

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

CS 14 of 2016

Messrs Bajrang Steel Trading Co. (India) Pvt. Ltd.

Versus

Biplab Das

Ms. Arunima Lala

Ms. Saolini Bose

Mr. Nikunj Berlia

... for the plaintiff.

Hearing Concluded On : 01.05.2024

Judgment on : 12.06.2024

Krishna Rao, J.:

1. The present suit is filed by the plaintiff for a decree of a sum of Rs.55,60,528/- along with interim interest and interest upon judgment at 24% per annum.
2. The plaintiff is carrying on business in manufacturing, dealing and trading in different specifications of iron and steel materials, such as

MS Plates/H.R. Coil, HR Sheet/MS Sheet/BP Sheet, MS angles/MS channel etc.

3. The defendant is carrying on business under the name and style of “A to Z Engineering” as a sole proprietor.
4. In or about June, 2009, the defendant approached the plaintiff, for the purpose of obtaining various types of iron and steel materials of diverse quantities and specifications.
5. The parties orally agreed for the supply, delivery and sale of the aforesaid goods on the basis of the following terms and conditions:
 - a) *The defendant from time to time would place its orders for purchase of the said goods from the plaintiff at the office of the plaintiff within the jurisdiction according to the requirements of the defendant from time to time at the rates agreed to by and between the parties.*
 - b) *The plaintiff would sell, supply, and deliver to the defendant the said goods so ordered by the defendant at the aforesaid factory of the defendant outside the jurisdiction and would thereafter raise and submit its bills/invoices for the price of the said goods sold by the plaintiff to the defendant.*
 - c) *The defendant shall pay to the plaintiff the price of the said goods sold, supplied and delivered by the plaintiff together with loading charges and costs along with delivery delivery charges, if incurred by the plaintiff, to the defendant immediately on receipt of bills/invoices, so raised and submitted by the plaintiff to the defendant and/or within the time agreed by and between the parties.*

- d) *It was agreed that the defendant would not be charged delivery charges if the goods were delivered by their own transport to the defendant from the godown of the plaintiff.*
- e) *It was agreed that the defendant shall also supply the excise duty and VAT (Value Added Tax) as applicable from time to time on the said goods to be sold and delivered to the defendant by the plaintiff.*
- f) *Interest would be charged at the agreed rate of 24% per annum if the bill/invoice is not paid by the defendant to the plaintiff on presentation of the same or on the agreed due date as the case may be.*
- g) *The accounts between the parties shall be current and continuous.*
- h) *The payment shall be made by the defendant at the aforesaid office of the plaintiff.*
- i) *All dealing and transactions by and between the parties shall be subject to Kolkata jurisdiction only.*

6. According to the terms and conditions of the contract entered into by and between the parties, the defendant from time to time placed various orders upon the plaintiff for supply of various quantities and qualities of the goods at the agreed rates during the period from 5th June, 2009 to 22nd November, 2010 and such delivery of the goods were accepted by the defendant without any demur or protest with regard to quality and/or any other issues related to the delivered goods.

7. The plaintiff raised bills/invoices in accordance with the goods that were sold and supplied to the defendant.
8. The defendant had made part payment towards the said goods sold and delivered and the defendant also issued a cheque of Rs.5,00,000/-, bearing the Cheque No. '603084' on 13th October, 2010 but the said cheque was dishonoured with the endorsement "Funds Insufficient".
9. The defendant thereafter failed and neglected to make further payment of the dues arising out of the goods that were sold and supplied to the defendant by the plaintiff in accordance with the agreed terms and conditions.
10. The plaintiff apart from filing the instant suit had also initiated proceedings under Section 156(3) of the Criminal Procedure Code in the Court of the Learned Chief Metropolitan Magistrate, Calcutta being Case No. C/9359 of 2014 on 10th March, 2014 whereupon an FIR has also been lodged with the police and the said proceeding is still pending.
11. The plaintiff had sent a notice dated 14th July, 2015, through its Advocate, calling upon the defendant to pay the balance amount along with interest but the said notice returned as undelivered.
12. The plaintiff has also published the legal notices in the English and Bengali daily newspaper but inspite of publication of the notices, the defendant has neither sent any reply nor has made payment, accordingly, the plaintiff has filed the present suit.

13. The defendant had entered appearance in the instant suit and filed their written statement. The defendant had alleged the following:

- (a) *The quality of goods delivered are inferior.*
- (b) *The plaintiff suppressed a huge number of payment statements to inflate its demands.*
- (c) *There are no outstanding dues of the defendant.*
- (d) *A sum of Rs.18,59,608.04/- has been paid in cash for which no receipt has been issued by the plaintiff.*

14. On the basis of the Written Statement filed by the defendant and on the basis of the plaint filed by the plaintiff, the parties had frame the following issues:

- (i) *Whether the suit is maintainable in its present form?*
- (ii) *Whether the goods were supplied and delivered as per the requirements of the defendant?*
- (iii) *Whether the plaintiff is entitled to recover for a sum of Rs.55,60,528/- along with interest @ 24% per annum on account of goods sold and delivered?*
- (iv) *Whether the plaintiff is entitled to the decree as prayed for?*
- (v) *To what extent of reliefs is the plaintiff entitled to?*

15. The plaintiff in order to prove its case has examined one witness, namely, Mr. Shashi Churiwala, who is the Management Executive of the plaintiff company.

