**IN THE HIGH COURT AT CALCUTTA**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**ORIGINAL SIDE**

**Present:**
**The Hon'ble Justice Sugato Majumdar**

CS/57/2017

SHRI BIHARIJI COLD ROLLERS (P) LTD.
VS
AJAY TUBE INDUSTRIES PVT. LTD.

| | | |
|---|---|---|
| For the Plaintiff | : | Mr. Debdut Mukherjee, Adv.<br>Mr. Anath Bandhu Datta, Adv.<br>Mr. Gourab Kr. Das, Adv.<br>Mr. Mukesh Kr. Gupta, Adv. |
| Hearing concluded on | : | 09/09/2024 |
| **Judgment on** | **:** | **18/09/2024** |

**Sugato Majumdar, J.:**

This is a suit for recovery of money lent.

The plaint case may be summarized as follow:

i. The Plaintiff is a company registered under the Companies' Act 1956 having it's registered office at Jalan Industrial Complex, Domjur, Howrah. The Plaintiff, since its inception carries on business of manufacturing cold rolled sheets, selling the same to various parties. The Defendant is also a company registered under the Companies' Act, 1956 having its registered office at 23A, Netaji Subhas Road, Kolkata – 700001 within jurisdiction of this Court.

ii. In due course of business, the Plaintiff was introduced to the Defendant company by two of its business partners namely M/S Prity Tube Pvt. Ltd and M/S E-Zone Strips Pvt. Ltd. In or about the first week of March, 2014, the Defendant approached the Plaintiff for obtaining financial assistance to meet business requirements. Considering the business relationship with the Defendant, the Plaintiff agreed to grant financial assistance subject to payment of interest at a rate of 18% per annum. Interest was agreed to be payable from the date of receipt of the loan till repayment. The Defendant agreed to the terms and conditions and assured to repay the amount after three months. Relying upon such assurances, the Plaintiff lent and advanced a sum of Rs.12,18,94,000/- to the Defendant. The amount was remitted from the banker HDFC Bank Ltd., Sector I, Salt Lake City, Kolkata, by way of RTGS. Details of the remittances are as follow:

| Date of Payment | Mode RTGS/Cheque reference | Amount in rupees |
|---|---|---|
| 20/03/2014 | 06 | 3,42,60,000/- |
| 20/03/2014 | 07 | 2,01,50,000/- |
| 21/03/2014 | 08 | 1,49,00,000/- |

| | | |
|---|---|---|
| 21/03/2014 | 09 | 1,69,88,000/- |
| 21/03/2014 | 10 | 1,68,40,000/- |
| 21/03/2014 | 11 | 1,65,26,000/- |
| 21/03/2014 | 12 | 22,30,000/- |
| | Total | 12,18,94,000/- |

iii. On expiry of the agreed period of three months, the Defendant neglected and failed to repay the loan or any part thereof. In spite of repeated demands, the loan remained unpaid. As on 17/03/2017 an amount of Rs.18,77,16,760/- became payable by the Defendant to the Plaintiff, details of which are as follows:

| | | |
|---|---|---|
| Principal amount | : | Rs. 12,18,94,000/- |
| Interest at a rate of 18% p.a from 21/03/2014 till 17/03/2017 | : | Rs. 6,58,22,760/- |
| Total | | Rs. 18,77,16,760/- |

iv. Initially the Plaintiff had caused issuance of two notices dated 24/07/2015 and 21/08/2015 demanding payment but the Defendant neglected and failed to repay the loan. Subsequently, the Plaintiff served a notice through his Learned Advocate dated 26/11/2015 under section 433/434/439 of the Companies Act, 1956. The Defendant, in terms of the reply dated 16/12/2015 refuted all the allegations. The Plaintiff also filed an application in this Court in appropriate jurisdiction for winding up of the Defendant which was registered as C.P. 48 of 2016 and the same is pending for adjudication.

