



2024:DHC:7335-DB

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

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Judgment delivered on:24.09.2024

+ **RFA (COMM) 60/2023****M/S IYIKATECH PVT. LTD.**

..... Appellant

versus

ABHISHEK JAIN

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Sachin Bajpai & Ms. Divya Singh,
Advs.

For the Respondent : Mr. Shiv Kumar Gautam, Mr. Shanu
Ansari & Mr. Ayush Kumar Singh, Advs.

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MR JUSTICE SACHIN DATTA****JUDGMENT****VIBHU BAKHRU, J**

1. The appellant, a company incorporated under the Companies Act, 2013, has filed the present appeal impugning a judgment and decree dated 01.02.2023 (hereafter *the impugned judgment*) delivered by the learned Commercial Court in CS (COMM) No.3547/2021 captioned *Sh. Abhishek Jain v. M/s Iyikatech Private Limited*.

2. The respondent (plaintiff in the suit – hereafter referred to as *the plaintiff*) filed the suit [CS (COMM) No.3547/2021] for recovery of a sum of ₹10,00,000/- along with *pendente lite* and future interest. By the



impugned judgment, the aforesaid suit was decreed and the learned Commercial Court held that the plaintiff is entitled to a sum of ₹10,00,000/- along with interest at the rate of 12% per annum from 30.08.2018 till its realization.

PLAINTIFF'S CASE

3. The plaintiff claims that he is engaged in the business of selling electrical articles such as LED lights and circuits amongst other goods, and carries on his business under his sole proprietorship concern named M/s Rushabh Traders. The plaintiff carries on his business activities from a shop being Shop No.114, More Sarai Road, Mini Lajpat Rai Market, Delhi-110006.

4. The plaintiff claims that in the second week of August, 2018, one Mr. Vasudev had visited his shop and introduced himself as an Executive / Director of the appellant company. He had represented that the appellant was engaged in the manufacturing of digital/touch electric switches, which were operated through Wi-Fi. He had also demonstrated the functioning of the said products by showing pictures and videos of the electricity boards having smart switches functioning by touch of a finger. The plaintiff being satisfied with the demonstration of the products shown to him placed an order of an aggregate value of ₹20,00,000/-.

5. The plaintiff remitted an advance amount of ₹10,00,000/- on 29.08.2018 through banking channels to the bank account of the appellant company – Current Bank Account No.629205502196 maintained with the ICICI Bank, Chandni Chowk, Delhi-110006. The



plaintiff claims that despite making an advance payment of ₹10,00,000/-, he did not receive any goods from the appellant. He claims that the appellant continued to make excuses for non-delivery of the goods on one pretext or the other. Subsequently, made the nationwide lockdown in the wake of the COVID-19 pandemic an excuse for non-delivery of the goods.

6. In the aforesaid circumstances, the plaintiff caused a legal notice dated 01.09.2020 to be issued to the appellant. The plaintiff claims that on receipt of the legal notice, the appellant assured that it would refund the amount with interest, however, neglected to do so. The plaintiff further claims that he had also attempted to telephonically contact the representative of the appellant on 15.06.2021 but he did not respond to the said call and stopped responding to the plaintiff's phone calls altogether.

7. The plaintiff also instituted mediation proceedings before the Central District Legal Services Authority but the mediation was a non-starter. Thereafter, the plaintiff instituted a suit for recovery of the amount of ₹10,00,000/- along with interest from the date of filing of the petition till realization of the said amount.

APPELLANT'S DEFENSE

8. The appellant filed its written statement contesting the suit. The appellant stated that the suit was not maintainable as the same was not properly valued; plaintiff had no cause of action to file the same; the suit was vexatious and instituted to defame the appellant; the suit was not maintainable under the Commercial Courts Act, 2015 (hereafter *the*



Commercial Courts Act); and the suit was not compliant with the Rules made by the Delhi High Court. However, the written statement neither provides any basis for the said defenses nor mentions any provision(s) of the Commercial Courts Act to substantiate the same.

9. The appellant claims that the parties had entered into a Distributor Agreement and acknowledged that the plaintiff had paid a sum of ₹10,00,000/- by remitting the same directly in its bank account for supply of goods. The appellant claims that it supplied goods of an aggregate value of ₹9,87,750/- which were delivered to the plaintiff by way of the following three E-challans:

- a. Delivery Challan No. 1Y/18/12/003 dated 03.12.2018 of INR 6,23,750/-
- b. Delivery Challan No. 1Y/18/12/001 dated 03.12.2018 of INR 2,60,000/-; and
- c. Delivery Challan No. 1Y/18/12/002 dated 03.12.2018 of INR 1,04,000/-.

10. The appellant also denied that any person named 'Vasudev' had dealt with the plaintiff on behalf of the appellant. However, it accepted that Sh. Bishwajit (also referred to as Sh. Vishwajit in the written statement), Director of the appellant company had met with the plaintiff and given a demonstration of various products manufactured by the appellant company.

