

IN THE COURT OF SHRI BHARAT AGGARWAL, LD. CIVIL

JUDGE – 02

WEST DISTRICT, TIS HAZARI COURTS, DELHI

SUIT NO.610079/16

S.D. Thakur, Proprietor

Through Green Freight Carrier, a proprietorship concern
having its office at WZ-8, Bhagwan Dass Nagar Extension,
Opposite Metro Pillar No.57, Main Rohtak Road,
New Delhi - 110026

.....**PLAINTIFF**

VERSUS

ITMA Hotels India Private Limited

Through: Director Jose Mylakulath Mathew,
ITMA Hotels, Ponnurunni North, Vytilla,
P.O. Kochi, Kerala - 682019

.....**DEFENDANT**

Suit filed on – 13/04/2015

Judgment Reserved on – 20/07/2020

Date of decision – 20/07/2020

**SUIT FOR RECOVERY OF Rs.1,20,000/- (RUPEES ONE LAKH AND
TWENTY THOUSAND ONLY)**

JUDGMENT:-

By this judgment, I shall adjudicate a suit for recovery of Rs.1,20,000/- filed by the plaintiff against the defendant. Before adjudicating upon the issues framed in the present suit, it is necessary to state the pleadings in the present suit concisely.

Pleadings of the plaintiff :-

1. The brief background of the present case is that the plaintiff is a proprietorship concern dealing in the business of cargo transportation and other ancillary services. It is further submitted that defendant had placed orders with the plaintiff from time to time for the transportation and delivery of goods and articles which were delivered by the plaintiff on mutually agreeable terms and prices and were duly received by the defendant.

It is further averred that as per the bill/invoice maintained by the plaintiff, it incurred a cost of Rs.1,18,188/- for the delivery of goods by road from Delhi to Kochi on 05/12/2012 and on subsequent dates and the said amount is due upon the defendant. It is further averred that plaintiff raised the bills of Rs.1,18,188/- upon the defendant which the defendant is liable to pay on account of delivery of goods which were duly received by the defendant. It is further stated that despite repeated requests and reminders, the defendant failed to tender the outstanding amount of Rs.1,18,188/- to the plaintiff.

It is stated that plaintiff also served a notice of demand upon the defendant through speed post on 04/03/2015 which was duly received by the defendant, but no heed was paid to the same by the defendant. That the defendant is liable to pay a total sum of Rs.1,20,000/- including Rs.1,812/- as cost incurred by the plaintiff for sending the legal notice. In these circumstances, having no other equally efficacious remedy available to the plaintiff, the present suit for recovery of Rs.1,20,000/- alongwith pendente lite and future interest @ 2% per month has been filed by the plaintiff.

Pleadings of the Defendant :-

2. The written statement was filed on behalf of defendant wherein *inter alia*, it was submitted that the plaintiff has not approached the court with clean hands and has concealed several material facts from the court. It is contended

that the suit is bad for non-joinder of necessary party as the Park Hotels Apeejay Technopark, which had commercial relationship with the plaintiff, has not been made a party in the present suit. It is stated that the said Park Hotel was instrumental in engaging the services of the plaintiff for transportation of the goods from Delhi to Kochi. It is stated that the goods in question were confiscated by the Kerala VAT authorities, and the Park Hotels carried out negotiations with the plaintiff and obtained relevant documents and sent the same to Kerala and also advised the defendant to submit a bank guarantee before the Kerala VAT authorities. It is stated that the Park Hotels, Apeejay Techno Park contacted the plaintiff and sought the services of the plaintiff for delivery of goods/consignment i.e. “textile arts” from New Delhi to Kochi and the plaintiff was given all the relevant documents including relevant bills and receipts etc.

