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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 20.02.2024

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RFA(COMM) 269/2023, CM Nos.60737/2023 & 60739/2023

TARUN BABBAR

..... Appellant

Through: Ms. Pallavi Vashisht, Adv.

Versus

ASHA RAM & SONS PVT LTD

..... Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (ORAL)****CM No.60740/2023 (of the appellant for condonation of 4 days delay in filing the appeal) and CM No.60738/2023 (of the appellant for condonation of 108 days delay in re-filing the appeal)**

1. For the reasons stated in the applications, the delay in filing and re-filing the appeal is condoned.

2. The applications are disposed of.

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3. None appears for the respondent.

4. The appellant (defendant in the suit) has filed the present appeal impugning the judgment and decree dated 21.02.2023 (hereafter '**the impugned judgment**') passed by the learned Commercial Court in Civil Suit (Commercial) No.799/2022 captioned *Asha Ram & Sons Pvt. Ltd. v. Tarun Babbar*.

5. The respondent (plaintiff in the suit) had filed the aforesaid suit for recovery of a sum of ₹12,32,643/- from the appellant.

6. The respondent is engaged in the business of distributing and supplying

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Signature Not Verified

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By: DUSHYANT
RAWAL

Signing Date: 28.02.2024



of various food materials – food grade chemicals, food ingredients, vegetable oil and fats etc. – to bakery industries in Delhi – NCR and other states of India. It is the respondent's case that the appellant had visited the respondent's office at Pahar Ganj, Delhi and placed purchase order for food grade material / ingredients. The respondent had supplied the said goods to the appellant and raised various invoices. The respondent claimed that it was maintaining a running account in respect of the business transactions in its ordinary course of business. And, a sum of ₹7,10,324/- was outstanding and recoverable from the appellant as on 13.01.2018 in respect of the goods supplied by the respondent. The respondent had also produced six invoices aggregating a sum of ₹7,10,324/-, which it claimed were outstanding and recoverable from the appellant. The details of the said invoices are set out below:

Sr. No.	Date	Invoice No.	Amount
1.	27.12.2017	AR/GST/L/1518/17	1,15,762.00
2.	02.01.2018	AR/GST/L/1547/17	56,700.00
3.	02.01.2018	AR/GST/L/1549/17	1,15,762.00
4.	09.01.2018	AR/GST/L/1606/17	2,11,050.00
5.	13.01.2018	AR/GST/L/1642/17	56,700.00
6.	13.01.2018	AR/GST/L/1643/17	1,54,350.00
Total			7,10,324/-

7. The respondent also claimed that the appellant had issued two cheques aggregating a sum of ₹4,22,100/- drawn on Kotak Mahindra Bank, Branch Unit No.A3/14, Paschim Vihar, New Delhi-110063 in favour of the respondent. However, the said two cheques were dishonoured on



presentation. The details of the said two cheques are as under:

“(a) Cheque bearing no.000188 dated 09.01.2018 for Rs.2,11,050/- (Two Lac Eleven Thousand Fifty Only),

(ii) Cheque bearing no.000189 dated 13.01.2018 for a sum of Rs.2,11,050/- (Two Lac Eleven Thousand Fifty Only).”

8. The respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereafter ‘the *NI Act*’) in respect of the dishonour of the aforementioned cheques. The impugned judgment records that the said complaint is pending adjudication.

9. In the aforesaid backdrop, the respondent filed a suit seeking recovery of the amount of ₹7,10,324/- in respect of the unpaid invoices along with interest at the rate of 18% per annum from the date of the invoices till the date of filing of the suit (13.02.2022). The said amount of interest was quantified at ₹5,22,319/-. Accordingly, the respondent sought recovery of ₹12,32,643/-. In addition, the respondent also claimed *pendente lite* and future interest at the rate of 18% per annum till realization.

10. The appellant contested the suit and filed his written statement. The appellant claimed that the goods supplied by the respondent were defective and therefore, he had no obligation to pay the amount as claimed. On the basis of the pleadings of the parties, the learned Commercial Court framed the following issues:

“i) Whether the plaintiff has supplied defective goods to the defendant and as such defendant is not under any obligation to pay any amount to the plaintiff? OPD

ii) Whether the plaintiff is entitled to recover the suit amount of Rs.12,32,643/- from the plaintiff? OPP



iii) Whether the plaintiff is entitled to any interest from the defendant? If so, as to what rate and for what period? OPP”

11. After examining the evidence led by the parties, the learned Commercial Court answered the first issue in the negative.

12. The learned Commercial Court allowed the respondent’s claim for a sum of ₹7,10,324/- as the same was admitted by the appellant. Additionally, the learned Commercial Court awarded *pendente lite* and future interest at the rate of 12% per annum on the principal amount of ₹7,10,324/-. Issue no.(ii) and (iii) were decided as aforesaid.

