



2024 : DHC : 4430-DB

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

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Judgment delivered on: 29.05.2024

+ **RFA(COMM) 36/2023 & CM No. 9910/2023****M/S INTER DECOR INCORPORATION**

..... Appellant

versus

M/S BRAJ BHOOMI TIMBERS

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Abhishek Kumar and Mr. Krishan Kumar, Advocates.

For the Respondent : Mr. Yashovir Singh, Advocate.

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MS JUSTICE TARA VITASTA GANJU****JUDGMENT****VIBHU BAKHRU, J**

1. The appellant (defendant in the suit), is an individual and carries on his business in the name and style of M/s Inter Décor Incorporation. He has filed the present appeal impugning a judgment dated 31.10.2022 (hereafter the *impugned judgment*) passed by the learned Commercial Court in CS(COMM) No.83/2021 captioned *M/s Braj Bhoomi Timbers v. M/s Inter Décor Incorporation*. The respondent (plaintiff in the suit) had filed the aforementioned suit for recovery of an amount of ₹18,71,839/- (Rupees Eighteen Lakhs Seventy-one Thousand Eight Hundred Thirty-nine Only) along with interest. By the impugned



judgment, the respondent's claim was accepted and the learned Commercial Court passed a decree for a sum of ₹18,71,839/- along with interest at the rate of 8% per annum from the date of filing of the suit till realization of the said amount.

2. The respondent (Mr. Anuj Bansal) is engaged in the trading of plywood and other wooden materials in the name of his sole proprietary concern M/s Braj Bhoomi Timbers. The respondent filed the aforementioned suit claiming that the appellant had approached him through a common friend and within a short period had gained his trust. The respondent claimed that he had supplied goods (plywood) under three separate invoices dated 06.08.2018 (Ex.CW1/A), 07.08.2018 (Ex.CW1/B) and 08.08.2018 (Ex.CW1/C) but the same remained unpaid. The respondent claimed that he had pursued the appellant for payment of his dues but after sometime the appellant started avoiding and ignoring the respondent. In the circumstances, the respondent caused a legal notice dated 21.07.2020 (Ex.CW1/E) issued to the appellant calling upon the appellant to pay a sum of ₹18,71,839/-, which was due and payable at the material time, within a period of fifteen days from the date of receipt of the said legal notice.

3. The appellant responded to the said legal notice by a letter dated 11.12.2020 (Ex.DW1/1) claiming that it had received the legal notice dated 21.07.2020 on 02/07.12.2020. The appellant claimed that the respondent had requested that the payments be made in cash with the assurance that the same would be returned later in exchange of a cheque.



However, the respondent's intention had turned dishonest and it had issued the legal notice dated 21.07.2020.

4. Thereafter, the respondent instituted the suit as mentioned above. The appellant filed an application, styled as an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereafter *the CPC*) praying that the suit be dismissed with cost. The appellant contended that the cause of action had not arisen in Delhi as neither the agreement was entered in Delhi nor the payment was to be made in Delhi. Additionally, it claimed that the legal notice was issued by the respondent from Ghaziabad, Uttar Pradesh and was responded to by the appellant from Noida, Uttar Pradesh.

5. The said application was dismissed by the learned Commercial Court by an order dated 30.03.2022.

6. On the basis of pleadings, the learned Commercial Court framed the following issues:

“1) Whether the plaintiff is entitled for a decree against the defendant in the sum of Rs.18,71,839/- alongwith interest, if any, and if yes, at what rate and for which period? OPP

2) Whether this Court has no territorial jurisdiction to decide the present suit? OPD

3) Relief.”

7. The learned Commercial Court decided the issues in favour of the respondent and against the appellant.



REASONS & CONCLUSION

8. The dispute between the parties relates to recovery of an amount of ₹18,71,839/- being the value of the three invoices dated 06.08.2018, 07.08.2018 and 08.08.2018 for a sum of ₹5,66,400/-, ₹4,64,448/- and ₹8,40,991/-. There is no dispute that the goods covered under the three invoices were delivered and received by the appellant. The appellant does not dispute that it was liable to pay the invoiced amounts. It is the appellant's case that in fact he had done so by making payments in cash. Thus, the onus to prove that the payments were made rested on the appellant.

9. The respondent had also produced a copy of the ledger account of the appellant in his books for the period 01.08.2018 to 31.08.2018 (Ex.CW1/D). The said ledger account statement was also admitted.

10. The appellant examined himself (as DW1) and tendered an affidavit affirming that the amounts claimed by the respondent were paid in cash. He further claimed that the amount due had been paid in cash at the request of the respondent. He also produced two documents, that is, letter dated 15.11.2019 (Ex.DW1/2) signed by the respondent requesting the appellant to make the payment in cash, if he was unable to pay in cheque; and a letter dated 05.10.2020 (Ex.DW1/3) addressed by the respondent to the appellant acknowledging receipt of an aggregate amount of ₹18,71,839/- from December, 2019 to September, 2020.



