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

% *Date of Decision: 14.12.2023*

+ **RFA(COMM) 296/2023 & CM Nos.64747/2023 & 64748/2023**

M/S HARYANA MEDICAL HALL
& ORS.

..... Appellants

Through: Mr. Pankaj Gupta, Adv.

versus

DR. ROSHANLAL AGGARWAL AND SONS PVT
LTD

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellants have filed the present appeal impugning a judgement dated 17.10.2023 (hereafter '**the impugned judgment**') passed by the learned Commercial Court in CS (Comm) No. 673/2021 captioned ***Dr. Roshanlal Aggarwal & Sons Pvt. Ltd. v. M/s Haryana Medical Hall & Ors.*** The said suit was instituted by the respondent (plaintiff in the said suit) for recovering an amount of ₹33,99,942/- along with pendente lite and future interest at the rate of 18% per annum on the amount of ₹28,80,847/-.

2. It was the respondent's case that the appellants approached the respondent for supply of the medicines at the agreed prices. It was



also agreed that in case of delay in making the payments, the appellants would be liable to pay, after the expiry of 30 days from the date of supply, interest at the rate of 18% per annum on the amounts of each invoice raised by the respondent upon the appellants. The respondent claimed that against the invoices outstanding as on 24.11.2020, the appellants were required to pay an outstanding amount of Rs. 33,99,942/- (principal amount of ₹28,80,847/- plus interest amounting to ₹5,19,095/-). The respondent, *inter alia*, claimed that the amount of ₹33,99,942 was due, however, no payment was made by the appellants despite serving the legal notice dated 08.10.2020 to them.

3. The said suit of recovery was instituted by the respondent on 25.02.2021 on the basis of running account maintained by the respondent.

4. The summons was served to the appellants by an order dated 01.03.2021 returnable for 26.04.2021. The appellants did not file the written statement within a stipulated time. Thereafter, the appellants were proceeded *ex parte* by an order dated 23.04.2022 passed by the learned Commercial Court as the appellants (defendants in the said suit), despite several opportunities, had not appeared in the proceedings.

5. The appellants, thereafter, filed an application dated 23.05.2022 under Order IX Rule 13 of the Code of Civil Procedure, 1908, before the learned Commercial Court for setting aside the order dated



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23.04.2022, whereby they were proceeded *ex parte*. The application of the appellants for setting aside the *ex parte* order was allowed by an order dated 05.11.2022, subject to the payment of cost ₹2,000/- to the respondent. The learned Commercial Court, by an order dated 01.08.2023, also a granted opportunity to the appellants the right to cross examine the witnesses of the respondent (plaintiff in the said suit).

6. After considering the evidences, the learned Commercial Court accepted the respondents claim for a sum of ₹ 28,80,847/- along with the interest at the rate of 12% per annum. The said interest was directed to be reckoned from 08.10.2020 till the filing of the suit. The learned Commercial Court also passed a decree for pendente lite and future interest at the rate of 12% per annum from the date of filing of the suit till the realization of the amount, in favour of the respondent.

7. The learned counsel appearing for the appellants had assailed the impugned judgment and decree on, essentially, three grounds. First, he submitted that the appellants' right to file the written statement was closed although the time for filing the same had not expired. He stated that the respondent had filed the suit on 25.02.2021. The summons was directed to be issued by an order dated 01.03.2021, therefore, the appellants had thirty days' time for filing the written statement, which was to expire some time in 02.04.2021. However, the appellants were entitled to further period of ninety days to file the written statement, which would expire in July 2021. He

Signature Not Verified

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By: DUSHYANT
RAWAL
Signing Date: 20.12.2023

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submitted that the Supreme Court had passed orders in ***Suo Motu Writ Petition (Civil) No.3/2020: In Re: Cognizance for Extension of Limitation, decided on 23.03.2020*** relaxing the period of limitation in all cases. Therefore, the learned Commercial Court had proceeded on erroneous premise that the appellants' right to file a written statement was required to be closed. He submitted that despite the orders passed by the Supreme Court in ***Suo Motu Writ Petition (Civil) No.3/2020: In Re: Cognizance for Extension of Limitation (supra)***, the learned Commercial Court had proceeded *ex parte* and he also stated that although the order was recalled by the learned Commercial Court on 05.11.2022 but the appellants were not granted further opportunity to file a written statement.

8. Next, he submitted that the respondent had not proved its claim for a sum of ₹28,80,847/- as the consideration for the goods supplied. He submitted that the respondent had not produced any delivery challans to establish that the goods covered under the invoices as claimed were delivered to the appellants. He submitted that the returns filed by the respondent under the Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017 would not establish the delivery of the goods. He submitted that since the appellants were proceeded *ex parte*, the respondent was required to cross a higher threshold of discharging its burden of proof and its claim could not have been decreed on preponderance of probabilities.



9. The first and foremost question to be addressed is whether the impugned judgment is liable to be set aside on the ground that the appellants were not afforded the full opportunity to file a written statement.

