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

Reserved on: 15.01.2025
Pronounced on: 20.02.2025

\+ RFA(COMM) 25/2025

M/S REGENT INTERNATIONAL .....Appellant

Through: Mr. Sudhindra Tripathi, Adv.

versus

PRATEEK DHAM .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

CM APPL. 2386/2025

1. Allowed, subject to all just exemption.

CM APPL. 2385/2025

2. The present application has been filed by the Appellant under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'), seeking permission to place additional documents on record.

3. For the reasons stated in the application, the application is allowed and disposed of.

4. Consequently, the additional documents are taken on record.

RFA(COMM) 25/2025, CM APPL. 2384/2025

5. This Regular First Appeal under Section 13 of the Commercial Courts Act, 2015 (hereinafter referred to as 'the CCA')read with Section 96 and 151 of the CPC has been filed to assail the Judgment and Decree dated 04.10.2024, passed by the Court of the District Judge (Commercial Court)-02, South-West District, Dwarka, New Delhi (Trial Court) in CS(COMM) 505/2023 titled ***Prateek Dham v. M/s Regent International*** (hereinafter referred to as 'Impugned Judgment').

6. *Vide* the Impugned Judgment, the learned Trial Court dismissed the application filed by the Appellant seeking Leave to Defend under Order XXXVII Rule 3(5) read with Section 151 of the CPC, and decreed the Suit of the Respondent for a sum of Rs.8,85,808.13/- along with an interest at 9% per annum, with effect from 20.11.2021 till the date of its realization. Further, the cost of the Suit was also awarded in favour of the Respondent against the Appellant.

BRIEF FACTS:

7. The Respondent herein filed the aforementioned Commercial Suit before the learned Trial Court on 31.10.2023, for the recovery of a sum of Rs.11,47,249/- from the Appellant, along with *pendente-lite* and future interest at 15% per annum. In the plaint, it was alleged that the Respondent is the proprietor of M/s R.B Traders, a proprietorship firm engaged in the business of freight forwarding. The Appellant approached the Respondent in order to avail of his Firm's services and

the Respondent agreed to provide the same.

8. In pursuance thereof, the Respondent provided terminal handling services to the Appellant and raised the invoice No. RB/OE/2021/041 dated 31.03.2021 for an amount of Rs.4,65,382/-. Out of the said amount, the Appellant only paid a sum of Rs.3,92,852/- with an amount of Rs.72,350/- still pending. The Respondent, on 03.08.2021, raised another invoice No. RB/OE/2021/156 for an amount of Rs.1,70,941/- for the services provided, out of which no amount had been paid. Thereafter, a third invoice RB/OE/2021/204 for the amount of Rs.6,42,517/- was raised on 19.11.2021 for the freight services provided by the Respondent to the Appellant. Accordingly, it was alleged that the Appellant was liable to pay an outstanding amount of Rs.8,85,808/- along with an interest amount of Rs.2,61,441/- on the outstanding amount till the date of filing the Suit.

9. Upon receiving summons of the Suit, the Appellant entered his appearance before the learned Trial Court, and pursuant to receiving summons for Judgment on 17.02.2024, the Appellant, on 29.02.2024, filed an application under Order XXXVII Rule 3(5) of the CPC, along with supporting documents seeking for Leave to Defend.

10. In the Leave to Defend application, the Appellant alleged that as per the plaint, the Respondent has averred that a payment of Rs.3,92,852/- was made by the Appellant, however, the ledger account filed by the Respondent reflects no such payment. It was also averred that apart from being the proprietor of M/s R.B Traders, the

Respondent was also related to the company by the name of M/s Shifl Pvt. Ltd., from whose Email Address all correspondences were made with the Appellant. The Appellant averred that it was carrying on business with both, the Respondent and M/s Shifl Pvt. Ltd., which is run by the mother of the Respondent, and that this fact was concealed by the Respondent in the plaint and therefore, this was a triable issue.