11. The appellant's case essentially rested on the aforesaid evidence.

12. The respondent disputed its signature on the said letters and denied issuing the same. The appellant (DW1) was cross-examined. He acknowledged that he was aware that no cash transactions above ₹10,000/- were permissible in law. He also admitted that he did not have the receipts of the separate payments claimed to have been over a period from December, 2019 to September, 2020.

13. The learned Commercial Court did not accept that the documents (Ex.DW1/2 and Ex.DW1/3) bore the signatures of the respondent. The respondent was confronted with his signatures on the affidavit, invoices and the disputed documents (Ex.DW1/2 and Ex.DW1/3). While he admitted his signatures on the affidavit and invoices, he denied the signatures on the disputed documents (letters dated 15.11.2019 and 05.10.2020).

14. The learned Commercial Court compared the admitted and disputed signatures and concluded that the same were not similar. The respondent had signed documents as Anuj Kumar Bansal with 'Kumar' being reflected as 'Kr'. However, in the disputed signatures, the initial 'Kr' was missing. The learned Commercial Court also noted that the letter 'j' in Ex.DW1/2 and Ex. DW1/3 had a loop whereas there was no loop in the letter 'j' in the admitted signatures. Additionally, the learned Commercial Court also noted that the appellant's response to the legal notice did not separately mention the tranches in which the payments



were made. The Court also noted that the legal notice was dated 21.07.2020 and the appellant's response was dated 11.12.2020. Thus, according to the appellant, it had made payments after issuance of the legal notice but the specific payments were not mentioned in the reply to the legal notice dated 21.07.2020, which the learned Commercial Court found to be totally vague and bereft of details.

15. As noted hereinbefore, it is contended on behalf of the appellant that he had made payments to the respondent in cash at his request. The reply dated 11.12.2020 (Ex.DW1/1) signed by the appellant also reiterates the same. The English translation of paragraph 4 of the response is relevant and is set out below:

“4. THAT when your client was in need of funds and your client asked my client to make the payment as was in dire need of funds. Your client requested my client to make the payment in cash with his assurance and promise that he would return the same later on and would take firm's cheque from my client. Such assurance has been given by your client in writing to my client.”

16. It is apparent from the above that appellant had claimed that it had made payment in cash as the respondent was “*in dire need of funds*”. However, it is an admitted case that the goods covered under the invoices dated 06.08.2018, 07.08.2018 and 08.08.2018 were delivered much prior to the issuance of the legal notice. The same is evident from the fact that the invoices bear the delivery note details as well as the registration number of the motor vehicle in which the goods were dispatched. It is not the respondent's case that the goods were



supplied on extended credit. Thus, it is evident that the appellant had failed to make the payments within a reasonable period of receipt of the goods. Even according to the appellant, the first tranche (which is disputed by the respondent) of payment was made in December, 2019. In this background, the contention that the appellant had made the payment in cash as the respondent was in dire need of the same cannot be believed. Admittedly, the appellant was liable to pay the amounts and he was required to do so through banking channels. There is no plausible reason provided for not making the payments through banking channels.

17. We also find that there are no details as to the dates on which the payments in cash were made. The letter dated 05.10.2020 (Ex.DW1/3) sets out a tabular statement indicating the payments made and received. The contents of the said letter are set out below:

“Dear Sir,

We have received a sum of Rs.18,71,839.00 (Rupees Eighteen Lakhs Seventy One Thousand Eight hundreds Thirty Nine Only) details as given below:-

Month of Payment	Amount
December 2019	2,60,000.00
January 2020	2,60,000.00
February 2020	2,60,000.00
March 2020	1,60,000.00
June 2020	1,40,000.00
July 2020	2,90,000.00
August 2020	2,50,000.00
September 2020	2,51,839.00
Total	18,71,839.00



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Now my account is clear and now I don't have any outstanding on you. I will provide date wise receipt on demand."

18. Although, the appellant claims that the payments were made in the manner as set out in the aforesaid letter dated 05.10.2020 (Ex.DW1/3), he has not provided the details, namely, the dates on which the said payments were made during the period commencing from December, 2019 to September, 2020. The appellant also does not have receipts in respect of the tranches of the payments made. It is difficult to accept that the appellant would have made payments of large amounts in cash without any receipt or acknowledgement. Absent details of the payments purportedly made and receipts of the same, it is difficult to accept that the appellant had made the payments in cash as claimed.

