

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

Present:

The Hon'ble Justice Krishna Rao

CS 357 of 2013

Subham Agarwal

Versus

M/s. Positive Print Sign Graphics & Ors.

Mr. Rajarshi Dutta

Mr. Shayak Mitra

Mr. Sayantan Bose

Ms. Ankita Choudhury

... for the plaintiff.

Hearing Concluded On : 08.12. 2023

Judgment on : 10.01.2024

Krishna Rao, J.:

- 1.** The Plaintiff had filed the instant suit against the defendants praying for a decree for an amount of Rs.15,20,659/- along with interim interest.
- 2.** As per the service report dated 30.11.2018, writ of summon was issued upon defendant no. 4 on 19.08.2014. Undelivered package of the

defendant no.1 with the endorsement 'Left' was received on 12.08.2014. Postal acknowledgment receipt with respect to defendant nos. 2 and 4 were received on 25.09.2014 and 27.08.2014 respectively. Undelivered package with the endorsement 'not claimed' with respect to defendant no.3 was received on 29.08.2014. Neither acknowledgment receipt nor undelivered package was received with respect to defendant no. 5. As per the report of Deputy Registrar (Ct & J.) dated 12.11.2014, defendant nos. 1, 2, 4 & 5 entered their appearance through their Learned Advocate. As per the report dated 17.12.2018 issued by Deputy Registrar (Ct & J.), the defendant no.3 has not entered appearance and the undelivered package of the defendant no.3 was returned unserved with the remark "not claimed". In view of the report, this Court by an order dated 16.11.2022 had fixed the matter as "undefended". Subsequently the plaintiff has informed this Court that the defendant no. 4 has filed written statement but the written statement was not on record and this Court has called for report from the Registrar. On receipt of such report, it was found that the written statement filed by the defendant no.4 was not accepted due to defect and accordingly, the suit is heard as "undefended".

- 3.** The Plaintiff carries on the business of sale of flex and other goods under the name and style of 'Sibco Trading Compnay' as a sole proprietor.
- 4.** Sometimes in or around May' 2010, the defendant nos. 2 to 5 had approached the plaintiff, for supply of flex.

5. One Mr. Anil Khosla and one Mr. Mayank Kejriwal, who all identified as the representatives of defendant no.1, had approached the plaintiff to take its services.
6. The Plaintiff and the defendants had entered the agreement orally and had agreed that the orders will be placed by the defendants orally. Certain terms and conditions were also agreed between the parties, which as follows:

“(a) The Plaintiff would supply the said goods upon receiving orders as aforesaid from the defendant no.1.

(b) The defendant no.1 would be represented by the defendant nos. 2 to 5 or by the dealing agents as mentioned hereinabove.

(c) Such orders would be placed by way of telephonic conversations.

(d) The term of payment was 30 days from the date of despatch of the said goods.

(e) The price for the said goods was to be paid by account payee cheques or by way of electronic transfer (RTGS/NEFT).

(f) Any discrepancies found in the invoices relating to quality, quantity etc. was required to be informed immediately at the time of delivery by the defendant no.1.

(g) In case of dishonour of cheques, a sum of Rs.400/- would be recovered as cheques dishonour charges.

(h) Interest @24% p.a. would be charged on unpaid invoices till final realization of payment.

(i) All disputes by and between the parties herein were subject to Kolkata jurisdiction exclusively.”

- 7.** On the basis of the representations of the defendant no.1 and believing the same to be true, the plaintiff supplied huge quantity of goods, starting from 12th May, 2010. Thereafter the plaintiff had raised total 21 invoices for an aggregate sum of Rs.18,59,074/-. Alongwith the invoices, one credit note was also issued by the plaintiff, which aggregates to a sum of Rs. 37,080/-.
- 8.** During the period between 15th January, 2011 and 12th July, 2011, the defendant has made part payments to the plaintiff of an aggregate sum of Rs. 9,37,015/-.
- 9.** In the meantime, two cheques were also issued by the defendant no.1 towards the due amount payable, which were dishonoured. By reason of such dishonour of cheques, an amount of Rs. 800/- was deducted from the account of the plaintiff and the defendants are liable to pay such amount of Rs. 800/-.
- 10.** As the defendants failed to pay the due amount to the plaintiff, the plaintiff has sent a legal notice dated 18.04.2013, calling upon the defendants to pay the said amount. The defendant no. 5 on receipt of the notice sent a reply stating that he has retired from the partnership business of the defendant no.1 and he has no liability to pay any amount. The other defendants have neither paid the amount nor sent any reply.

- 11.** The plaintiff has examined himself, who's the sole proprietor of the Plaintiff Company and during his evidence, altogether two documents were exhibited as Exhibit-A and Exhibit-B.

Exhibit – A: Copies of total 21 Tax invoices, along with 21 Challans raised by the Plaintiff company upon M/s. Positive Print Sign Graphics, along with one Credit Note dated 22.05.2010 and two Debit Notes dated 25.08.2010 and 24.09.2010, also one letter dated 04.06.2013 along with the notice dated 19.04.2013 issued by the North Port Police Station and the Seizure List dated 04.06.2013. are all exhibited collectively.

Exhibit – B: Original office copy of a letter dated 18.04.2013 together with original postal receipts of Indian Post and five original A/D Cards and one original envelop A/D Card that has been returned on the ground 'Refused' are all exhibited collectively.

- 12.** Exhibit – A proves that the defendants had duly received the invoices raised by the plaintiff and the invoices also has the terms and conditions mentioned regarding the agreement that had been entered by and between the parties.

Exhibit – B proves that a letter was sent by the plaintiff through its advocate regarding the payment amount due and payable by the defendants, which was duly served upon the defendants except defendant no.1 as the defendant no.1 has refused to accept.

- 13.** Considered the submissions made by the Counsel for the plaintiff, perused the evidence of plaintiff's witness, plaint and the documents exhibited during evidence. Exhibit – A collectively proves that the

plaintiff has supplied materials to the defendant and the defendants have received the materials, invoices and challans regarding such delivery. The plaintiff had sent 21 Challans for the supplies made to the defendant no.1 for a total value of Rs. 18,59,074/- and the plaintiff had issued credit notes for Rs. 37,080/- on account of sale return and two debit notes of Rs. 400/- each on account of dishonour of cheques.

The total claim raised by the plaintiff was Rs. 18,59,074/- out of which, the defendant had paid a part payment of Rs. 9,37,015/- and the plaintiff had issued credit note of Rs. 37,080/- on account of sale return. The plaintiff had also invested Rs. 800/- due to dishonour of the cheques issued by the defendant. Thus, the total amount is of Rs. 8,85,779/- is liable to be paid by the defendant to the plaintiff.

The defendants have not paid the amount. The plaintiff has lodged a complaint in the North Port police station and during investigation, police has seized the invoices and challans from the plaintiff by way of seizure memo and the original seizure list is already marked as 'Exhibit-A' collectively.

- 14.** In spite of receipt of notice, the defendants neither paid the amount nor have sent any reply other than the defendant no. 5. This Court finds that the plaintiff has proved its case by adducing evidence and is entitled to get decree for an amount of Rs. 8,85,779/- along with interest.
- 15.** In view of the above, the defendants are directed to pay jointly and severally an amount of Rs. 8,85,779/- along with interest at the rate of

24% per annum with effect from 15th January, 2011 till the realisation of the said amount.

16. C.S. No. 357 of 2013 is **disposed of**. Decree to be drawn accordingly.

(Krishna Rao, J.)