IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 26.09.2024

+ **RFA (COMM) 220/2023**

CENTRAL GOVT. EMPLOYEES CONSUMER COOPERATIVE SOCIETY LTD. ..... Appellant

versus

SGT SANJEEV KUMAR ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Apurva Upmanyu and Ms Aparna Vishal, Advocates.

For the Respondent : Mr Vikas Sharma, Mr Samir Mudgil, Ms Aakanksha Sahni, Ms Komal Sharma and Ms Aishwary, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE SACHIN DATTA

JUDGMENT

VIBHU BAKHRU, J.

1. The appellant – Central Government Employees Consumer Cooperative Society Limited, popularly known as *Kendriya Bhandar* (hereafter alternatively referred to as *the appellant* or *the appellant society*) – has filed the present appeal being aggrieved by the common judgement of the learned Commercial Court dated 08.07.2023 (hereafter *the impugned judgement*) whereby CS (COMM) No.

934/2022 filed by the appellant and the Counter Claim No. 47/2022 filed by the respondent, were both dismissed.

2. The appellant has filed the present appeal assailing the impugned judgment to the extent that the learned Commercial Court has dismissed the appellant's suit [CS(COMM) 934/2022].

FACTUAL CONTEXT

3. The appellant society is a Cooperative Society registered under the Multi-State Cooperative Societies Act, 2002 and is a welfare organisation of the Central Government selling grocery, consumer and household items at fair prices with stores in states across India. The respondent is an ex-serviceman and had served in the Indian Air Force. After his retirement, he opened a franchise outlet of *Kendriya Bhandar* at Sant Nagar, Burari, Delhi (hereafter *the retail outlet* or *the shop*). The parties along with Veterans India, a trust registered under the Indian Trusts Act, 1882 acting as the facilitator, entered into an agreement – the Tripartite Agreement dated 07.02.2018 (hereafter *the Agreement*) – whereby the respondent (franchisee) set up the retail outlet, and was responsible to manage and operate the same at his cost. The appellant had agreed to supply the goods for sale at the retail outlet. The respondent also deposited a Fixed Deposit Receipt (FDR) of INR 5,00,000/- bearing number 21767528 dated 13.02.2018 issued by ICICI Bank Ltd., with the appellant as security, in terms of the Agreement.

4. In terms of the Agreement, the respondent (franchisee) was bound to sell the goods at the selling price fixed by the appellant society

with a profit margin of 3% to 4% on the full value of supplies. As stated in Clause (iv) of the Agreement, the franchisee was to submit payment by issuing a fifteen days advance post-dated cheque for the full value of supplies to be made and the stock was to be transferred to the franchisee (respondent) on a fifteen days credit. The relevant clause, Clause (iv) of the Agreement, is reproduced below:

> "iv) the stocks will be supplied against firm demand and on production of advance post dated cheque (15 days) for the full value of supplies to he made, KB will take profit margin of 3-4% and the stocks will be transferred to Franchisee against 15 days credit. However, post dated cheque has to accompany the firm demand."

5. The appellant claims that it entered into the Agreement for allotment of a retail outlet to the respondent on a recommendation for developing its business by ex-servicemen. It acknowledged that it had received a Fixed Deposit Receipt of a sum of ₹5,00,000/- (FDR bearing number 21767528 dated 13.02.2018 issued by ICICI Bank Ltd.) as security in terms of the Agreement. The appellant claims that it had, during the course of its dealings, supplied goods to the respondent of a value of ₹45,54,986/- during the period 11.05.2018 to July 2019. Against the aforesaid supplies, the appellant claims that it had received an aggregate sum of ₹23,05,874/-. Thus, it was entitled to the balance amount.

6. Against the aforesaid amount, the appellant adjusted the amount of the security deposit of ₹5,00,000/-, a sum of ₹2,50,000/- on account of furniture returned by the respondent; and ₹1,84,058/- as credit for the

value of the goods returned. The appellant claims that a sum of ₹13,15,054/- was outstanding and payable by the respondent. It also claimed interest on the said amount at the rate of 18% per annum for the period May, 2019 to February, 2022. Accordingly, the appellant sought a decree for a sum of ₹19,36,100/- along with *pendente lite* and future interest at the rate of 18% per annum.