IMPUGNED JUDGEMENT

11. Based on the pleadings, the learned Commercial Court framed the following issues for its consideration:



- “(i) Whether plaintiff is entitled to recover suit amount as prayed for? OPP
- (ii) Whether plaintiff is entitled to any interest as prayed for, if so, for which period and at what rate? OPP
- (iii) Whether the defendant has supplied the material to the plaintiff after accepting the advance payment of Rs.10 lakhs? OPD
- (iv) Relief.”

12. Both parties led evidence. The plaintiff examined himself (as PW-1) in support of his case. He also proved the bank statements (Ex.PW1/2) reflecting the transfer of an aggregate sum of ₹10,00,000/- in two tranches of ₹5,00,000/- each on 29.08.2018 to the bank account of the appellant. He also proved the issuance of the legal notice dated 01.09.2020 (Ex.PW1/3) and the postal receipts. He was also cross-examined.

13. The appellant examined its Director Sh. Bishwajit (as DW-1). He produced the Distributorship / Direct Dealer Application and Agreement Form executed by the plaintiff (Ex.DW1/B) as well as the three E-challans of delivery of goods (Ex.DW1/C Colly).

14. The learned Commercial Court considered the rival contentions and evidence led by the parties and rejected the appellant's case that it had delivered any goods to the plaintiff. Accordingly, the suit was decreed.

15. The learned Commercial Court also found that the plaintiff had also filed a suit for the same relief (being CS(COMM) No.2730/2021)



which was withdrawn on 06.08.2021 with liberty to file afresh after exhausting the recourse to mediation under Section 12A of the Commercial Courts Act. However, the plaintiff had not disclosed the filing of the said suit in its plaint. The learned Commercial Court found that the plaintiff had not filed the court fees in respect of the prior suit and concluded that he had omitted to do so as he did not want to file the court fees for the same. Further, the plaintiff's statement (PW1's response in cross examination) that he had not filed the earlier suit and did not know the counsel, was incorrect, as the plaintiff was represented by the same counsel who was representing the plaintiff in the earlier suit. Accordingly, the learned Commercial Court denied the plaintiff's claim for any cost.

REASONS & CONCLUSION

16. As is apparent from the pleadings, there is no dispute that the plaintiff had remitted a sum of ₹10,00,000/- to the appellant for supply of goods. The averments made in the written statement expressly acknowledge the receipt of advance of ₹10,00,000/- for supply of goods. The relevant averments are reproduced below:

“12. ...The plaintiff advanced Rs.1,00,0000/- (Rupees ten lakh only) through RTGS in the bank account of defendant company for supply of goods as per the order placed by the plaintiff to the defendant.....”

17. According to the appellant, it had supplied the goods of a value of ₹9,87,750/-. Thus, the key issue to be addressed is whether the appellant had supplied the goods as claimed.



18. The appellant raised several objections of a general nature in his written statement including that the suit is not maintainable as the plaintiff has no *locus standi*; the allegations made in the suit are false and frivolous; that the plaintiff had no cause of action to file the suit; that the suit was an abuse of the process of law and was filed to harass and humiliate the appellant; that the suit was filed to extract money from the appellant with *mala fide* intention; the suit was vexatious and groundless; the suit was not maintainable under the provisions of the Commercial Courts Act; and the suit was not compliant with the Rules made by the Delhi High Court. However, the written statement did not provide any basis for the said defences. Further the counsel for the appellant has also not canvassed any of the said defences in this Court.

19. The sole defence raised by the appellant is that the goods of the value of ₹9,87,750/- were, in fact, supplied by the appellant to the plaintiff under the three E-challans.

20. The plaintiff (PW-1) had filed an affidavit affirming the averments made in the plaint. The plaintiff had also proved that he had sent a legal notice dated 01.09.2020, which was delivered. The plaintiff was also cross-examined. He was confronted with the E-challans (Ex.DW1/C Colly) and he testified that none of the said E-challans bore his signatures. He denied that he had received any goods from the appellant or had signed the delivery challans in acknowledgment of the receipt of the said goods.

21. Sh. Bishwajit (DW-1) was also cross-examined. In his cross-examination he testified that the appellant's manufacturing unit is



located at Wazirabad, Delhi and every item manufactured bears a serial number of a particular group (batch) manufactured by the appellant. On being questioned as to whether the appellant had any record of the serial number of the goods supplied to the plaintiff, he replied in the negative. He stated that the appellant had no record of the serial number of the goods supplied to the plaintiff as such records were maintained only for a period of three years. He also confirmed that the appellant maintains a stock register and the details of the goods supplied to the plaintiff must have been reflected in the stock register. He further acknowledged that for goods having value of more than ₹50,000/-, an E-way bill is required to be prepared mentioning the details of the vehicle through which the goods are dispatched. He acknowledged that the products are required to be classified in accordance with Harmonized System of Nomenclature (HSN) but the appellant had not used HSN codes in respect of its products. He affirmed that the appellant had not filed any E-way bills on record and in fact, had not generated the same for supplies made to the plaintiff. However, he denied the suggestion that the appellant had not generated the E-way bills as the appellant had not supplied the goods to the plaintiff.