11. The Appellant had raised three more triable issues in the Leave to Defend application, which are, firstly, the Respondent, in the invoice dated 03.08.2021, claimed an amount higher than what was agreed upon by the parties, and in fact, the Appellant had requested the Respondent, *vide* an email dated 27.12.2021, to send an amended invoice after adjusting the debit note charges, which the Respondent did not accede to; secondly, the Respondent failed to provide the Appellant an arrival notice with respect to a freight order arriving from the United States of America (USA) on 31.08.2021, thereby causing a huge loss to the Appellant as it had claimed the right to interest and damages by counter claim; lastly, all three invoices in question had been settled by the Appellant as without the consent of the Appellant, the Respondent had received a payment of more than Rs. 2.5 lakh from the clients of the Appellant, which the Respondent failed to credit into the ledger account of the Appellant, therefore, the issue of any outstanding amount against Appellant was also triable and thus, the Appellant prayed for grant of unconditional Leave to Defend.

12. After hearing the arguments advanced by both the parties, the

learned Trial Court passed the Impugned Judgment and Decree, compelling the aggrieved Appellant to file the present appeal.

SUBMISSIONS OF THE APPELLANT:

13. The learned counsel appearing on behalf of the Appellant submitted that the Impugned Judgment passed by the learned Trial Court is erroneous in both fact and law. Making a reference to the grounds taken in the Leave to Defend application, as stated hereinabove, the learned counsel submitted that many triable issues remain, on the basis of which the Appellant is entitled for Leave to Defend.

14. The learned counsel, in addition to the grounds raised in the plaint, submitted that except for the invoices in question, the Respondent has not placed on record any other document that proves that the Respondent was engaged in business with the Appellant through its proprietorship firm M/s R.B Traders. Further, M/s Shifl Pvt. Ltd., the Company through which the Appellant has been carrying out transactions with, has not been made a party in the Suit.

15. The Appellant, in the Leave to Defend application has impressed upon the argument that the Appellant was supposed to collect an amount of Rs. 2.5 lakh from an international client for providing freighting cargos, however, the Respondent without any consent from the Appellant, received the said payment from the client. He submitted that the learned Trial Court has not given any finding in this regard while deciding the Leave to Defend application.

16. To conclude, the learned counsel submitted that the invoices, on the basis which the Respondent has filed the Suit, do not contain any terms and conditions entered into between the parties regarding service and payment. The invoices only contain items *qua* which the charges are made and, therefore, cannot be treated as a written contract between the parties as envisaged under Order XXXVII Rule 2(6) of the CPC. This being the case, there remain many triable issues and therefore, the Leave to Defend application ought to have been allowed. Thus, it was prayed that the appeal be allowed and the Impugned Judgment be set aside.

ANALYSIS & FINDINGS

17. Having heard the learned counsel for the Appellant and examined the documents on record, the short issue that comes up for the consideration before this Court is whether any triable issues remain in the aforementioned Suit. It is not disputed that the Appellant had availed of the terminal handling service in the year 2021 from the Respondent and also the fact that the Respondent had filed the aforementioned Suit under Order XXXVII of the CPC, based on three invoices.

18. The learned Trial Court while passing the Impugned Order, did not find any favor in the argument that various triable issues arise and came to the conclusion that the application filed by the Appellant under Order XXXVII Rule 3(5) of the CPC was devoid of any triable issues and therefore, did not grant the Appellant Leave to Defend.

19. Before delving into the submissions made by the learned counsel for the Appellant, we may note the findings given by the learned Trial Court in the Impugned Judgment, which read as under:

> *"**23.** Applying the law to the facts of the present case, it is apparent that defendant has not raised any triable issue vide his present application for the reasons mentioned hereinbelow.*
>
> ***24.**The defendant has not disputed the availing of terminal handling services from the plaintiff in the year 2021 and of making payment from time to time as this fact is admitted in para 2 of his affidavit. The plaintiff has filed the present suit under Order XXXVII CPC, based upon three invoices. In his application seeking leave to defend, defendant has not disputed invoice RB/OE/20211041 dated 3 1.03.2021 for Rs.4,65,382/- and invoice RB/OE/2021/204 dated 19.11.2021 for Rs.6,42,517 /-.*
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> ***25.**The contention of Ld. counsel for defendant that against invoice no. RB/OE/2021/041 dated 31.03.2021, a partial payment of Rs.3,92,852/- is not being reflected in the ledger account filed by plaintiff, deserves to be rejected.*
>
> ***26.**I have carefully perused the ledger account and the same shows that plaintiff had provided terminal handling services to defendant on four occasions and, therefore, four invoices were generated. With regard to first invoice of Rs.20,566/-, payment of the exact amount has been made.*
>
> ***27.**Further, with regard to invoice RB/OE/2021/041 for Rs.4,65,382/-, payment of Rs.20,499.57p., Rs.2 Lacs, Rs.1 Lac and Rs.72,532/- has been received on various dates and if said amount is added, then it comes to Rs.3,93,031.57p. and it seems that plaintiff due to calculation mistake has mentioned the said amount to be Rs.3,92,852/-. The making of part payment against the aforementioned*

invoice has not been disputed by the defendant as is apparent from para 4 of his affidavit. Therefore, on this ground, no triable issue is raised as whatever payments were received from the defendant against invoice RB/OE/2021/041 has been duly mentioned in the ledger Account.