7. The appellant instituted its claim on the premise that the respondent had failed to make payments by issuing fifteen days post-dated cheque for the full value of the goods, as per Clause (iv) of the Agreement in advance. It is submitted that, although, goods were supplied to the respondent in perfect condition and without defects from May, 2018 to March, 2019, the respondent defaulted in complying with their obligations under the Agreement by not issuing the post-dated cheques.

8. The appellant claims that it issued several letters including letters dated 02.09.2019, 10.10.2019 and 01.08.2019 and a legal notice dated 22.03.2021 [Ex.PW1/J] calling upon the respondent to pay the amounts due. However, the respondent failed to make the said payment.

9. The respondent filed a written statement. He denied that total amount of ₹19,36,100/- was recoverable. He claimed that the value of "*furniture, goods, computer, thermal printer etc.*", which was recovered by the appellant was ₹9,70,000/-. The amount of ₹4,34,058/- [₹2,50,000/- plus ₹1,84,058/-] adjusted by the appellant was much less than the actual amount.

10. The respondent also filed a written statement and a counter claim [Counter Claim No.47/2022].

11. The respondent made a counter claim of ₹34,97,000/-. The respondent claimed that it had incurred expenditure of an amount of ₹65,000/- on renovation of the property (retail outlet); ₹65,000/- on electric work; ₹4,85,000/- on furniture; ₹89,000/- on computers and printers; ₹30,000/- on software and instalment charges; ₹22,500/- on internet charges; ₹3,000/- on instalment of router; ₹6,12,000/- as rent for the shop/site; ₹4,40,000/- approximately on futher rent for the shop/site; ₹1,50,000/- as salary of the cashier; ₹90,000/- on the salary of helper; ₹22,500/- on a salary of night guard; ₹22,500/- on salary of relearning staff; ₹1,74,000/- on account of electricity bill. Thus, the respondent claimed an aggregate amount of ₹22,70,500/- on account of the aforementioned expenditure. In addition, the respondent also claimed interest on the said amounts for a period of three years, at the rate of 18% per annum. The respondent sought recovery of an aggregate amount of ₹34,97,000/- along with *pendente lite* and future interest at the rate of 12% per annum.

THE IMPUGNED JUDGEMENT

12. The appellant examined the Manager of the Franchisee Cell of the appellant society as PW-1. The respondent examined three witnesses including himself as DW-1, Mr Shashwat Kumar stated to be the caretaker/manager of the franchisee retail outlet (DW-2) and Mr Divya Abhishek stated to be a regular customer of the shop (DW-3).

The witnesses also relied upon various documents in support of their contentions.

13. The learned Commercial Court framed the following issues in the Suit [CS(Comm) no. 934/2022]:

> "i) Whether the suit is liable to be dismissed for want of cause of action? OPD
>
> ii) Whether the Plaintiff has not come to the court with clean hands and has suppressed the material facts? OPD
>
> iii) Whether the Plaintiff has supplied inferior quality and deficient goods to the Defendant, as claimed? OPD
>
> iv) Whether the Plaintiff is entitled to recover Rs.19,36,100/- from the Defendant, as prayed? OPP
>
> v) Whether the Plaintiff is entitled to recover any interest from the Defendant? If so, at what rate and for which period? OPP
>
> vi) Relief."

14. The learned Commercial Court framed the following issues in the Counter Claim [Claim No.47/2022]:

> "i) Whether the counter claim has been filed without any cause of action and is liable to be dismissed on this score? OPD
>
> ii) Whether the counter claim is bad for non-joinder of necessary parties? OPP
>
> iii) Whether the counter claimant/petitioner is entitled to recover a sum of Rs.34,97,000/- from the Respondent? OPP

iv) Whether the counter claimant/petitioner is entitled to recover any interest from the Respondent? If so, at what rate? OPP

v) Relief."

15. The learned Commercial Court rejected the contention that the appellant had approached the court with unclean hands. The learned Commercial Court also found that both the Suit and Counter Claim could not be held to be without any cause of action. The challenge to the Counter Claim based on non-joinder of the direct supplier of goods to the respondent was also rejected with the finding that it did not have any bearing on the recovery proceedings initiated against the appellant.

