

**IN THE COURT OF CIVIL JUDGE-06, (CENTRAL), TIS HAZARI
COURTS, DELHI**

DATE OF INSTITUTION: 24.01.2017

CIS NO. : 198/2017

CNR NO. : DLCT03-000412-2017

DATE OF DECISION: 25.06.2020

PRESIDING OFFICER: Mr. RUPINDER SINGH DHIMAN

Mrs. Anita Gupta

Sole Proprietor,

M/s Garg Enterprises,

Office at: 63, 3rd Floor, G.B. Road,

Delhi – 110006.

Through Sh. Ved Prakash Gupta,

Authorized Representative

.....Plaintiff

Versus

1. M/s DBR Cooling Tower Pvt Ltd,
Office at 55, Jatin Das Marg,
Kolkata- 700029.

Also, at:

M/s DBR Cooling Tower Pvt Ltd
C-141, 2nd Floor, Preet Vihar
Delhi-110092

Also, at:

M/s DBR Cooling Tower Pvt Ltd
2, Park Street Road
Kolkata-700026

2. Sh. V K Singh,
Authorized Representative of
M/s DBR Cooling Tower Pvt Ltd,
112, Shakti Khand-3, Indira Puram,
Ghaziabad-201014.

.....Defendant.

Argued by:

(a) Sh. Jatin Aggarwal, counsel for plaintiff.

**Note: Defendants are already proceeded against ex-parte vide order dated
21.01.2019**

**SUIT FOR RECOVERY OF RS. 1,07,794/-- ALONG WITH PENDENTE-
LITE AND FUTURE INTEREST**

JUDGMENT:

1. Vide this judgment, I shall dispose of a suit filed by the plaintiff against the defendants for a recovery of Rs. 1,07,794/- (Rupees One Lakh Seven Thousand Seven Hundred Ninety-Four only).
2. In a nutshell, the factual matrix of the case is as under: -

The plaintiff is a proprietorship concern trading in pump, heavy motors, bearings etc. in the name and style of M/s Garg Enterprises. The present suit has been filed by Sh. Ved Prakash Gupta who is the authorized representative and husband of Mrs. Anita Gupta, the sole proprietor of the plaintiff firm. The plaintiff had business relations with the defendant no.1 which is a private limited company and defendant no.2 is the Director/Authorized Representative of defendant no.1. Several contracts for supply of pump, heavy motors etc. were entered into between the plaintiff and the defendant. The plaintiff supplied products to the defendant as per the specifications and requirements of the defendant concern. As per the statement of account maintained by the plaintiff of the period from 01.04.2015 till 10.11.2015, Rs. 1,46,274/- were due as balance principle amount towards the goods purchased by the defendant. In order to discharge

the aforesaid liability, defendant issued postdated cheques bearing no. 082715 dated 15.09.2015 for a sum of Rs. 50,000/- and cheque bearing no. 082716 dated 22.09.2015 for a sum of Rs. 57,794/-. The defendant also promised to pay the balance amount. However, the aforesaid cheques were dishonored on presentation with the remarks 'Funds Insufficient'. Plaintiff issued a legal notice dated 15.01.2016 demanding the due amount but to no avail. The total amount due from the defendant towards the plaintiff is Rs. 1,46,274/-. Left with no other equally efficacious remedy and tired of the persistent breach of financial commitments made by the defendant, the present suit was filed for recovery of the suit amount i.e. Rs. 1,07,794/- only along with interest @ 24% per annum under Order XXXVII CPC.

3. Summons of the present suit under prescribed proforma were issued to the defendant, however, the same were received back unserved with the report that 'No such person was found residing at the given address'. Thereafter again efforts were made to serve the defendant on 07.06.2017 and 27.09.2017, but the defendant remained unserved. Thereafter, application under Order V Rule 20 CPC was moved on behalf of the plaintiff which was allowed vide order dated 06.03.2018. On 24.10.2018, the publication was affected upon the defendant but no one appeared on behalf of the defendant on 26.10.2018. On 26.10.2018, authorized representative of the plaintiff, in the presence of the counsel for plaintiff prayed for conversion of the present suit under Order XXXVII Civil Procedure Code into an ordinary suit for recovery. His statement was recorded to the said effect. As the publication was affected for a summary suit, but now the suit was converted into an ordinary suit, therefore, defendant was given an opportunity to appear and file his

written statement. However, again no one appeared on behalf of the defendant on 21.01.2019. Therefore, right to file written statement was closed and defendant was proceeded against ex parte for non-appearance.

