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

% Judgement delivered on*:* 01.07.2024

\+ **RFA(COMM) 18/2023 CM APPL. 8666/2023**

NAVIGATORS VISA GLOBAL LOGISTICS LTD ..... Appellant

Versus

THERMOKING THR ITS PROPRIETOR PRADEEP KHANNA ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr.Anubhav Kumar, Mr.Rishabh Kaushik, Ms.Gauri Swarup Bansal, Advocates.

For the Respondent : Mr. S.M.Hashmi and Mr.Chander Paswan, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal impugning the judgment and decree dated 19.11.2022 (hereafter *the impugned judgment*) passed by the learned Commercial Court in CS (COMM) No.9/2021 captioned *Navigators Visa Global Logistics Ltd v. Thermoking*, whereby the learned Commercial Court had dismissed the aforesaid suit.

2. The appellant (hereafter *the plaintiff*) had filed the aforementioned suit for the recovery of ₹3,39,101/- (Rupees three lacs thirty-nine thousand one hundred and one only) along with interest at the rate of 18% per annum against the respondent (hereafter *the defendant*). The learned Commercial Court accepted the defendant's claim that it had discharged its liability for the services rendered by the plaintiff and no further amount was payable by the defendant. The defendant claims that it had paid certain amounts in cash, the receipt of which were denied by the plaintiff.

3. The principal dispute is centered around whether the defendant had made the payments in cash as claimed by it. The said transactions were reflected in the statement of accounts furnished by the defendant but were not reflected in the statement of accounts produced by the plaintiff.

4. The learned Commercial Court found that the plaintiff had accepted the cash, which was not reflected in its statement of accounts and also accepted the statement of accounts furnished by the defendant.

5. In view of the above, the principal controversy to be addressed is whether the defendant had established that it had made the payments in cash which were reflected in the statement of accounts produced by it, but not reflected in the statement of accounts relied upon and produced by the plaintiff.

The Context

6. The plaintiff is a public limited company incorporated under the Companies Act, 1956 and is involved in the business of providing logistical services and freight forwarding. The plaintiff claims that it provided "end-

to end" logistic to its customers. The defendant is engaged in the business of manufacturing and exporting of various electrical equipments.

7. The plaintiff claimed that it had rendered services to the defendant from time to time and it had raised invoices for the same. However, the amount remained outstanding against the said invoices and despite follow ups and emails sent by the plaintiff, the defendant failed to make the payment as due. The plaintiff claimed that there was no dispute to the amount payable and the defendant had sought time to make requisite payments, but had failed and neglected to do so.

8. Admittedly, the defendant had availed the services of freight forwarding and logistical handling of its consignments from the plaintiff during the period from April, 2016 to March, 2017.

9. On 12.10.2018 the plaintiff sent a legal notice (Ex.PW-1/6) to the defendant calling upon it to make the payment of the aforesaid suit amount of ₹3,39,101/- within a period of 10 days from the date of receipt of the legal notice along with interest at the rate of 18% per annum, due from the said date.

10. In these circumstances, the plaintiff took recourse to pre-institution mediation as required in terms of Section 12A of the Commercial Courts Act, 2015 before the South District Legal Services Authority on 24.12.2019. The said proceedings were 'non-starter' and the report to the said effect was sent by the South District Legal Services Authority on 26.02.2020. Thereafter, the plaintiff instituted the above captioned suit.

11. The defendant contested the suit and filed its written statement. It claimed that it had made payments aggregating to an amount of ₹1,49,830/- (₹50,000/- on 16.12.2015; ₹50,000/- on 29.01.2016; and ₹49,830/- on 18.03.2016) in cash during the financial year 2015-2016, which were not reflected in the statement of accounts as produced by the plaintiff. The defendant further claimed that the receipt of the said amounts was acknowledged by the then employees of the plaintiff (Mr. Pankaj Kumar and Mr. Rakesh Kumar) who had affixed their signatures on the payment vouchers. The defendant claimed that Mr. Pankaj Kumar had settled and reconciled the account of the plaintiff and on 31.03.2016, had made a noting "All Accounts NIL" on a sheet of paper which was relied upon by the defendant.

12. In addition to the aforementioned sums, the defendant claimed that the plaintiff had also not accounted for an amount of ₹2,40,887/- which was paid in cash as cargo expenses and an amount of ₹40,000/- which was received as a security deposit. The defendant claimed that it had paid a sum of ₹51,616/- in excess, which was liable to be refunded by the plaintiff. The defendant also claimed that the claim raised by the plaintiff was barred by limitation.