16. The learned Commercial Court rejected the claim that goods of inferior quality and deficient in quantity were supplied to the respondent. The learned Commercial Court rejected the Counter Claim of the respondent as the Court found that there was insufficient evidence relied upon by the respondent to substantiate its claims. The respondent relied upon the testimonies of DW-2 (claiming to be the manager/ caretaker of the retail outlet) and DW-3 (claiming to be a regular customer of the retail outlet), and the documents relied upon by them.

17. The learned Commercial Court found that although DW-2 relied upon Ex. DW-2/1 and Ex. DW-2/4 (being emails dated 08.05.2018 and 13.08.2018 respectively) to show it had raised complaints of shortage of goods being supplied to the respondent, the said emails were general in nature and did not specify the details of the goods that were in short supply in reference to the shipments. It was also found that the emails

were not duly supported by the requisite certificate under Section 65B of the Indian Evidence Act, 1872, and were inadmissible in evidence in light of the decisions of the Supreme Court in ***Anvar P.V. v. P.K. Basheer & Ors.: (2014) 10 SCC 473*** and ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors.: (2020) 7 SCC 1***. The learned Commercial Court also found that no declaration was filed by the respondent in terms of the provisions of Order XI Rule 6 of the Code of Civil Procedure, 1908 (hereafter *the CPC*) as amended by the Commercial Courts Act, 2015. The documents (being Ex. DW-2/1 and Ex. DW-2/4) were found to be mere printouts of emails that were brought on record for the first time at the stage of recording of evidence and were not filed along with the Written Statement or the Counter Claim filed by the respondent. The learned Commercial Court found that the respondent had failed to file the said documents at the appropriate stage, even though they were in his power, possession, control or custody. Accordingly, the documents were not admitted in evidence.

18. The learned Commercial Court further found that the testimony of DW-3 could not be relied upon as it was not supported by the details of purchases allegedly made by him being a regular customer at the shop, including the dates on which he made such purchases or any receipts showing the purchases. The Court found that the respondent had not discharged his burden to prove that goods of inferior quality or insufficient quantities, were supplied. Such allegations were not supported by cogent evidence.

19. The learned Commercial Court found that the Counter Claims raised were not supported by any documentary evidence to show the expenses as claimed. The learned Commercial Court referred to the statement by DW-2 in his cross examination deposing that there was no agreement between the parties, which required the appellant to pay for the electrical works, computer and other infrastructure for which the Counter Claim is raised. The claim for reimbursement of the electricity cost of INR 1,74,000/- was also found to be unsupported by any electricity bill. The claim on account of alleged expenses incurred by the respondent amounting to INR 22,70,500/-, was rejected.

20. The claim raised by the appellant in the suit for the goods supplied for the period of May 2019 to February 2022 for a sum of INR 13,15,054/- along with interest at the rate of 18% per annum, being a total sum of INR 19,36,100/-, was also rejected. The claim was raised by deducting the sum of INR 23,05,874/- received from the respondent, encashment of the FDR deposited as security having value of INR 5,00,000/-, amount towards return of furniture and return of inferior goods. The Court held that the appellant had failed to bring on record any statement of account showing balance payments due from the appellant or the value of the goods/furniture which was adjusted from the amount claimed by the appellant. The Court held that the appellant had failed to substantiate its claim to show that it was entitled to recover the sum of INR 19,36,100/-. Claims for interest claimed in the Suit and the Counter Claim, were rejected as well.

REASONS AND CONCLUSION

21. It is material to note that the respondent has not appealed the impugned judgment. Thus, the controversy in the present appeal is confined to the decision of the learned Commercial Court rejecting the appellant's claim.

22. The plaintiff's claim rested on the fact that it had supplied goods to the respondent of a value of ₹45,54,986/- and against the aforesaid amount had received an aggregate amount of ₹23,05,874/-. Thus, according to the appellant, it was entitled to the balance sum of ₹22,49,112/-, which it claimed on account of goods supplied.

23. The appellant had adjusted the security deposit of ₹5,00,000/- from the amount due for supply of goods. In addition, the appellant also adjusted an amount of ₹2,50,000/- on account of furniture lying at the outlet and ₹1,84,058/- on account of inferior goods returned by the respondent. Thus, the appellant claimed a net amount of ₹13,15,054/-.