4. Plaintiff then led ex-parte plaintiff evidence and has examined one witness i.e. AR of the plaintiff firm (Sh. Ved Prakash Gupta). Plaintiff's affidavit of evidence is marked Ex.PW1/A. In his affidavit of evidence, the plaintiff has reiterated the averments made in the plaint and the same are not repeated here for the sake of brevity. To substantiate the claim of the plaintiff, the following documents have been relied upon:

- Ex. P1 (OSR) : Copy of authority letter in favour of PW-1.
- Ex. P2 (Colly.) : Original cheques bearing no. 082715 and 082716.
- Ex. P3 (Colly.) : Bank memos dated 08.12.2015.
- Ex. P4 : Office copy of legal notice dated 15.01.2016.
- Ex.P5 (Colly) : Postal receipts.
- Ex. P6 : Computer generated copy of statement of account.
- Ex. P7 : Certificate U/s. 65B of Indian Evidence Act.

5. No one appeared on behalf of the defendant to cross examine the plaintiff. Hence, plaintiff closed plaintiff evidence on 14.02.2020. Thereafter, the matter was posted for ex- parte final arguments. I have heard the arguments advanced by Ld. counsel for the plaintiff and perused the material available on record.

6. The present suit has been filed based on cheques issued by the defendant towards discharge of his purported liability for the goods supplied by the plaintiff. In order to prove supply of goods, plaintiff has

relied upon Ex. P6 i.e. statement of account for the period 01.04.2015 to 10.11.2015. The said document is also accompanied by Ex. P7 i.e. Certificate under Section 65B of the Indian Evidence Act. PW-1 has also deposed on oath regarding supply of goods to the defendant. Further the claim of PW-1 is also corroborated by Ex. P2 i.e. cheques issued by the defendant in discharge of his liability for supply of goods. The said testimony has gone unrebutted. There is nothing on record to disbelieve the testimony of PW-1 in this regard. The documents Ex. P2, Ex. P6 and Ex. P7, the veracity of which has gone unchallenged establish the factum of supply of goods to the defendant. Further, PW-1 has deposed that both the cheques i.e. P2 Colly. were dishonored on presentation. This fact is also corroborated from Ex. P3 colly. i.e. cheque returning memos dated 10.12.2015. Thus testimony of PW1 vide his affidavit on oath **Ex.PW1/A** is duly supported and corroborated by the documents placed on record. These facts clearly establish that defendant has defaulted in discharging his liability towards the goods supplied.

7. The present suit filed on 24.01.2017 is well within limitation. An amount of Rs. 1,46,274/- was due from the defendant for goods supplied as per statement of account Ex. P6. Despite the loan recall notice Ex. P4, the defendant failed to clear his dues. The cheques issued Ex. P2 colly. For discharge of the same were also dishonored. The defendant also did not bother to appear in court or file the written statement. Therefore, it can be safely presumed that the defendant had no real defense to put forth.

8. In ex-parte suits, where defendant does not file a written statement or does not appear to contest the case, the plaintiff proceeds on the basis that there is no real opposition. Hence, plaintiff is required only to prove a *prima facie* case, which has been successfully done by the plaintiff in

this case, at least so far as the claim of the plaintiff is for the amount of Rs.1,07,794/- is concerned (as this was the amount for which cheques were issued by the defendant which were dishonored on presentation). In so far as the claim of the plaintiff regarding interest @ 24% p.a. is concerned in my opinion the same is exorbitant and ends of justice would be met if interest @ 9% p.a. is granted to the plaintiff on the amount claimed in the present suit i.e. Rs. 1,07,794/-. Plaintiff has failed to show that there was any contractual stipulation between the parties that in case of delayed payment, 24% per annum shall be charged as interest.

9. Accordingly, the **suit of the plaintiff is decreed** against the defendants for **Rs. 1,07,794/-** along with simple interest @ **9% p.a.** from the date of filing of the present suit till the date of actual realization of the amount. Costs of the suit are also awarded to the plaintiff.
10. Decree sheet be prepared accordingly.
11. File be consigned to Record Room after due compliance.

RUPINDER SINGH DHIMAN
Civil Judge -06 (Central)/THC
Delhi/25.06.2020