13. Based on the rival contentions, the learned Commercial Court framed the following issues:-

> "1. Whether the plaintiff is entitled to recovery of a sum of ₹339101/- as prayed for? OPP
> 2. Whether the plaintiff is entitled to interest, if so, at what rate and of which period? OPP
> 3. Whether the suit is barred by limitation? OPD

4. Relief?"

14. The learned Commercial Court decided the issue of limitation (Issue no.3) in favour of the plaintiff and the remaining issues in favour of the defendant. Aggrieved by the same, the plaintiff has filed the present appeal.

REASONS AND CONCLUSION

15. As noted at the outset, there is no dispute in regards to the value of the services rendered by the plaintiff. The defendant does not dispute its obligation to pay for the same. The dispute between the parties is confined to whether, in fact, the defendant had paid the amounts due. Whilst, the defendant claimed that it had paid certain amount in cash, the same was not reflected in the statement of accounts maintained by the plaintiff (Ex.DW-1/PW-1). The same were not reflected in the statement of accounts maintained by the plaintiff (Ex.PW-1/3). The plaintiff denied that it had received any payment in cash as claimed by the defendant.

The evidence

16. The plaintiff had rendered the evidence of Shri Akhilesh Kumar Singh (authorized representative of the plaintiff – PW-1/A) in support of its claim. He produced the ledger account of the defendant maintained in the books of the plaintiff for the period from 01.04.2016 to 31.03.2017. The said statement indicates that a sum of ₹ 6,39,101/- was due and recoverable from the defendant. He also produced the ledger account for the period from 10.04.2017 to 10.09.2018, which reflected that three payments of ₹1,00,000/- each were received by the plaintiff on 04.05.2017, 10.06.2017

and 20.06.2017, respectively. Thus, the total balance as on 20.06.2017 was a sum of ₹3,39,101/-. He also produced the invoices raised by the defendant and confirmed that the same were acknowledged by the defendant. Additionally, he also produced the Bill of Lading (Ex.PW-1/4). He also confirmed that the plaintiff had pursued the defendant for the outstanding payment and had sent various emails reminding the defendant to clear the outstanding amount.

17. He also produced the copies of the emails Ex.PW-1/5 (Colly) whereby the plaintiff had called upon the defendant to clear the outstanding amounts. He affirmed that the amounts due were undisputed, but alleged that the defendant had adopted delaying tactics. He stated that initially the defendant had sought extension of time for making the payments, but subsequently, avoided meeting the employee/ agent/ representative of the plaintiff. He also claimed that the defendant did not reply to any of the communications sent by the plaintiff. In the cross-examination, PW-1 (Shri. Akhilesh Kumar Singh) was confronted with the statement of accounts prepared by the defendant (Ex.DW-1). He was also shown the entries in the statement of accounts recording the payment of cash of ₹50,000/- on 16.12.2015; cash of ₹50,000/- on 29.01.2016; and cash of ₹49,830/- on 18.03.2016. However, he denied the same and stated that the plaintiff did not make any transaction in cash. He also denied that any cash was received by the plaintiff from Shri. Pankaj Kumar or Shri Rakesh Kumar on account of the defendant. He denied the suggestion that the accounts of the parties were reconciled on 31.03.2016. He also denied the suggestion that an amount of ₹2,40,887/- was received in cash by Shri. Pankaj Kumar and

Rakesh Kumar and that those payments were acknowledged on the payment vouchers. However, he stated that a sum of ₹40,000/- towards security was given by the defendant, which was lying with the plaintiff as container security. He also acknowledged the payment of ₹1,00,000/- each made by three cheques on 04.05.2017, 10.06.2017 and 20.06.2017. He denied that any excess amount was made and was refundable to the defendant.

18. There is no ambiguity in the testimony of PW-1 and he has testified that the statement of accounts produced (Ex PW-1/1), was maintained in the books of account of the plaintiff.