24. In order to establish its claim, the appellant established the value of the goods supplied by it. In Paragraph 7 of its plaint, it had set out the value of the supplies made month-wise and the amounts received against the said supplies. Paragraph 7 of the plaint is relevant and is set out below:-

> "7. That the Plaintiff Society supplied Grocery and other consumer items to the Defendant as giving below:

S.No.	Month & year	Total amount of item supplied
1.	11.05.2018 to 31.05.2018	Rs.5,39,593.62
2.	June, 2018	Rs.8,50,730.05
3.	July, 2018	Rs.8,55,874/-
4.	August, 2018	Rs.6,64,919/-
5.	September, 2018	Rs.6,98,863.48
6.	October, 2018	Rs.1,48,769/-
7.	November, 2018	Rs.3,75,698/-
8.	December, 2018	Rs.2,10,827/-
9.	January, 2019	Rs.47,400/-
10.	February, 2019	Rs. 68,664.64/-
11.	March, 2019	Rs.8,187.07
12.	May, 2019	Rs.50,514/-
13.	July, 2019	Rs.34,942.84
	Grand total	Rs.45,54,986/- (Rupees Forty five Lackh Fifty four thousand nine hundred eighty six

The Schedule of payments received by the plaintiff from the Defendant is as under:-

S.No.	Month and year	Total amount of payment received
1.	June, 2018	Rs.3,00,000/-
2.	July, 2018	Rs.4,00,000/-
3.	September, 2018	Rs.4,00,000/-
4.	October, 2018	Rs.4,55,874/-
5.	November, 2018	Rs.4,00,000/-
6.	February, 2019	Rs.2,50,000/-
7.	May, 2019	Rs.1,00,000/-
		23,05,874/-

During the month of August, 2019 22,49,112 less Rs.5,00,000/- as FDR of Rs.5,00,000/- as security and the same was encashed in August, 2019, less returned furniture Rs.2,50,000/-, returned inferior goods Rs.1,84,058/- total recoverable amount of Rs.13,15,054/- plus interest @ 18% per annum w.e.f. May, 2019 to February, 2022 ah interest 18% per annum w.e.f. May, 2019 to February, 2022 is Rs.19,36,100/- (Rupees nineteen Lakhs Thirty six thousand one hundred only)."

25. There was no clear denial by the respondent, of the appellant's averment regarding the value of the goods supplied by it. In fact, contents of Paragraph 7 of the plaint were partly admitted. The respondent's response to Paragraph 7 of the plaint as articulated in Paragraph 7 of its written statement, is relevant and is set out below:

> "7. That the contents of para no.7 of the plaint are partly admitted and partly denied. It is denied that during the month of August, 2019, 22,49,112 less Rs.5,00,000/- as FDR of Rs.5,00,000/- as security and the same was encashed in August, 2019 less returned furniture Rs.2,50,000/-, returned inferior goods Rs.1,84,058/- total recoverable amount of RS.13,15,054/- plus interest @ 18% p.a. w.e.f. May, 2019 to February, 2022 ah interest 18% p.a. w.e.f. May, 2019 to February, 2022 is Rs.19,36,100/- (Rupees Nineteen Lacs Thirty Six Thousand One Hundred Only).
>
> In reply to this para, it is submitted that the plaintiff has illegally and unlawfully encashed the FDR of Rs.5,00,000/- (Rupees Five Lacs Only) without the permission and consent of the defendant. However, the plaintiff has not adjusted the amount received as interest from the said FDR. The plaintiff has recovered the furniture, goods, computer, thermal printer etc. from the defendant, which amounts to Rs.9,70,000/- (Rupees Nine Lacs Seventy Thousand Only) approx. However the plaintiff has adjusted an amount of Rs.4,34,058/-, which is very lesser amount than the actual amount."

26. It is clear from the above that the respondent had not agreed to the value of the adjustment made by the appellant. He had claimed the value of the furniture, fixture and computers, which was taken over by the appellant was ₹9,70,000/-. According to the respondent, the adjustment of ₹4,34,058/- (₹2,50,000/- on account of furniture and ₹1,84,058/- on account of goods returned) was less than the actual amount, which he claimed was about ₹9,70,000/-. The respondent did not clearly deny that he had received the goods of the value as claimed by the appellant. Thus, insofar as the appellant's claim is concerned, the controversy was limited to whether the value of the future and the

goods returned was ₹9,70,000/-, as claimed by the respondent, or ₹4,34,058/-, as adjusted by the appellant. The assertion that the appellant had supplied goods of aggregate value of ₹45,54,986/- and against the same had received a sum of ₹23,05,874/-, remained uncontroverted.