22. He was also questioned on the mode of transport through which the goods were supplied to the plaintiff. However, he stated that he did not remember the mode of such transport. He further stated that no invoices were issued regarding the goods sold to the plaintiff.

23. The appellant was also questioned about the manner of preparation of delivery challans and it was put to him that the signatures



of the plaintiff on the delivery challans in question are forged. He denied the suggestion that the signatures of the plaintiff were forged. In response to the question regarding the manner of delivery of goods, he testified that the goods are delivered from the factory directly to the place of the purchaser and the worker present at the factory verifies the quantity of the goods while loading the same on the transport vehicle. He further stated that no gate pass was prepared in the factory. He could not readily state the name of the worker who had gone with the tempo to deliver the goods. He also stated that no record was maintained in the factory as to which worker had proceeded with the goods at the time of its delivery. Moreover, the name of the worker who accompanied the goods is also not mentioned in the delivery challan.

24. As noted above, the appellant's case rested on the documentary evidence regarding delivery challans. The copies of the delivery challans indicate that the same are inchoate. Each of the three delivery challans (Ex.DW1/C Colly) mentioned the mode of transport as 'tempo' but the delivery challans do not mention the vehicle numbers. The details of the same are blank. Thus, there is no evidence on record as to how the goods had been delivered. The appellant has not produced any evidence to establish the person or the agency through which goods had been delivered to the plaintiff.

25. As noted above, DW-1 had testified that one of the workers of the appellant's factory had gone with the tempo to deliver the goods to the plaintiff, however, he could not name the said worker. And, more importantly, no such worker had been examined.



26. Although, the appellant has also claimed that the stock register would contain the entries regarding the outward supplies made to the plaintiff but no copies of the said stock register were produced.

27. DW-1 acknowledged that an E-Way bill is required to be generated for goods of a value of more than ₹50,000/-, however, he accepted that no such E-Way bill had been generated in respect of the goods supplied. The plaintiff had also testified that no invoices had been raised in respect of the goods supplied to him.

28. Undisputedly, goods can either be transferred on account of stock transfers or on account of transactions for sale of goods. In the present case, the goods purportedly delivered to the plaintiff were on account of sale of goods. It is, thus, difficult to accept any such transaction had taken place without generating invoices.

29. The appellant had also relied upon the Distributor Agreement entered into between the parties. Clauses 6 and 9 of the said agreement are relevant. The same are set out below:

“6. Distributor agree to purchase from Iyikatech such products at the prevailing list prices as fixed by Iyikatech from time to time.

9. Iyikatech will sell goods ex-depot or ex factory (in case of direct sales). Iyikatech will not be liable for any damage in transit. Further goods once sold shall not be taken back.”

30. The said terms also clearly indicate that the supply of goods was pursuant to sale and purchase transaction, which obviously requires an



invoice(s) to be generated. The fact that the appellant had not generated any invoice for the goods claimed to have been supplied to the plaintiff raises a serious doubt as to the appellant's case that it had supplied the goods.

31. We find merit in the view of the learned Commercial Court that the appellant has failed to establish that it had delivered the goods against payments made by the plaintiff. No E-Way bills – which were mandatory for transportation of the goods in question – were generated. No invoice against the goods was raised. The appellant's worker who supposedly accompanied the goods was neither identified nor examined. The delivery challans do not mention the details of the vehicle used for transporting the goods. There is no material to identify the transport agency used for transport of the goods. There is also no other communication on record evidencing the delivery of goods or acknowledgement of the same. The appellant had relied heavily on the signatures of the plaintiff on the three challans, however, the plaintiff had denied his signatures on the said challans. No other evidence was led by the appellant to prove that the signatures appearing on the challans were that of the plaintiff.

32. In view of the above, we concur with the view that the plaintiff was entitled to recover the sum of ₹10,00,000/- paid by him along with interest.

33. It is material to note that the plaintiff had sought interest only from the date of institution of the suit till its realization and had not claimed any interest for the pre-suit period. He had also not paid any



court fees for any such relief. Notwithstanding the same, the learned Commercial Court had granted interest at the rate of 12% per annum on the principal amount even for the period prior to the institution of the suit. We are of the view that since no such relief was claimed by the plaintiff, he is not entitled to the same. Accordingly, the plaintiff would be entitled to recover a sum of ₹10,00,000/- along with interest at the rate of 12% per annum from the date of the institution of the suit till its realization. The impugned judgment and decree is modified to the aforesaid extent.

34. The appeal is disposed of with the aforesaid directions. The parties are left to bear their own costs.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 24, 2024

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