19. The defendant (Pradeep Khanna, sole proprietor of Thermoking) also rendered his affidavit by way of evidence. He also produced the statement of accounts (Ex.DW-1/1) reflecting three entries, which were not reflected in the account for the financial years 2015-2016, as produced by the plaintiff. The said statement of accounts indicated that an aggregate amount of ₹1,49,830/- (₹50,000/- on 16.12.2015; ₹50,000/- on 29.01.2016; and ₹49,830/- on 18.03.2016) was paid in cash. He also produced the payment vouchers reflecting the said payments as Ex.DW-1/2 and the same also purportedly bore the signatures of the receivers. The said voucher reflected that the cash was received by one, Pankaj. In addition, he also produced the payment vouchers in regard to the payments made during the period from 12.08.2016 to 06.01.2017 [Ex.DW-1/4 (Colly)]. He affirmed that the cash expenses for the purpose of cargo, loading, unloading and other miscellaneous expenses totaling to ₹2,40,887/- had been paid. He affirmed that if the said payments were accounted for then, the defendant had paid ₹51,616/- in excess and claimed that the same was refundable with 24%

interest. Sh. Pradeep Khanna (Ex.DW-1) was also cross examined. He stated that he was not disputing the invoices raised by the plaintiff, but denied the suggestion that he had not made any payment in cash and deposed falsely. He claimed that he used to make the payments in cash to the representative of the plaintiff, including one Pankaj. He stated that the representative of the plaintiff used to come to him for receiving the payment in cash. He also stated that he *"did not feel it necessary to take any acknowledgment or document as to the receipt of the payment to the plaintiff"*.

20. In addition to tendering the evidence of the defendant (DW-1), the defendant also examined Gaurav Jain, General Manager (Finance) of the plaintiff as DW-2. DW-2 affirmed that he was working with the plaintiff company since the year 2014 and except for on one occasion, he did not visit the office of the defendant. He claimed that he had visited the office of the defendant along with Sh. Pankaj to settle the account and outstanding dues. However, he denied that he had visited the office on 31.03.2016.

21. The defendant had produced one sheet on which certain numbers and amounts were scribbled. On top left corner of the sheet also bore the notation *"All Account NIl on 31.03.2016"*. The defendant heavily relied upon the said document (Ex.DW1/3). DW-2 was shown the said document (DW1/3) but denied that the said document (Ex.DW-1/3) bore his signatures. He was cross-examined by the learned counsel for the plaintiff. In his cross-examination, he testified that no settlement had taken place with the defendant when he went with Pankaj to settle the account. He also testified that Pankaj had communicated the outstanding amount to the

defendant on 12.05.2016.

22. The defendant also examined one Sh. Pankaj Singh, (DW-3), a former employee of the plaintiff. He had affirmed that he was posted as Manager (Sales) with the plaintiff company and had, on a number of occasions, communicated with the defendant regarding the settlement of his account. He testified that on 31.03.2016 he had gone to the office of the defendant to settle the account, but later stated that he could not confirm the date. He was confronted with the document Ex.DW-1/3 and he acknowledged that the said document bore his signatures at point B. He also testified that the amounts were fully settled and there were no dues that were outstanding from the defendant. He also stated that Gaurav Jain (DW-2) had accompanied him to the office of the defendant when the account was settled. He explained that Gaurav Jain (DW-2) had accompanied him because at that time he was looking after the accounts. He also stated that the settlement (Ex.DW-1/3) had been recorded in the presence of one Gaurav. He was also shown the email dated 12.05.2016, but he claimed that he had not send the same, although it was sent from his e-mail ID. He stated that he continued to work with the plaintiff till 20.05.2016.

23. He denied that he did not receive any complaint regarding use of his official e-mail ID. He also denied that he collected any cash from the defendant. He claimed that Gaurav Jain (Ex.DW-2) used to send another person for cash collections. In his cross examination he denied that Ex.DW-1/3 bore his signatures. He, however, volunteered that it was signed by one Anuj.

Evaluation

24. On evaluation of the evidence adduced by the parties, we find that there is no credible evidence to establish that the defendant had made any cash payments, as claimed by it. There is no evidence as to who had received the cash from the defendant. According to the defendant, cash was received by Pankaj Singh (DW-3). However, Pankaj Singh (DW-3) had flatly denied the same on being cross examined by the learned counsel for the plaintiff. He claimed that Gaurav Jain (DW-2) used to send another person for cash collection. Gaurav Jain (DW-2) did not testify as to the receipt of cash from the defendants.

25. Thus, only material to support the defendant's claim that cash was received by the plaintiff is his self-serving testimony and to some extent the payment vouchers, which he claimed reflected that the payments had been made to Pankaj Singh (DW-3). However, Pankaj had not accepted the same and on the contrary, he claimed that he had not collected cash from the defendant.

26. As noted above, the defendant had also relied upon the document (Ex.DW-1/3) on which several figures have been scribbled. None of the figures reconciled with the statement of accounts. However, on the top left corner of the sheet mentioned the notation *"All Account NIL 31.03.2016"*. The said document purportedly mentions the name of Pankaj on central left of the document below noting *"OK"* and also bears the scribbled signatures above the words *"Navigators Logistics"* (name of the plaintiff). It is not established as to who had signed the said document or who had made the

notation *"All Accounts NIL 31.03.2016"*.