27. As stated above, the respondent had also made counter claims, which were largely in the nature of damages suffered by it on account of short supplies and inferior supplies of the goods. This counter claim as noted above, was rejected by the learned Commercial Court and is not a subject matter of controversy in this appeal.

28. In view of the above, we are unable to accept that the appellant's claim for the value of the goods could be rejected. As noted above, the controversy in regard to the appellant's claim is limited to whether a sum of ₹9,70,000/- was required to be adjusted on account of furniture and goods returned instead of ₹4,34,058/-. The difference in the two is ₹5,35,942/- and the controversy fell in this narrow compass.

29. Thus, even if the respondent's case is accepted and the said amount is adjusted against the amount of ₹13,15,054/- claimed by the appellant, the appellant's claim to the extent of ₹7,79,112/- (without interest) was required to be accepted.

30. We also find that the appellant had produced sufficient evidence to establish the value of the goods. It is also relevant to note that in Paragraph 8 of its plaint, the appellant had set out details of the goods

and items supplied to the respondent and the respondent had admitted the same. Paragraph 8 of the plaint is set out below:

> "8. That the details of goods/items supplied to the Defendant are as under:-

Date of supplied	Amount of supply	Items supplies
11.05.2018	Rs.1,48,994/-	Consumer
14.05.2018	Rs.77,357/–	Grocery items
14.05.2018	Rs.30,300/-	Atta and Grocery items
24.05.2018	Rs.21,887/-	Grocery items
24.05.2018	Rs.7218/-	Grocery items
25.05.2018	Rs.12,689/-	Cold drinks & Rice
25.05.2018	Rs.83,119/-	Grocery & consumers
26.05.2018	Rs.25,462/-	Grocery & consumers
26.05.2018	Rs.81,968/-	Grocery & consumers
31.05.2018	Rs.41,492/-	Atta
31.05.2018	Rs.9108/-	Atta
01.06.2018	Rs.45,626/-	Grocery
01.06.2018	Rs.49,898/-	Grocery
01.06.2018	Rs.20,648/-	Grocery
07.06.2018	Rs.7,572/-	Grocery & Consumer items
07.06.2018	Rs.1,73,064/-	Grocery

08.06.2018	Rs.2,77,166/-	Consumer items
11.06.2018	Rs.28,075/-	Consumer
11.06.2018	Rs.81,819/-	Consumer
11.06.2018	Rs.12,180/-	Consumer
16.06.2018	Rs.23,539/-	Grocery & consumer
19.06.2018	Rs.35,674/-	Consumer
23.06.2018	Rs.61,089/-	Atta
23.06.2018	Rs.21,001/-	Consumer
26.06.2018	Rs.13,078/-	Consumer
02.07.2018	Rs.58,287/-	Grocery
03.07.2018	Rs.90,418/-	Cold drink
03.07.2018	Rs.12,061/-	Grocery
03.07.2018	Rs.24,652/-	Grocery
03.07.2018	Rs.29,191/-	Consumer
6.07.2018	Rs.26,039/-	Consumer
6.7.2018	Rs.16,257/-	Grocery
06.07.2018	Rs.34,401/-	Consumer
09.7.2018	Rs.1126/-	Grocery
09.07.2018	Rs.3512/-	Grocery
09.07.2018	Rs.19148/-	Consumer
11.7.2018	Rs.11912/-	Consumer
11.7.2018	Rs.1174/-	Grocery
13.07.2018	Rs.1,30,619/-	Grocery
14.07.2018	Rs.91,344/-	Consumer
19.07.2018	Rs.6,290/-	Cold drinks