v. It was contended by the Defendant, both in the reply letter dated 16/12/2015 as well as in the counter affidavit, filed in C.P. 48 of 2016 that the amount lent by the Plaintiff was actually advanced payment on account of supply of various goods by the Defendant. Those goods were allegedly supplied by the Defendant from 02/03/2015 to 14/03/2015. The Defendant issued tax invoices also in respect of those goods. The Defendant also claimed that it had supplied goods worth Rs.12,54,33,061/- to the Plaintiff and after adjustment the Defendant was entitled to a sum of Rs.35,39,061/-. The Defendant raised the claim in terms of the demand notice dated 23/12/2015.

vi. The Defendant, in order to thwart the claim of the Plaintiff also relied upon an alleged VAT return filed by itself on 03/09/2015 on account of the alleged sale of goods.

vii. It is averred in the plaint that the parties herein had never entered into any agreement for sale of goods and the Plaintiff had never issued any purchase order upon the Defendant in respect of any alleged goods and had never received any such goods from the Defendant. It is further alleged in the plaint that the Defendant manufactured alleged invoices in respect of sale of goods to the Plaintiff for an alleged amount of Rs.12,54,33,061/-.

The Defendant also forged and fabricated stamp of the Plaintiff company and affixed the same on the alleged invoices. The Defendant also fraudulently filed its VAT returns before the statutory authorities on the basis of fictitious supply. The plaint is also rife with other allegations against the Defendant.

viii. The Plaintiff was constrained to file the instant suit praying, inter alia, for recovery of a sum of Rs.18,77,16,760/- along with interest at a rate of 18% per annum from 17/03/2017, decree for declaration that the alleged invoices are illegal, manufactured, null and void, decree for declaration that the alleged VAT return filed by the Defendant on 03/09/2015, is null and void, decree for cancellation and delivery up of the alleged VAT returns to the Plaintiff along with consequential reliefs.

The Defendant contested the suit by filing written statement refuting all the allegations contained in the plaint.

a) The Defendants case is that in usual course of business, the Plaintiff placed orders on the Defendant for supply of M.S. Pipes, CR Sheets, HR Sheet and other articles. All the orders placed were oral. Towards the oral orders placed the Plaintiff issued cheques between 20/03/2014 and 21/03/2014. The aggregate sum was Rs.12,18,94,000/-. This amount was paid by the Plaintiff on account of price of goods purchased by the Plaintiff from the Defendant. The Defendant supplied goods between 02/03/2015 and 14/03/2015. All delivery of materials were taken by the Plaintiff from the go-down of the Defendant. The Defendant issued tax invoices cum challans. The Plaintiff duly received the goods without raising any objection whatsoever. The Defendant raised tax invoices aggregating a sum of Rs.12,54,33,061/-. Since the advance had been paid by the Plaintiff towards the price of goods sold and delivered, the Defendant adjusted the advance amount against the price of goods after which a sum of Rs.35,39,061/- was payable by the Plaintiff to the Defendant. Despite repeated assurances, the Plaintiff neglected and failed to pay that outstanding amount to the Defendant.

b) In these circumstances, to the utter shock and disbelief, the Defendant received a letter from the Plaintiff under section 434 of the Companies Act, 1956. Contention of the Defendant is that the claim raised by the Plaintiff is false, fictitious and frivolous. The Defendant issued a notice dated 23/12/2015 to the Plaintiff demanding payment of the outstanding amount of Rs. 35,39,061/-. Yet the amount remained unpaid. The Defendant instituted a suit on 08/01/2016 in this Court claiming for a decree for a sum of Rs.40,12,029/-. The suit was registered as C.S. 19 of 2016. At the same time the Plaintiff also drawn up proceeding for winding up of the Defendant which was registered as C.P. 48 of 2016.

c) It is further contended in the written statement that the instant suit was filed after drawing up the proceeding for winding up of the Defendant.

d) It is further contended that an e-auction sale notice was published by the State Bank of India under SARFAESI Act, 2002 against the Plaintiff for recovery of an amount in excess of rupees fifty-five crores. It is preposterous to suggest, therefore, according to the Defendant, that a company with a loan burden of more than rupees fifty-five crore would venture to lend another company a sum in excess of rupees twelve crores. All other allegations, made in the plaint, are denied by the Defendant.