10. The order sheets as filed by the appellants indicate that the suit in question received by the learned Commercial Court on 25.02.2021, was directed to be checked and registered. The summons in the said suit was directed to be issued on 01.03.2021. The Court further directed the written statement to be filed by the appellants (defendants in the suit) within thirty days (extendable up to 120 days in all with the leave of court and subject to terms) from the date of service of process and the matter was directed to be listed on 26.04.2021. The order sheet of 26.04.2021 is not on record but it is stated that the matter was adjourned. It was further listed on 15.07.2021, but was adjourned *en-bloc* in view of the directions issued by this Court. The suit was, thereafter, listed on 15.09.2021. On the said date, the learned counsel for the appellants appeared and submitted that he would file his *vakalatnama* before the next date of hearing. He also confirmed that he had received a copy of the plaint along with the documents. Accordingly, the suit was directed to be listed on 10.11.2021.

11. On the next date, that is, on 10.11.2021, none had appeared for the appellants and therefore, the matter was once again adjourned to 13.01.2022. On that date as well, none appeared for the appellants and the suit was directed to be listed on 07.03.2022. This was the second



adjournment for want of representation on behalf of the appellants. The suit was, thereafter, listed on 07.03.2022 but once again none appeared for the appellants. It was, thereafter, listed on 23.04.2022. On that day as well, none appeared for the appellants. Since none had appeared for the appellants on four consecutive hearings including on 23.04.2022, the learned Commercial Court ordered that the appellants be proceeded *ex parte* and listed the matter for *ex parte* evidence on 30.07.2022. In the meanwhile, the appellants filed an application dated 23.05.2022 for recalling the said order. The said application was taken up on 30.05.2022 and notice was issued to the respondent. The suit was directed to be listed on date already fixed for hearing, that is, 30.07.2022. On that date, the Court granted time to the respondent to file a reply to the said application and listed the suit on 20.09.2022.

12. At the hearing held on 20.09.2022, the learned counsel appearing for the respondent stated that the respondent did not wish to file a reply to the application moved by the appellants for recall of the order directing that the suit be proceeded *ex parte*. On that date as well, the counsel for the appellants was not present. However, appellant no.2 (defendant no. 3 in the said suit) was present in person and sought an adjournment, which was granted. The suit was, thereafter, listed on 05.11.2022. On the said date, the appellants' application for recalling the order dated 23.04.2022 was allowed.

13. It is material to note that the order sheet does not indicate that any request was made by the appellants to seek further time to file a



written statement. It is also material to note that there is no order, closing the right of the appellants to file the written statement. Thus, the appellants were not precluded from filing the written statement. Although they had filed an application to recall the *ex parte* order, it is conceded that they neither filed the written statement, nor moved any application for being allowed to do so. The appellants' contention that the right to file written statement had been closed despite the period of limitation being extended by the orders passed by the Supreme Court is based on erroneous premise that the Court had foreclosed their right to file the written statement on account of a failure to do so within a period of 120 days from the date of issuance of summons. We are not persuaded to accept that the impugned judgment could be faulted on the said ground.

14. The next question to be examined is whether the respondent/plaintiff had sufficiently proved its claim. It is material to note that the respondent had claimed that it had maintained a running account. A plain reading of the plaint indicates that the respondent had set out a list of invoices issued from April 2019. The first being invoice dated 03.04.2019. In all, the respondent had mentioned 190 invoices. The value of the invoices aggregated ₹3,75,93,214/-. The respondent had also set out the payments received from the appellants. The account indicated that during the period April 2019 to 31.03.2020, there were 213 entries of receipts aggregating ₹3,98,35,889.24/-. The respondent had claimed that the same included a sum of ₹55,62,852.24/-, which was outstanding as on 01.04.2019.



The respondent had claimed that since it was maintaining a running account, the payments were first appropriated towards the outstanding balance of ₹55,62,852.24/- as on 01.04.2019. Thus, according to the respondent, the account disclosed a balance of ₹33,20,177/- as on 31.03.2020. The respondent had claimed that after 01.04.2020, the appellants were supplied goods under twelve invoices for an amount aggregating ₹60,43,199/-. Against the aforesaid amounts, the appellants had paid a sum of ₹56,90,004/-. The respondent had also set out further transactions including the amounts received after July 2020.

15. The respondent had produced a computer print of its running account disclosing a closing balance of ₹28,80,847/-. To prove the same, the respondent had also filed a certificate under Section 65B of the Indian Evidence Act, 1872. Mr Krishan Pal Singh, Sales Manager and Authorized Representative of the respondent (PW-1) had tendered an affidavit by way of evidence affirming as to the contents of the said statement of accounts for the year 2019-20. The respondent had also produced copies of the invoices (197 in number) (Ex.PW-1/5 to Ex.PW-1/201).

16. The learned counsel appearing for the appellants had pointed out that the respondent had not placed consignment notes. The Court had also posed a question whether the transactions were reflected in the income tax returns and PW-1 had responded that the transactions were reflected in the GST Returns filed by the respondent company.



We are of the view that the respondent had duly proved that the statement of accounts was maintained in the normal course of business and had reflected a balance of ₹28,80,847/- as outstanding and payable by the appellants.

17. The respondent had also produced GSTR returns, which were referred to by the learned Commercial Court. The contention that the said returns had no evidentiary value, is erroneous. The said returns clearly indicated that the respondent had paid central tax as well as state/UT tax and the benefit of such input tax credit of the said amount would be available to the appellants.

18. The contention that the respondent was required to discharge a higher degree of proof because the appellants had not filed a written statement, is unmerited. The respondent was required to prove its claim, which it has. The appellants had full opportunity to contest the claim, but they had chosen not to file the written statement.

19. The same does not inure to the benefit. We do not find any merit in the present appeal. The same is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 14, 2023
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