19.07.2018	Rs.7505/-	Consumer
20.07.2018	Rs.6876/-	Consumer
20.07.2018	Rs.8725/-	Consumer
21.07.2018	Rs.36,437/-	Grocery
23.07.2018	Rs.30,844/-	Atta
28.07.2018	Rs.10,227/-	Grocery
28.07.2018	Rs.12,204/-	Grocery & consumer
28.07.2018	Rs.21,015/-	Consumer
28.07.2018	Rs.45,678/-	Grocery
28.07.2018	Rs.32,455/-	Grocery
28.07.2018	Rs.18,971/-	Consumer
28.07.2018	Rs.16,959/-	Consumer
30.07.2018	Rs.58013/-	Grocery
30.07.2018	Rs.42,363/-	Grocery
30.07.2018	Rs.5,953/-	Consumer
30.07.2018	Rs.26066/-	Consumer
31.07.2018	Rs.47,548/-	Consumer
04.08.2018	Rs.1,17,703/-	Grocery
06.08.2018	Rs.17,066/-	Grocery
07.08.2018	Rs.11,411/-	Consumer
07.08.2018	Rs.18,315/-	Consumer
07.08.2018	Rs.19,095/-	Grocery
07.08.2018	Rs.12,244/-	Grocery
07.08.2018	Rs.1056/-	Grocery
08.08.2018	Rs.19,981/-	Grocery

08.08.2018	Rs.17,068/-	Grocery
8.08.2018	Rs.99,077/-	Grocery
09.8.2018	Rs.10,882/-	Consumer
09.08.2018	Rs.33,931/-	Consumer
09.08.2018	Rs.1237/-	Consumer
17.08.2018	Rs.15,179/-	Grocery
17.08.2018	Rs.1201/-	Grocery
17.08.2018	Rs.20,475/-	Consumer
19.08.2018	Rs.40,289/-	Grocery
23.08.2018	Rs.8,766/-	Grocery
23.08.2018	Rs.20110/-	Consumer
24.08.2018	Rs.42,061/-	Consumer
27.08.2018	Rs.45,406/-	Consumer
27.08.2018	Rs.14,536/-	Consumer & Grocery
28.08.2018	Rs.27,684/-	Consumer
28.08.2018	Rs.7292/-	Grocery
29.08.2018	Rs.10,488/-	Consumer
29.08.2018	Rs.56187/-	Atta
29.08.2018	Rs.61,175/-	Consumer
30.08.2018	Rs.45,026/-	Atta
03.08.2018	Rs.40,027/-	Grocery & consumer
04.09.2018	Rs.22,640/-	Consumer and Grocery
06.09.2018	Rs.78819/-	Consumer

06.09.2018	Rs.19240/-	Consumer
06.08.2018	Rs.27,137/-	Grocery
11.08.2018	Rs.39026/-	Consumer
11.08.2019	Rs.23,190/-	Consumer
12.09.2018	Rs.1,05,784/-	Grocery
17.09.2018	Rs.13,029/-	Consumer
19.09.2018	Rs.4471/-	Consumer
21.09.2018	Rs.3132/-	Consumer
21.09.2018	Rs.1142/-	Consumer
25.08.2018	Rs.2925/-	Consumer
25.09.2018	Rs.3377/-	Consumer
26.09.2018	Rs.5234/-	Grocery
26.09.2018	Rs.28091/-	Consumer
26.09.2018	Rs.50091/-	Consumer
26.09.2018	Rs.16088/-	Grocery
26.09.2018	Rs.58904/-	Consumer
27.08.2018	Rs.22825/-	Atta
27.09.2018	Rs.22663/-	Atta
28.08.2018	Rs.10,402/-	Grocery
06.10.2018	Rs.3167/-	Grocery
09.10.2018	Rs.9808/-	Consumer
09.10.2018	Rs.11933/-	Grocery
09.10.2018	Rs.8878/-	Consumer
15.10.2018	Rs.20,906/-	Grocery
24.10.2018	Rs.23238/-	Atta

24.10.2018	Rs.23138/-	Atta
30.10.2018	Rs.18033/-	Grocery
30.10.2018	Rs.9568/-	Grocery
31.10.2018	Rs.20100/-	Grocery
01.11.2018	Rs.8,693/-	Consumer
01.11.2018	Rs.20048/-	Consumer
12.11.2018	Rs.27575/-	Grocery
15.11.2018	Rs.25111/-	Grocery
19.11.2018	Rs.25726/-	Consumer
20.11.2018	Rs.23828/-	Consumer
20.11.2018	Rs.24337/-	Grocery
22.11.2018	Rs.34855/-	Atta
26.11.2018	Rs.96087/-	Grocery
26.11.2018	Rs.27791/-	Consumer
28.11.2018	Rs.3646/-	Consumer
28.11.2018	Rs.34800/-	Grocery
28.11.2018	Rs.23200/-	Atta
12.12.2018	Rs.41591/-	Grocery & consumer
13.12.2018	Rs.937/-	Consumer
13.12.2018	Rs.3063/-	Grocery
21.12.2018	Rs.23863/-	Consumer
27.12.2018	Rs.7880/-	Grocery
28.12.2018	Rs.74993/-	Grocery
31.12.2018	Rs.35100/-	Atta
31.12.2018	Rs/23400/-	Atta

