available as on 01.03.2022 was 96 days i.e longer of 90 and 96 days. The plaint being filed on 30.05.2022 was within limitation. On the second invoice, it was contended that the last date for payment was 24.06.2017 and the limitation was to expire on 23.06.2020. Excluding the period from 15.03.2020 to 23.06.2020, the period of limitation available as on 01.03.2022 was 101 days. For the last invoice, it was contended that the last date for payment was 28.05.2017 and the limitation was to expire on



27.05.2020. Excluding the period from 15.03.2020 to 27.05.2020, the period of limitation available as on 01.03.2022 was 74 days but in view of the aforesaid order passed by the Supreme Court, the longer period of 90 days would be available which would expire of 30.05.2022.

12. The long and short of the defendant's contention is that the latest suit could have been filed till 29.05.2022, when the 90 days as per said order passed by Supreme Court order expired. However, the suit filed on 30.05.2022 had become time barred. Plaintiff in its response has clarified that 29.05.2022 was a Sunday and thus the suit was filed immediately upon the reopening of court on the following Monday i.e., on 30.05.2022.

13. Plaintiff has also claimed benefit of the pre-institution mediation which was instituted on 27.12.2021. The mediation proceedings were held on 10.01.2022 and 17.01.2022, with the proceedings closing on the latter date with the 'non-starter' report. Thus, a benefit of further 21 days is claimed.

14. Based, on above calculations, this Court does not find any merit in the defendant's contention. As discussed above, the three years limitation period for each of the three invoices expired on 18.06.2020, 23.06.2020 and 27.05.2020 respectively. Granting the benefit of said order passed by Supreme Court on extension of limitation order, the period from 15.03.2020 till 28.02.2022 plus 90 days, is excluded from counting. Further, since a longer limitation period-more than 90 days after 01.03.2022, was available for each of the invoices, the suit filed on 30.05.2022, is within limitation. Defendant's plea therefore is unsustainable.

15. On limitation, the defendant's another contention that the filing of the suit on 30.05.2022 was time barred since the filing of the suit without the



court fee was *non est*, is not too meritorious. The filing of suit without the payment of court fee has been satisfactorily explained by the plaintiff by explaining that originally the court fee was intended to be purchased by the counsel, however the same could not be done since the court fee agency would accept the payment for court fee only from the account of the purchaser in whose name the court fee would be purchased and not from any other account. It is not in dispute that the requisite court fee of Rs. 2,82,000/- was paid with the re-filed suit on 11.07.2022.

16. As pleaded by the plaintiff in reply to the defendant's application for leave to defend, the objections were raised by the Registry via its email dated 02.07.2022, upon the reopening of the Registry after summer vacation. Under Sub-rule (c) of Rule 3 of Chapter IV of the Delhi High Court (Original Side) Rules, 2018, the application for condonation of delay is required to be filed if the refiling is done beyond the aggregate time of 30 days allowed under sub-rule (a). When the refiling was done on the 11.07.2022, the same was within 30 days from 02.07.2022, when the objections were raised and communicated by the Registry to the plaintiff. No condonation of delay application was required at the time of refiling on 11.07.2022.

Also, pertinently, there was no material defect in the plaint which would render the filing *non est* on 30.05.2022. There is no allegation that the plaint as filed on 30.05.2020 was not signed or verified in accordance with Order VI Rule 15 of CPC. It is not an allegation that the plaint filed on 30.05.2022 was incomplete and that the plaint refiled on 11.07.2022 was materially different from the earlier filing. For the said reasons, the defendant's contention about *non est* filing on 30.05.2022 is rejected.



17. On the abuse of the process of law to attract the pecuniary jurisdiction of this court by inflating the interest amount is concerned, it will be apt to dismiss the objection by reminding the defendant that the plaintiff is the master of its own litigation (dominus litus). If the plaintiff is convinced about the merit of its claim for interest and has paid the requisite court fee on the pre-suit interest amount, the court cannot at the threshold enquire and call upon the plaintiff to justify the claim amount. At this stage the court is required to examine if the sum claimed in the plaint is within the pecuniary jurisdiction of this court. In any case the defendant has not explained how this objection will entitle it to the grant of leave to defend. The grant of final relief is for the court to decide at a later stage if plaintiff's claim is found to be in accordance with law.

18. For the reasons stated above, no plausible defence or triable issues have been raised by the defendant ensuring it the benefit of leave to defend. The application for leave to defend is therefore rejected.

19. Suit is based on invoices dated 20.04.2017, 25.04.2017 and 28.04.2017, that have been acknowledged by the defendant. The sum claimed in the suit is for a liquidated sum based upon a written contract, which in this case exists in the form of acknowledged invoices. The suit is maintainable under Order XXXVII CPC.

20. The plaint is supported by an affidavit. Plaintiff has filed original invoices along with the corresponding purchase orders, and printouts of the acknowledgment emails dated 27.11.2017, 14.03.2018 and 20.04.2018 supported by an affidavit under Section 65B have also been filed along with the plaint.

21. The principal sum claimed in the suit is Rs.1,49,02,560.75/-, on which



a pre-suit interest has been claimed @18% p.a from the respective due dates of the invoices. The principal sum claimed is the aggregate due value of the aforesaid three invoices. Although the plaintiff has claimed an amount of Rs.2,81,92,694.16/- in the suit, upon a closer scrutiny, it can be seen that there has been an arithmetical error w.r.t Invoice No. 5290019389. While the plaintiff has claimed an amount of Rs.1,80,83,992.21/- being the due amount + interest under the said invoice, the correct amount is Rs.1,51,60,621/-. Consequently, the correct value of the suit comes out to be Rs.2,52,69,322.52/-. The defendant has acknowledged the liability and there is no denial in the leave to defend about the correctness or authenticity of the invoices. Legal notice dated 26.06.2020 demanding the invoice amount was sent by the plaintiff which was not responded by the defendant, though the defendant has denied receiving the legal notice in its leave to defend. However, since the plaint is supported by an affidavit and further proof of service of legal notice has been filed, there is no reason to disbelieve the plaintiff.

22. Plaintiff is entitled to the sum of Rs.1,49,02,560.75/-, being the aggregate due value of the invoices dated 20.04.2017, 25.04.2017 and 28.04.2017.

23. However, the plaintiff has not justified its claim for pre-suit interest claimed @18% p.a. There is no contract for payment of interest filed nor pleaded. In the absence of the said, the interest claimed @18% is rejected. However, since the transaction between the parties is commercial in nature, it would be fair to grant simple interest @7% p.a. on the invoice amounts, from the time when invoices became due till the payment is received by the plaintiff.



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24. Suit is accordingly decreed in the aforementioned terms. All other pending applications are disposed of.

25. Decree sheet be prepared accordingly.

**MANOJ KUMAR OHRI
(JUDGE)**

NOVEMBER 9, 2023