19. The signatures on the letters dated 15.11.2019 and 05.10.2020 (Ex.DW1/2 and Ex.DW1/3) are materially different from the admitted signatures of the respondent on his affidavit as well as on the invoices. The difference in the signatures is clearly visible as the initials 'Kr', which are part of the admitted signatures, are absent from the alleged signatures of the respondent appearing on letters dated 15.11.2019 and 05.10.2020. The onus to prove that the signatures appearing on letters dated 15.11.2019 and 05.10.2020 was that of the respondent was on the appellant. However, the appellant did not produce any evidence to establish the same. It was open for the appellant to have led the forensic evidence, if necessary. However, the appellant chose not to do so.



20. The appellant has filed an application before this Court to refer the disputed documents for forensic examination. However, the same was not pressed and the counsel had proceeded to address the final arguments. There is no explanation why such an application was not made before the Learned Commercial Court.

21. Given the evidence led by the parties, we concur with the opinion of the learned Commercial Court that the appellant had failed to establish that he had made the payments in cash in discharge of the amounts admittedly due to the respondent.

22. In the given circumstances, we concur with the decision of the learned Commercial Court that the respondent is entitled to recover a sum of ₹18,71,839/-. Since the transactions between the parties were commercial transactions, the respondent would also be entitled to reasonable interest to compensate for the time, value and money. There is no cavil that interest at the rate of 8% per annum is a reasonable rate of interest.

23. The next question to be examined is whether the learned Commercial Court had the territorial jurisdiction to entertain the suit. It is the respondent's case that it has an office within the territorial jurisdiction of the Commercial Court and the goods were supplied from Delhi. The respondent also claims that the agreement to supply was finalized in Delhi and the order for delivering the goods was also received in Delhi. In addition, it is contended that the payment was also



required to be made to the respondent in Delhi. However, the appellant had disputed the same. The appellant claimed that the respondent's office is located in Ghaziabad, Uttar Pradesh and the goods were supplied to the appellant at Noida, Uttar Pradesh. The appellant also relies on the fact that legal notice dated 21.07.2020 (Ex.CW1/E) was issued by an advocate having office and residence at Gautam Budh Nagar, Noida, Uttar Pradesh.

24. The invoices, which have remained outstanding, bear the address of the respondent's office in Delhi. Thus, the invoices were issued by the respondent from its office in Delhi. The respondent also claims that he had dispatched the goods from Delhi. The respondent had received the order to supply in Delhi and had dispatched the goods from Delhi. Concededly, there are no written purchase orders. However, the respondent has affirmed that he had received the verbal request to supply at Delhi. The respondent was cross-examined and he denied the suggestion that no business transaction had taken place between the parties at Delhi. The invoices, which are not disputed, reflect that the respondent's office is at Delhi and there is no serious dispute that the purchase orders were received by the respondent verbally. Thus, based on the preponderance of probabilities, we accept the respondent's claim that he had received the orders at Delhi as there is no evidence to indicate that the respondent had collected the orders or entered into negotiations at any other business place. Insofar as the supply of goods is concerned, neither of the parties have produced the GR notes nor the



documents which would indicate the place of dispatch of the goods. However, the invoices mention the delivery notes as well as the GST registration number. The invoices do not indicate that the goods were delivered from an establishment outside Delhi. It is also important to note that since the invoices were raised in Delhi and there are no instructions indicating to the contrary, the payments were also required to be received at Delhi. We, thus, accept that the payment for the goods were also required to be received by the respondent at Delhi.

25. In *A.B.C. Laminart (P) Ltd. & Anr. v. A.P. Agencies, Salem: (1989) 2 SCC 163*, the Supreme Court had observed as under:

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

26. As noted above, in the present case, the invoices were raised in Delhi from the respondent's office at Delhi and it is implied that payments are required to be made to the said office.



27. In *A.V.M. Sales Corporation v. Anuradha Chemicals Private Limited: (2012) 2 SCC 315*, the Supreme Court had observed as under:

“14. In the instant case, since the invoices for the goods in question were raised at Vijayawada, the goods were dispatched from Vijayawada and the money was payable to the respondent or its nominee at Vijayawada, in our view, the same comprised part of the bundle of facts giving rise to the cause of action for the suit.”

28. The suit is for recovery of money that was to be received by the respondent in Delhi and therefore, we are unable to accept that no part of the cause of action had arisen at Delhi. In *Alchemist Ltd. & Anr. v. State Bank of Sikkim & Ors.: (2007) 11 SCC 335*, the Supreme Court had held that the place where a material part of the cause of action arises, the court would have the territorial jurisdiction to entertain the suit.

29. In view of the above, the present appeal is dismissed. Pending application is also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 29, 2024
'gsr'