



2024:DHC:3425



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

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Date of decision: 23rd April, 2024

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CS(COMM) 1165/2018, I.A. 933/2020, I.A. 214/2020

ITC LIMITED

..... Plaintiff

Through: Mr. Anil Kher, Senior Advocate with
Mr. Sandeep Thukral, Mr. Kunal
Kher and Mr. Ankur Gosain,
Advocates.

versus

MS. SAMITA BHATIA PROPRIETOR S.S. ENTERPRISES

..... Defendant

Through: None

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

**I.A.17603/2024(under Section 5 of the Limitation Act 1963 read with
Section 151 CPC 1908 filed by the plaintiff for condonation of delay of
70 days in filing the Reply)**

1. The application under Section 5 of the Limitation Act, 1963 read with Section 151 CPC, 1908 has been filed on behalf of the plaintiff for condonation of delay of 70 days in filing the reply.
2. For the reasons stated in the application, the delay of 70 days in filing the reply is condoned.
3. The application is allowed and the reply is taken on record.

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I.A.3145/2020 (under Section 151 CPC, 1908 filed by the defendant for placing on record the Expert's opinion)

4. The application under Section 151 CPC, 1908 has been filed on behalf of the defendant for placing on record the expert's opinion.
5. None is appearing on behalf of the defendant.
6. The application is hereby dismissed in default.

I.A.17602/2019(under Section 151 CPC for taking the signatures of defendant/applicant Ms. Samita Bhatia on record)

7. The application under Section 151 CPC, 1908 has been filed on behalf of the defendant for taking on record the admitted signatures of the defendant/applicant Ms. Samita Bhatia on record.
8. None is appearing on behalf of the defendant.
9. The application is hereby dismissed in default.

I.A.15543/2018 (under Order XXXVII Rule 3(5) filed on behalf of the defendant seeking leave to defend the present suit on merits)

10. The application under Order XXXVII Rule 3(5) CPC, 1908 has been filed on behalf of the defendant seeking leave to defend the present suit on merits, but none has appeared on behalf of the respondents.
11. The application is thus, dismissed in default.

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12. The plaintiff has filed the present **Suit for Recovery** of Rs.2,19,17,562/- under *Order XXXVII of Code of Civil Procedure, 1908*.
13. It is submitted that the plaintiff is a duly registered Company having its registered Office at Kolkata and it has diversified businesses including sale of Education and Stationery Products, while the defendant is a sole



proprietor of S.S. Enterprises and operates her business from Tilak Nagar, New Delhi.

14. It is submitted that the defendant had approached the plaintiff for purchase of various Education and Stationery products marketed and sold by the plaintiff. Accordingly, the plaintiff sold and delivered various Education and Stationery products from time to time, to the defendant, on the basis of various Requisitions/Orders made personally as well as telephonically, which were duly received by the defendant and acknowledged on the Invoices raised by the plaintiff in respect thereof.

15. The plaintiff has claimed that taking advantage of the credit policy of the plaintiff for payment ranging between 30 (thirty) to 120 (one hundred and twenty) days from the date of sale, the defendant took advantage of the credit policy of the plaintiff by making *on account* payments in respect of the various Invoices, which were credited by the plaintiff in its Book of Accounts.

16. The defendant *vide* its Letter authorized certain Transporters to collect the Education and Stationery material from the Godown/Warehouse of the plaintiff at regular intervals, as had been purchased by the defendant.

17. The defendant duly acknowledged and confirmed the outstanding amount of Rs.1,98,01,705/- to be outstanding and payable as on 30.09.2015, subsequent to reconciliation of the Statement of Accounts between the parties hereto. The claim of the plaintiff is duly supported by the *Confirmation Letter* of the defendant wherein it is admitted that a sum of Rs. 1,98,01,705/- is due on 30.09.2015 and has been correctly reflected in the books of accounts.

18. Since the defendant was not forthcoming to make the payments, the



plaintiff sent a Legal Notice dated 19.05.2016 seeking the amount along with interest @24% p.a. from the defendant. The Notice was duly replied *vide* Letter dated 03.06.2016 and 20.09.2017 whereby false claims of pending dues were raised by the defendant. However, the defendant, categorically admitted that within three months i.e. between January to March, 2015, a credit of Rs. 2,22,48,874/- was released by the plaintiffs, despite the plaintiff being aware that the defendant already had sufficient unused stocks in their Godowns, thereby admitting the supply of goods.

19. The plaintiff has thus, filed the present Suit under Order XXXVII of CPC 1908 for Recovery of Rs. Rs.2,19,17,562/- along with the *pendent lite* and future interest @ 24% p.a.

20. The defendant had filed its **Leave to Defend Application** claiming that the *Letter of Confirmation of Balance* relied upon by the plaintiff, was a forged and fabricated document. However, the defendant had failed to appear subsequently and the *Leave to Defend Application* has been dismissed in default. However, in the Reply dated 03.06.2016 of the defendant to the Legal Notice served by the Plaintiff, it is admitted by him that the goods had been delivered to the defendant and admittedly credit was also released in favour of the defendants and there were outstanding dues of Rs. 1,98,01,705/- as on 30.09.2015. The factum of payment, delivery of goods and release of credit amount are thus, admitted by the defendant in their leave to defend application, duly supported with the affidavit. Moreover, the *Letter of Confirmation of Balance* not only bears the signatures of the defendant, but also has the Stamp of the Company. Further, the contents of *Letter of Confirmation of Balance* is also corroborated by the contents of the Reply of the defendant, as discussed above.



21. ***The claim of the plaintiff for Rs.1,98,01,705/-, is therefore, allowed.***
22. The plaintiff had also claimed interest @24% p.a. from the due date, which has been included in the amount claimed by way of the suit.
23. The law on payment of interest has been settled in *Oil and Natural Gas Corpn. Ltd. vs. State Bank of India*, 2001 SCC OnLine Bom 119; *Daryanani (Indo Saigon) Construction (P) Ltd. vs. Mantri Realty Ltd.*, 2017 SCC OnLine Bom 7963; *Khera Handloom Supply vs. O.B. Exports*, 1990 SCC OnLine Del 42 and *Diglife Distribution and Marketing Services Ltd. vs. Stalco Consultancy and Systems (P) Ltd.*, 2018 SCC OnLine Del 11278, wherein it was held that where an amount/liability is admitted by the defendants, then merely a claim for interest made in the Legal Notice making a demand from the defendants, which was not mutually agreed by the parties, would not make the Suit/claim beyond the scope of Order XXXVII CPC, 1908.
24. The issue is no more *res integra* that even if there is nothing on record to show that there existed any agreement between the parties to claim any specified interest, the plaintiff is entitled to claim interest as per the prevailing market rates, because a person is entitled to payment of interest on the principal amount as such person was deprived of the use of money to which he was legitimately entitled and has a right to be compensated for such deprivation and for such period of deprivation till the amount is released in his favour.
25. Therefore, the plaintiff is justified in claiming interest but there is no basis shown by the plaintiff to justify its claim for interest @24% p.a. in case of default in payment. ***Therefore, considering the prevalent market practices, interest of 9% p.a. is granted from the date of 30.09.2015, till the***



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date of realisation on the principal amount.

Relief:

26. The plaintiff is held entitled to the sum of Rs. 1,98,01,705/- along with interest of 9% p.a. from 30.09.2015, till the date of realisation .
27. The parties to bear their own cost.
28. The decree sheet be prepared accordingly.
29. The Suit is hereby, disposed along with pending application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 23, 2024/RS

Signature Not Verified

Digitally Signed By: AHIL SHARMA

Signing Date: 30.04.2024
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