On the basis of rival pleadings, the following issues were framed:

1. *Whether the plaintiff lent and advanced a sum of Rs.12,18,94,000/- to the Defendant by way of financial assistance for a period of 3 months against interest at the rate of 18% per annum?*

2. *Whether there was any oral agreement between the parties by which the Plaintiff agreed to sell goods to the Defendant?*

3. *Whether the Defendant supplied any goods to the Plaintiff under the alleged oral agreement for sale?*

4. *Whether the invoices referred to in paragraph 19(a) of the plaint have been fabricated and/or forged?*

5. *Whether the Plaintiff is entitled to a decree for Rs.12,18,94,000/- against the Defendant?*

6. *Whether the Plaintiff is entitled to a decree for interest against the Defendant at the rate of 18% per annum?*

7. *To what other relief or reliefs is the Plaintiff entitled?*

Plaintiff adduced oral as well as documentary evidences.

The Defendant did not come forward to adduce any evidence. None appear for the Defendant to argue the suit.

All the issues are taken up together.

According to the plaint, genesis of the dispute is the loan advanced by the Plaintiff to the Defendant. None-payment of the loan is the cause of action of the suit. Existence and proof of loan is *sine qua non* to be established. The Plaintiff adduced the statement of bank account maintained in HDFC Bank, Salt Lake, Sector-II Branch from 12/02/2014 to 31/03/2014 (Ext. A), legal notice (Ext. B, C and D).

It is contended by Mr. Mukherjee that the bank statements contained in (Ext. A), establish transmission of the loan amount to the Defendant. Plaintiff demanded repayment and also served notice under Section 433, 434 and 439 of the Companies Act, 1956 (Ext. B, C and D) to which the Defendant did not respond. This conduct of the Defendant, according to the Mr. Mukherjee, establish that the financial accommodation in the form of loan is tacitly admitted by the Defendant and confirms that loan was advanced to the Defendant.

Both the parties are corporate bodies engaged in the business. Both the corporate bodies understand their business interest best. It is very unlikely that one corporate body would lent an hefty amount of Rs.12,54,33,061/- without creation of any document. No loan agreement or any written document purporting to contain that a loan of Rs.12,54,33,061/- given to the Defendant by the Plaintiff. Had there been any agreement that could furnish one of the best evidences of existence of the loan. The Plaintiff did not produce copy of books of accounts or financial statement of the company filed annually before the register of the companies. The amount of loan advanced by the Plaintiff to the Defendant, as pleaded, should have found a place in those documents just now. The books of accounts, financial statement of the company could bear eloquent testimony of the loan. Mere transaction evidenced in the bank statement is not enough to establish a loan. Legal notices are not also conclusive proof. Mr. Mukherjee referred to the conduct of the Defendant but conduct cannot prove a corporate loan or loan advanced by one corporate entity to the other one. Best evidence rule demands adducing as evidence, the books of accounts and annual financial statement of the Plaintiff filed before the Register of Companies for that year. In absence of such best evidence, as aforesaid, this Court of view that the Plaintiff has failed to establish the loan of Rs.12,54,33,061/- or entitlement of any interest on that account. In absence of proof of loan, the Plaintiff is not entitled to a decree of money, as prayed for, or any decree for interest.

The Plaintiff failed to adduce alleged invoices and VAT returns as mentioned in the plaint as well as in prayers (c), (d), (f) and (f). Therefore, the Plaintiff is not entitled to any relief in respect of those documents.

In nutshell, the plaint case is not proved.

It is ordered, therefore, the instant suit be dismissed on merit without any costs and disposed of along with all pending applications, if any.

**(Sugato Majumdar, J.)**