***28.**Thirdly, with regard to invoice RB/OE/2021/156, defendant has claimed a triable issue on the ground that plaintiff has charged higher amount than the agreed terms and has also not adjusted the debit note charges.*

***29.**The amount of the said invoice is Rs. 1,70,941/- and plaintiff has filed on record the invoice dated 30.07.2021, which has been issued by Teamworld Logistics Pvt. Ltd. for Rs.1,68,109/- in the name of plaintiff. Therefore, the invoice raised upon defendant for Rs.1,70,941/- cannot be said to be on the higher side, as any company or a firm, which is into business will not issue any invoice for lesser price than what has been charged and, therefore, if plaintiff has charged around Rs.3,000/- more from the defendant for providing terminal handling services, then it cannot be said that plaintiff has charged a very higher amount for his services. Further, defendant has not provided the details of debit note, amount of debit note and the reason for raising the debit note in his application. Even the copy of debit note has not been filed on record. Even the email dated 27.12.2021 has got no attachment of debit note even though reference of the same is made in the email Therefore, in absence of any debit note and the reason for issuance of debit note, no triable issue is raised.*

***30.**Lastly, defendant has claimed a triable issue, on the basis of invoice SCP-G-1023/21-22, as due to delay in handing over the arrival notice, he had suffered losses and hence, he is entitled to claim damages suffered by him from the plaintiff.*

31. *The said defence also does not raise any triable issue as communication filed on record between defendant and Shift Pvt. Ltd. shows that aforementioned invoice pertains to transaction between defendant and Shift Pvt. Ltd. and has got no concern with the plaintiff's proprietorship concern. Therefore, if defendant has any claim of damages with regard to aforementioned invoice, then, the same has to be claimed from ShiflPvt. Ltd. and not from plaintiffs firm.*

32.*Lastly, it is the claim of the defendant in para 10 of his affidavit that entire payment of all the three invoices has been made and all the three invoices stand settled. However, no payment proof has been filed on record. Therefore, this submission does not raise any triable issue. Further, on one hand, defendant is disputing the amount of invoice no. RB/OE/2021/156 and on the other hand, defendant is claiming to have made the payment of all the three invoices, which shows that defendant is raising contradictory pleas and hence, defendant does not have any reasonable defence for which he is entitled for leave to defend.*

33.In the light of aforesaid discussion, no triable issues have been raised by defendant in his leave to defend application for which he can be granted unconditional leave to contest. Hence, the application filed by defendant is devoid of any merit. The same is accordingly dismissed. Accordingly, suit of the plaintiff is decreed for a principal sum of Rs.8,85,808.13. Further, although plaintiff has claimed interest @15% per annum, on the basis of invoices but in the opinion of this court, interest @ 15% per annum is highly excessive and unreasonable and even the Nationalized banks do not charge such high rate of interest. Hence, the same is declined. However, this court while exercising its discretion under Section 34 CPC and as the transaction in question is commercial, deems it appropriate *to grant interest @9% per annum on the principal sum of Rs.8,85,808.13p. From 20.11.2021 till the date of payment. Cost of the suit is also awarded in favour of plaintiff."*

20. On a perusal of the record, we find that the plea of the Appellant that the partial payment made by the Appellant of Rs. 3,92,852/- against invoice No. RB/OE/2021/041 dated 31.03.2021 is not reflected in the ledger account filed by the Respondent, is incorrect. The Respondent, in its reply to the leave to defend, has stated that the said payment was not made in one go, but on different dates, and the amount of Rs.3,92,852/-, is duly reflected in the ledger account. On examining the ledger account placed on record, it is noticed that there are four payments received, being, Rs. 20,499.57/-, Rs. 2,00,000/-, Rs. 1,00,000/- and Rs. 72,532/, totalling to Rs. 3,93,031.57. As noticed by the learned Trial Court, perhaps there has been a mistake in the plaint in mentioning the amount as Rs. 3,92,852/- instead of Rs. 3,93,031.57.The making of part payment against the aforementioned invoice has not been disputed by the Appellant.

