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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(COMM) 24/2021**
VIJAY GUPTAAppellant
Through: Mr Anil Panwar, Advocate.

versus

RAD LOGISTICS (I) (P) LTD.Respondent
Through:

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

ORDER
22.07.2024

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1. The appellant has filed the present appeal impugning a judgment and decree dated 30.10.2021 (hereafter *the impugned judgment*) passed in CS(COMM) 555/2020, whereby the learned Commercial Court had decreed the aforementioned suit for a sum of ₹4,83,128/- along with *pendente lite* and future interest at the rate of 18% per annum from the date of filing of the suit till its realisation.
2. The respondent had filed the above-captioned suit claiming that the defendant (Vijay Gupta, Proprietor of M/s Weavetex India) had availed the services of the respondent of shipment of cargo to the consignee described as "Ideal Textiles Limited, Block-3, Unit 38, 14 Eastmuir Street Glasgow, G32 DHS, UK". The respondent claimed that the said cargo had reached its destination and the respondent had raised an invoice dated 15.06.2018 for a sum of ₹85,938/-. Similarly, it is claimed that the defendant had also availed services for consigning the cargo to Gitiessse S.R.L., via Albertini, 36 Gross Ancona, Blocco A4 30131 Ancona, Italy by Air Freight. In respect of the



said consignment, the respondent had raised an invoice dated 21.06.2018 for a sum of ₹2,77,237/-.

3. The respondent's suit was thus for recovery of the aforementioned two invoices for an aggregate amount of ₹3,63,175/- (Invoice dated 15.06.2018 for a sum of ₹85,938/- and Invoice dated 21.06.2018 for a sum of ₹2,77,237/-). The respondent had also sought pre-institution interest at the rate of 18% per annum, which was quantified at ₹1,08,953/- till February, 2020. In addition, the respondent also claimed notice charges of ₹11,000/- and future interest at the rate of 18% per annum from the date of filing of the suit till its realisation.

4. The impugned judgment indicates that the defendant was proceeded *ex parte* as none had represented the defendant.

5. It is the appellant's case that he is not the defendant as described in the suit. The appellant claims that although his name is Vijay Gupta, he is not proprietor of M/s Weavetex India. He further states that he never resided at D-48, Third Floor, Pushpanjali Enclave, Pitampura, Delhi-110034, which was the address of the defendant in the suit. He also points out that in the plaint that the respondent had provided two other addresses of the defendant: 212, HSIIDC Phase-V, Sector-53, Kundli, Sonapat, Haryana-131028; and 41, HSIIDC Phase-IV, Sector-57, Kundli, Sonapat, Haryana-131028. In addition, the respondent had also provided the cell phone numbers and emails of the defendant. The appellant claims that none of the addresses belong to him. Further, neither the mobile numbers nor the email IDs belongs to the appellant.

6. The appellant also referred to the two invoices in question, which indicate that the same were raised on "M/s Weavetex India, Plot no.41,



HSI IDC, PH-IV, SEC-57, Kundli, Sonapat”.

7. The learned counsel for the appellant has also referred to the emails annexed with the plaint and submits that none of the emails had originated from the appellant.

8. The impugned judgment was also stayed by this Court by an order dated 23.12.2021. Notices of the present appeal were served on the respondent electronically. However, none had appeared for the respondent, despite the service of notice. By an order dated 21.09.2022, the respondent was proceeded *ex parte*.

9. In the given circumstances, we find merit in the appellant’s contention that none of the documents or materials placed on record by the respondent in support of its claim indicates that the appellant had dispatched the consignments through the respondent and is liable for to pay the invoices.

10. In view of the above, we allow the present appeal *albeit* to the limited extent to set aside the impugned judgment against the appellant, if the same is construed as such. The appellant is not bound by the impugned judgment and the same would not be enforced against the appellant.

11. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 22, 2024
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