16. The plaintiff has also exhibited a total number of 10 (Ten) documents, which are marked as “**Exhibit – A to Exhibit – J**”, they are as follows:

Exhibit – A (Collectively): *Certified copies of Challans, issued by the plaintiff to the defendant, during the period of 2010-2011.*

Exhibit – B (Collectively): *Certified copies of Tax Invoices, issued by the plaintiff to the defendant, from the year 2009 till 2011.*

Exhibit – C (Collectively): *Copies of Paper Publication done by the plaintiff, one on The English newspaper ‘The Statesman’ and one on the Bengali newspaper ‘Anandabazar Patrika’, demanding the monies due by the defendant to the plaintiff.*

Exhibit – D (Collectively): *Copies of statements of account of the plaintiff, which shows the part amount received by the defendant.*

Exhibit – E (Collectively): *A copy of a letter dated 20th May, 2011, issued by the plaintiff to the defendant, asking him to make payments.*

Exhibit – F (Collectively): *Copies of Excise Invoices get pass which was issued along with Commercial Invoices for taking the CENVAT Benefit from 20th May, 2010 to 22nd November, 2010.*

Exhibit – G: *Copy of a letter dated 14th July, 2015, issued by the plaintiff to the defendant regarding the amount due.*

Exhibit – H: *Certificate under Section 65B of Indian Evidence Act, 1822.*

Exhibit – I: *Copy of Interest Calculation given to the defendant for claiming interest for delayed payment and non-payment of bills.*

Exhibit – J: *Bank Statements of plaintiff from ING Vysya Bank Limited, for the period of 2009 to 2011.*

- 17.** Exhibit **“A”** are copies of several challans for the period of 5th June, 2009 to 22nd November, 2010, which proves that according to the understanding and agreement between the parties, the plaintiff had supplied, delivered and sold the goods as specified by the defendant and the same were accepted by the defendant without any demur or protest. and Exhibit **“B”** and **“F”** are copies of invoices/bills with regard to the materials supplied and delivered to the defendant.
- 18.** The plaintiff has made out a case that an amount of Rs.55,60,528/- is due and payable by the defendant and also in order to release its due payable to the plaintiff, the defendant had made part payments which has not been proved by the plaintiff, even after the plaintiff had exhibited its bank statements, i.e. Exhibit **“I”** and Exhibit **“J”**, and also had given an Account Confirmation, i.e. Exhibit **“D”** . The plaintiff had failed to specify as to on which date part payments were made by the defendant as well as the Account Confirmation shows that an amount of Rs.67,23,911.08/- to be payable which is contrary to the plaintiff's case.
- 19.** The plaintiff has made out a case that the defendant is liable to pay the balance principal amount of Rs.19,39,406/- and interest at the rate of 24% per annum from 31st December, 2015 which amounts to Rs.36,21,122/- but the plaintiff has not disclosed anywhere either in the plaint or in the evidence that what was to the total cost of the materials and how much amount has been paid by the defendant to the plaintiff. The plaintiff has relied upon Exhibit **“I”** i.e. interest

calculation sheet and as per the evidence of the plaintiff, Exhibit “I” given to the defendant but there is no evidence to prove that the said document was received by the defendant. The plaintiff has also exhibited statement of account of ING VYSYA Bank Limited of the related to the plaintiff’s firm from the year 2009 to 2011 but the plaintiff has not proved which of the transaction is related to the defendant.

20. The plaintiff says that the last payment was made by the defendant on 4th February, 2013 but the plaintiff has not proved the last payment was made on 4th February, 2013. The bank statements which the plaintiff has relied upon is only upto the year 2011 and from the said document also it is not proved that the defendant has made last payment on 4th February, 2013. The plaintiff has relied upon the account confirmation for the year 2009 to 2011 which is marked as Exhibit “D” collectively but in the said document as on 4th March, 2011, the closing balance shown as Rs.34,89,406.08/- which is not in conformity with the claim of the plaintiff.

21. Notice sent by the plaintiff to the defendant through the Learned Advocate dated 20th May, 2011, is marked as Exhibit “E” and in the said notice, the plaintiff has claimed Rs.34,89,406.08/- and as per the evidence of the plaintiff, the notice was received by the defendant but in the plaint, the plaintiff has not made out such case and also not mentioned about the said notice. At the time of evidence, the plaintiff has also relied upon the notice dated 14th July, 2015, being Exhibit “G”

sent to the defendant but there is no evidence on record to prove whether the said notice was actually sent to the defendant as there is neither any postal receipt nor any acknowledgement due. The plaintiff has also exhibited two original daily newspaper publication of "The Statements" and "Ananda Bazar Patrika" dated 22nd September, 2015, wherein the plaintiff has published a legal notice issued to the defendant wherein it is mentioned that the Learned Counsel for the plaintiff had sent a notice to the defendant by Registered post with A/D and by Speed Post but both the notices were returned unserved as the defendant avoided to receive the said notice but the undelivered notices were not exhibited during the evidence of the plaintiff.

- 22.** The defendant entered appearance and had filed written statement but thereafter inspite of several opportunities, the defendant has not come forward for complete the discovery and inspection of documents and failed to appear in the suit and the suit is proceeded in the absence of the defendant.
- 23.** Considered the plaint, written statement, evidence of the plaintiff and the documents relied by the plaintiff. The plaintiff has not proved what was the total cost of the materials supplied by the plaintiff to the defendant and how much amount has been paid by the defendant to the plaintiff. The plaintiff has made out the specific case that the last payment was made by the defendant on 4th February, 2013 but the plaintiff failed to prove the same. As per the bank statement, confirmation of account, challans and tax invoices all the transactions

are till 2011 and the plaintiff has filed the suit on 27th January, 2016, thus the suit filed by the plaintiff is barred by limitation.

24. In view of the above, this Court finds that the plaintiff failed to prove the case and the suit is also barred by limitation.

25. C.S. No. 14 of 2016 is dismissed. Decree be drawn accordingly.

(Krishna Rao, J.)