28.1.2019	Rs.47400/-	Atta
16.02.2019	Rs.6563/-	Grocery
16.02.2018	Rs.3237/-	Grocery
23.02.2019	Rs.35165/-	Grocery
23.02.2019	Rs.23700/-	Atta
14.03.2019	Rs.8189/-	Consumer
17.05.2019	Rs.7150/-	Grocery
17.05.2019	Rs.33842/-	Grocery
17.05.2018	Rs.9522/-	Grocery
02.07.2019	Rs.34943/-	Consumer”

31. In its written statement, the respondent had unambiguously stated that “*the contents of para no.8 of the plaint are admitted*”.

32. Notwithstanding the above, the appellant had produced copies of invoices raised by it [Ex.PW1/F (Colly)]. It is also material to note that Clause (xiii) of the Agreement also clearly provided that the goods sold would not be taken back except items of *Kendriya Bhandar* Brand. Clause (xiii) of the Agreement is set out below:

> “(xiii) Items once sold by KendriyaBhandar will not be taken back under any circumstances except KendriyaBhandar brand items which may be returned atleast 30 days before expiry subject to the condition that franchisee will have to take items of same value from KendriyaBhandar in exchange.”

33. Once the appellant had established that it had supplied goods of a value of ₹45,54,986/-, the onus to prove that the respondent had discharged its liability for payment of consideration against the

aforesaid supplies rested on him. As noted above, the written statement does not indicate that the respondent had disputed that he had paid a sum of ₹23,05,874/- against the supplies received. It is not the respondent's case that he had paid a larger sum to the appellant against the supplies made by the appellant. Thus, insofar as the appellant's claims are concerned, the only controversy that the learned Commercial Court was required to address was whether the adjustment of ₹4,34,058/- was correct or that the adjustment was required to be higher at ₹9,70,000/-, as claimed by the respondent.

34. The appellant has not led any evidence as to how it had valued the furniture at ₹2,50,000/-. It has also not produced any documentary evidence to establish that the value of goods returned was ₹1,84,058/-. However, the onus to prove the value of furniture that was taken over by the appellant and the value of the goods, which were returned, rested on the respondent. Since the respondent did not agree to the value of adjustment put forth by the appellant, he was required to prove that the value of furniture and goods was not ₹4,34,058/- but ₹9,70,000/-.

35. In view of the above, we are unable to accept that the appellant's claim for value of the goods supplied was required to be rejected on the ground that it had not produced the Statement of Account. As noted above, it had established that the value of the goods supplied during the period May 2018 to July 2019 was ₹45,54,986/-. The same was also admitted. It had set out the amount received from the respondent. The respondent has neither claimed nor established that he had paid a higher

amount. The respondent has also failed to prove that he was entitled to higher adjustments on account of value of furniture or goods returned.

36. In view of the above, we find that the appellant is entitled to a sum of ₹13,15,054/- as claimed by it. Insofar as the pre-suit interest is concerned, the appellant had issued a legal notice dated 22.03.2021 [Ex.PW1/J] claiming an amount of ₹13,15,054/- along with interest at the rate of 18% per annum. However, the appellant had led no evidence to establish that he was entitled to interest at the rate of 18% per annum. The Agreement between the parties also did not provide for the rate of interest to be paid beyond the credit period.

37. Having stated the above, we are of the view that since the disputes between the parties are commercial disputes, the appellant would be entitled to reasonable interest. We, accordingly, hold that the appellant would be entitled to interest at the rate of 8% per annum from the date of issuance of the legal notice dated 22.03.2021 on the sum of ₹13,15,054/- till the date of realization.

38. The appeal is allowed in the aforesaid terms. Let a decree sheet be drawn up.

39. The parties are left to bear their own costs.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 26, 2024
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