SUBMISSIONS

13. Ms. Pallavi Vashisht, learned counsel appearing for the appellant, through video conferencing, assails the impugned judgment on two fronts. First, she contended that the suit filed by the respondent was not maintainable as the respondent had not initiated the pre-litigation mediation as required under Section 12A of the Commercial Courts Act, 2015. On a pointed query from the Court, whether any such defence was taken in the written statement. She submitted that the appellant had raised the said defence in the written statement. Second, she submits that the learned Commercial Court had erred in not appreciating that the appellant had no liability to pay for the goods as the same were defective.

REASONS & CONCLUSION

14. We have examined the Trial Court Record and find that the appellant had taken no objection as to the maintainability of the suit on the ground that mediation had not been initiated prior to the institution of the suit. The Trial Court Record also indicates that the respondent had in fact approached the



Central District Legal Services Authority for mediation. Notices in mediation were issued. The report from the Central District Legal Services Authority – which is a part of the Trial Court Record – indicates that the same were delivered. However, the appellant neither responded to the notices nor appeared in the mediation proceedings.

15. The submissions made by the learned counsel for the appellant in this regard are incorrect on both counts. No objection was taken by the appellant in its written statement, and the respondent had initiated pre-institution mediation on 02.11.2020, which was closed as a ‘non-starter’.

16. A plain reading of the written statement filed by the appellant/defendant indicates that there was no effective denial in regard to the respondent’s assertion regarding the supply of goods covered under the invoices raised by it. The appellant’s defence rested solely on the ground that respondent had supplied defective goods. The appellant had asserted that “*by using the said product, the defendant suffered a great loss in his business*”. The products supplied by the respondent were food ingredients and the appellant had admitted that the same were used by him. However, the appellant also asserted that he had called upon the respondent to take back the defective products. He claimed that the respondent had also assured that it would compensate the appellant.

17. It was thus apparent that the principal issue to be addressed is whether there was any defect in the goods admittedly supplied by the respondent and whether the same absolved the appellant from paying the invoice price. The learned Commercial Court had noted the same and by an order dated 25.11.2022 called upon the appellant to lead evidence first. The appellant



(who is carrying on the business under his sole proprietary concern M/s Babbar Foods) had examined himself as the only defence witness (DW-1) and filed an affidavit. A plain reading of the said affidavit indicates that the same is largely the reproduction of the written statement. However, DW-1 had also affirmed that the respondent had placed on record invoices of the year 2017-18 and claimed that there was delay in filing the suit. He affirmed that he had been kept in the dark by the respondent regarding the quality of the food ingredients. He also stated that the outstanding balance of ₹7,10,324/- was “altogether forged” and had sought to substantiate the same by stating that the cheques issued by him were less than the amount claimed.

18. DW1 was cross-examined. In his cross examination, he admitted that he had issued the two cheques in question out of which one was bounced and the payment in respect of the other was stopped by him. The appellant had not filed any document in support of his claim regarding defects in the goods supplied by him and admitted to the same in his cross-examination. It is material to note that the appellant also unequivocally admitted his liability to pay an amount of ₹7,10,320/-. He stated: *“it is correct that I owe the liability towards the plaintiff of Rs.7,10,320 as on 28.01.2018”*. He also volunteered that goods received by him were defective and he had suffered loss. He also conceded that he neither filed any document nor calculation in respect of the loss suffered. In view of the evidence led, it is apparent that the appellant had failed to discharge the burden of proof of establishing that the goods supplied by the respondent were defective. As noted above in his written statement, the appellant had also stated that the goods have been used by him. It is also material to note that there are no documents or communication on record, which would establish that the appellant had called upon the respondent to



take back the goods as claimed.

19. The appellant in his cross-examination had admitted that an amount of ₹7,10,320/- was owed by him towards the respondent. Thus, clearly, the respondent was entitled to a decree for the said amount. It is relevant to note that the learned Commercial Court has not decreed the pre-suit interest as claimed by the respondent. It is apparent from the record that the respondent was unable to establish its entitlement to the same.

20. In view of the above, we concur with the impugned judgment decreeing a sum of ₹7,10,320/-. We also concur with the decision to decree the *pendente lite* and future interest at the rate of 12% per annum.

21. The appeal is unmerited and liable to be dismissed. As noted above, one of the grounds urged by the appellant to assail the impugned judgment is that no pre-litigation mediation proceedings were conducted by the respondent and this objection was raised by the appellant in his written statement. As noted above, these contentions are contrary to the record.

22. In view of the above, the present appeal is dismissed with costs quantified at ₹50,000/-. The costs shall be paid to the Delhi High Court Legal Services Committee within a period of two weeks from date.

23. The pending application is also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 20, 2024

‘gsr’

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