27. As noted above, DW-2 had flatly denied that the said document bore his signatures. However, he stated that he visited the office of the defendant along with Pankaj once. In his cross-examination he denied that any settlement had taken place with the defendant when he had gone to the office with Pankaj to settle the account. Pankaj Singh (DW-3) affirmed in his testimony that the document Ex.DW-1/3 bears his signatures at point B and also affirmed that all the accounts with the defendant were fully settled. He testified that the settlement as per document Ex.DW-1/3 took place in presence of Gaurav Jain (DW-2). This fact was flatly denied by DW-2, Gaurav Jain. In his cross examination, he resiled from the statement that the document Ex.DW-1/3 bore his signatures. He stated that it was signed by one Anuj. Clearly, the testimony of Gaurav Jain (DW-2) has little evidentiary value as he had effectively retracted his testimony that he had signed the document Ex.DW-1/3 after having testified to the said fact. As noted above, his further testimony is also contrary to and is relied by the testimony of DW-2.

28. It is also important to note that there is no dispute with regards to the number of emails (Ex.PW-1/5) sent by the plaintiff calling upon the defendant to clear the dues. By the email dated 24.10.2017, the plaintiff had sent a statement of accounts indicating that a sum of ₹3,39,101/- was outstanding and payable. A similar email was also sent on 06.07.2017. The plaintiff also sent a legal notice dated 12.10.2018 (Ex.PW-1/6), however, the defendant did not respond to the said notice.

29. We are also unable to appreciate as to why any payments were made in cash at the first place – there is no credible reason for the same. Although, Sh. Pradeep Khana (DW-1) affirmed that the same was disclosed to the Income Tax authorities, there is no corroborative evidence to the said effect. The expenditure above the specified limit, if made in cash is not deductible as an expenditure for the purpose of calculating the taxable income. [Section 40A(3) of the Income Tax Act, 1961]. There is, thus, a clear dis-incentive for incurring the expenditure in cash. No explanation has ever been provided by the defendant to substantiate the reasons for making such payment in cash instead of the normal banking channel.

30. As noted above, the plaintiff had not acknowledged the receipt of any cash and had not issued any receipt for the same. Sh. Pradeep Khanna (DW-1) had testified that he had not received any acknowledgment from the plaintiff. He had stated that he *"did not feel it necessary to take any acknowledgment or document as to the receipt of the payment to the plaintiff"*. Sh. Pradeep Khanna (DW-1) heavily relied upon the signatures on the payment vouchers. However, the said signatures have not been proved.

31. The onus to establish that the defendant had made payments in cash rests on the defendant. We are unable to accept that the defendant has sufficiently discharged the said burden.

32. The learned Commercial Court had on evaluation of the documents Ex.DW-1/3 handed a noted sheet containing the signatures of the receivers and noting on the top left corner *"All Account Settled"*. Statement of accounts Ex.DW-1/1, Ex.DW-1/5 and Ex.DW-1/6, concluded that the

defendant had established that it had made the payments in cash. We are unable to concur with the said view. The statement of accounts is a self-serving statement reflecting the payments in cash. Production of such statement is not sufficient to establish that the payments in cash were in fact made.

33. We have no reasons to accept the documents Ex.DW-1/1 to Ex.DW-1/5. The same are not corroborated by sufficient evidence regarding the entries made therein. In so far as the statement of accounts reflecting the payments of three cheques of ₹1,00,000/- each are concerned, the same are admitted and were duly accounted for by the plaintiff.

Conclusion

34. In view of the above, the appeal is allowed. The impugned judgment is set aside. The plaintiff is also entitled to interest. Since the invoices raised by the plaintiff, which are not in dispute, also state that the *plaintiff reserve right to charge interest @ 18%* on the bills overdue for more than 15 days.

35. The plaintiff also issued the legal notice (Ex.PW-1/6) calling upon the defendant to pay interest at the rate of 18% per annum on the outstanding amount from the due date till the date of realization.

36. In view of the above, we consider it apposite to also award interest at the rate of 18% per annum on the suit amount of ₹3,39,101/- from 12.10.2018 (the date of the legal notice) till the institution of the suit. We also consider it apposite to allow the interest on the suit amount of ₹3,39,101/- at the rate of 12% per annum from the date of institution till the

realization. The costs of the suit are also awarded in favour of the plaintiff.

37. The Decree sheet be drawn up accordingly.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JULY 01, 2024
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