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

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Date of Decision: 06.02.2024

+ **RFA(COMM) 36/2024 & CM APPL. 7244/2024 CM APPL. 7245/2024 CM APPL. 7246/2024 CM APPL. 7247/2024 CM APPL. 7248/2024**

GULJIT SINGH CHOPRA

..... APPELLANT

Through: Mr.Vibhor Mathur, Advocate.

versus

M/S FRENCH LEATHER FACTORY

..... RESPONDENT

Through: Mr. Sanjeev Anand, Sr. Adv. with
Ms. Sonam Anand, Mr. Raghav
Anand and Mr. Akshay Thakur,
Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (ORAL)

1. The appellant has filed the present appeal impugning an order dated 20.04.2023 (hereafter '**the impugned order**') passed by the learned Commercial Court in CS (COMM) No.497/2021 captioned ***M/s French Leather Factory v. Mr. Guljit Singh Chopra.***
2. By the impugned order, the learned Commercial Court had allowed the respondent's application filed under Order XIII A of the Code of Civil Procedure, 1908 (hereafter '**CPC**') and decreed the suit. The learned Commercial Court determined that the appellant (who was arrayed as the sole defendant) did not have any possibility of succeeding in his defence.
3. The respondent is a manufacturer and exporter of Arabic Sheep Skin,



having its factory located in Riyadh, Kingdom of Saudi Arabia. The respondent claimed that the appellant had placed an order for supply of sheep skins for a total value of US \$116,640/-. The respondent shipped the said goods and raised an invoice dated 13.01.2019 in respect of the said goods. The agreed terms of payment were D.A.120 days [Documents against Acceptance] from Bill of Lading date – 24.01.2019. Thus the appellant was provided a credit period of 120 days from the date of the Bill of Lading. The said terms were also reflected in the invoice dated 13.01.2019.

4. The respondent shipped the goods to the appellant from Saudi Arabia on 24.01.2019 and also forwarded the original documents of the said shipment to the respondent's bank through its banker. The respondent claims that the said documents were delivered to the appellant against acceptance of 'D.A. at 120 days from B/L date for US \$116,640/-'. The said documents were duly accepted by the appellant. There is no dispute that the appellant took delivery of the goods on the basis of the documents as accepted. However, the appellant failed and neglected to make the agreed payment.

5. Accordingly, the respondent instituted the suit [CS(COMM) No. 497/2021] for recovery of the said amount along with interest. It was the appellant's case before the learned Commercial Court that the goods supplied were defective. The appellant claimed that the goods were infected with fungus and also had "Fat/Spew Problem". The appellant claimed that he had communicated the same to the respondent on telephone and the respondent agreed to replace the goods in question. According to the appellant, the respondent was not entitled to any sum as the goods were of no use on account of the "Fat/Spew Problem".

6. The appellant also claimed that he was entitled to recover US



\$1,43,750/- as commission in respect of supplies made by the respondent to the appellant's customer – one M/s Savi Leather –in addition an earlier outstanding balance of US \$15,000/-. The appellant states that M/s Savi Leathers is one of his customers but the respondent had contacted the said customer directly. According to the appellant the said conduct was unethical.

7. The learned Commercial Court found no merit in the defence raised by the appellant as there was no documentary evidence or material on record to remotely suggest that the appellant had raised any objection regarding the over-pricing of goods or that the same were of inferior quality. Concededly, the appellant had also taken no steps for return of the said goods.

8. The appellant claimed that there were e-mails sent to the respondent objecting to the quality of the goods, however, no such emails were produced. According to the appellant, he had deleted the said e-mails from his computer, and therefore had filed an application praying that directions be issued to the respondent to disclose all communications.

9. Mr. Anand, learned senior counsel appearing for the respondent submits that all relevant documents and e-mails were disclosed. The respondent has filed a Statement of Truth along with the plaint affirming that it has disclosed all material relevant to the disputes. There is no material to evidence the existence of the alleged e-mails and there is no possibility of the respondent producing any such document.

10. We find no infirmity with the decision of the learned Commercial Court. Clearly, there is no possibility of the appellant succeeding in its defence regarding inferior goods, given the fact that there is no material available on record to establish the same and the appellant had taken no



steps whatsoever for returning the goods in question.

11. The learned counsel appearing for the appellant also sought to assail the impugned order on the ground that the purchase order for the goods in question was not placed by the appellant but by another firm named '*GC COUTURE*'. He states that the appellant is a partner in the said firm, however, the decree has been passed against the appellant as a sole proprietor. He states that the firm '*GC COUTURE*' was not made a party to the suit and this lapse is fatal to the respondent's claim in the said suit.

12. The said contention is unmerited and is required to be rejected. A plain reading of the written statement filed by the appellant indicates that the appellant had admitted that he had placed the order for leather skins with the respondent. The appellant had also admitted that he had received the goods in question. The only defence raised in the Written Statement is that the goods supplied, did not meet the expected quality. The relevant extract of the written statement is set out below:

“III. It is respectfully submitted that in consonance with the requirement of sheep skin, the Defendant had placed an order of leather Skins upon the Plaintiff. That the terms and condition, which we agreed, should be good quality.

IV. It is respectfully submitted that because of goods relationship with the Plaintiff, the Defendant have expected that the goods/material to supplied shall meet the expected quality as supplied previously and will be up-to its mark however, when the Defendant checked the quality of said sheep skins, it came to the notice that the supplied goods were of an inferior and substandard quality and more than 50% of the goods supplied were infected with “Fungus” and “Fat/Spew Problem”.

It terms of a lay man or business parlance “Fat/Spew Problem” refers to a situation where the skin/goods contains excess proportion of fat, which upon being processed expels large quantities of fat thereby rendering the goods useless for the Defendant. It is needless to say that the Defendant have duly communicated the aforesaid problem to



the Plaintiff over telephone and the Plaintiff have accepted to replace the supplied goods.”

13. In view of the above, it is clear that the grounds sought to be raised at this stage are an afterthought. It is also material to note that there is no dispute that the documents in respect of the goods had been negotiated through banks. The appellant had accepted the documents. The appellant cannot avoid the liability to pay for the goods admittedly received by him.

14. Apart from the aforesaid contention, the learned counsel appearing for the appellant also submits that the appellant’s application for disclosure of emails sent by the appellant to the respondent was not allowed. As. Noted above, in terms of the Order XI of the CPC as amended by the Commercial Courts Act, 2015, the respondent is required to produce all relevant documents along with the plaint. The written statement does not indicate any serious contest to the same. The appellant’s application for production of e-mails, absent any material as to their existence, is clearly insubstantial.

15. In view of the above, the present appeal is unmerited and accordingly dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 06, 2024/r

Click here to check corrigendum, if any