21. Now, coming to the second contention raised by the Appellant in the Leave to Defend application that the Respondent is not only a proprietor of M/s. R.B Traders but also operates a private limited company, namely M/s *Shifl Pvt. Ltd.* with Renu Dham, who is the mother of the Respondent and that the Respondent has concealed this fact and as such, it is a triable issue. However, nothing has been placed on record by the Appellant to show as to how this is a triable

issue. Neither it is the contention of the Appellant that there was joint account being maintained of both the Proprietorship Firm and the Private Limited Company, nor has any document been placed on record, *qua* the same. Merely, the fact that the same Email Address was being used to communicate in respect of both the Proprietorship Firm and the Private Limited Company, does not in any manner further the case of the Appellant.

22. With regard to the third contention raised by the Appellant, that is the Respondent charged a high amount for his services, which is not acceptable to the Appellant. There is again no material placed on record by the Appellant to state in what manner the invoice No. RB/OE/2021/156 is higher than the agreed amount. The invoice dated 03.08.2021 is for an amount of Rs.1,70,941/-, and the respondent has filed the said invoice on record, which reflects that invoice has been issued by one Teamworld Logistics Pvt. Ltd, for an amount of Rs.1,68,190/- in the name of the Respondent. There is a difference of Rs.3,000/-,but there is nothing placed on record to support the claim that the Respondent could not have charged a sum of Rs. 3,000/- over and above the amount charged by Teamworld Logistics Pvt. Ltd. Further, no details of the debit note were placed on record with the Leave to Defend application, as averred by the Appellant. In absence of the debit note, no triable issue remains in this regard as well.

23. The next submission raised by the Appellant in the Leave to Defend application is that in the month of August 2021, the Appellant was supposed to receive one freight order that was coming from the

USA to India on 31.08.2021. The Appellant engaged the Respondent for its terminal handling services and an invoice No. SCP-G-1 023/21-22 was generated for the same. The Respondent was responsible for providing cargo arrival notice to the Appellant, however, despite continuous requests, the Respondent failed to provide arrival notice and that the Appellant as such has a counter claim. On perusing the record, it is noticed that other than a mere averment of having suffered an alleged loss, there is neither any documentary proof of the same, nor there is any amount mentioned as to what is the quantum of alleged loss, nor has the Appellant filed any suit claiming any loss or damages. It is noticed that the said transaction was of year August 2021 and more than three years have passed. Therefore, no triable issue remains in this regard as well.

24. Coming to the last leg of submission raised by the Appellant, whereby it has been claimed that all the three invoices have been settled, and that the Respondent, without the consent of the Appellant, received payments from Appellant's clients for an amount of more than Rs. 2,50,000/-, which should have been credited to the account of the Appellant. However, other than the vague plea taken, no details are forthcoming. There are no details mentioned as to when and on what account the said payment was received. No proof of payment in regard of this has been filed either. Without there being anything to substantiate the same, such plea cannot be sustained as well.

25. Moreso, it is noticed that the Appellant has not placed on record its own ledger account so as to contradict the ledger filed by the

Respondent. It is noted that the Appellant's application for Leave to Defend lacks substantial grounds and is devoid of any merit. The proposed defence is not plausible and indeed no triable issue arises in the present case. The Appellant has not presented any cogent evidence or valid defence that would necessitate a trial. Even the additional documents do not further the case of the Appellant. As noticed above, mere sending of Email by common Email Address by the Respondent and company namely M/s Shifl Pvt. Ltd. does not imply that there was a common account being maintained by the parties. Therefore, keeping in view the settled law as noted above, we affirm that the Appellant is not entitled to the Leave to Defend.

26. On a perusal of the Impugned Judgment, it is apparent that the learned Trial Court has dealt with all the contentions raised by the parties and passed a well-reasoned and detailed Judgment. We, therefore, find no infirmity with the Impugned Judgment.

27. The appeal, along with the pending applications, is accordingly dismissed.

SHALINDER KAUR, J

NAVIN CHAWLA, J

FEBRUARY 20, 2025/FRK/*VS*