It is further stated that the plaintiff on 28/03/2013 in violation of the contract between the plaintiff and the Part Hotels Apeejay Techno Park transported the goods to Kochi through a different transporter i.e. “M/s Fast and Safe Transporter Pvt. Ltd.” and the transportation from Bangalore to Kochi was done by the plaintiff without valid documents including Form-20 which is required by the Kerala VAT authorities. It is stated that as a result due to non-production of valid original documents by the said M/s Fast and Safe Transporter Pvt. Ltd., the goods were confiscated by the Kerala VAT authorities at Walayar check post, Kerala. Thereafter, the defendant rush to the check post and produced the relevant documents and also submitted a bank guarantee of Rs.1,55,250/- for the release of the goods and allegedly incurred Rs.3230/- towards bank guarantee charges and Rs.4,015/- towards transportation charges. It is stated that due to the illegal acts of the plaintiff, defendant suffered severe losses and plaintiff owes an amount of Rs.1,62,495/- to the defendant and to Park Hotels, Apeejay Techno Park. In these circumstances it is stated that the defendant is not liable to pay any amount to the plaintiff till the bank guarantee amount is refunded by the Kerala VAT

authorities. It is also stated that the defendant issued a reply dt.18/03/2015 to the notice issued by the plaintiff.

Issues :-

3. From the pleadings of the parties, following issues were framed in the suit vide order dt.19/01/2016: -

- (a) Whether the defendant is not liable to make the payment to the plaintiff as due to the negligence of the plaintiff, the defendant has suffered a loss of Rs.1,62,495/-? OPD
- (b) Whether the plaintiff is entitled for the money decree as prayed for alongwith interest, if yes, then at what rate and for which period? OPP
- (c) Relief.

Evidence :-

4. In order to prove his case, plaintiff got examined himself as PW-1 and led his evidence by way of affidavit which is Ext. PW-1/1 wherein he reiterated the averments made in the plaint. It was further stated that payment of bank guarantee does not absolve the defendant to legally entitled outstanding dues of the plaintiff. It was further stated that the goods have already been delivered to the defendant and there was clear understanding that payment shall be made after 15 days of the delivery of the goods. PW-1 also relied upon certain documents which are as under :-

Identification Mark	Description
Mark-A (Colly)	Photocopy of invoice dt.05/12/2012 alongwith e-mails. (Same are mentioned as Ex. PW-1/A in the

	evidence affidavit).
Ex. PW-1/B (Colly)	Copy of legal notice dt.04/03/2015 alongwith postal receipt.
Ex. PW-1/C	Reply dt.18/03/2015 to the legal notice dt.04/03/2015.

PW-1 was cross-examined by the counsel for defendant and during his cross-examination, PW-1 stated that the consignment was booked from Delhi to Kerala via Bangalore. He stated that the consignment was given by the Park Hotels and he was in constant touch with the defendant on phone. It was further stated that when the consignment was booked there was no time limit to deliver the consignment. He further stated that the goods were booked from New Delhi to Bangalore and thereafter transportation was done by his associate service provider by the name of Fast and Safe Transport Company Limited who is his day to day carrier used for transportation of goods from Bangalore to Kerala. He further stated that he received all the original/computer generated documents required for the purpose of transportation of the goods.

He further stated that there is a requirement of form known as Kerala Entry Form to enter the State Government and that the Kerala form was to be given or sent by the party at the Kerala border which was not done and he never received any form which was required to enter the Kerala State border. He further stated voluntarily that he was stranded for three days at the border waiting for the form and due to non-availability of the Kerala form, the defendant had to pay a refundable bank guarantee against the penalty imposed by the Kerala VAT authorities. He admitted that he received an e-mail on 24/03/2014 from the defendant regarding the matter being taken up before the Kerala VAT authorities. Thereafter plaintiff's evidence was closed by the

plaintiff vide his statement recorded on 25/05/2017.

5. In order to prove its case, defendant led the evidence of Sh. M.M. Jose, authorised representative of the defendant company as DW-1 who led his evidence by way of affidavit which is Ext. DW-1/A wherein he reiterated the averments made in the written statement. The DW-1 also filed additional evidence affidavit which is Ex. DW-1/A1 wherein it is stated that the items were booked on 01/12/2012 and were required to be delivered by the plaintiff via the Kochi railway station, however, the goods were sent by road and stopped at Walayar check post on 29/03/2013 and due to the negligence and default on the part of the plaintiff the defendant incurred losses in getting the goods released by way of furnishing the bank guarantee and thereafter defendant itself appeared in the proceedings before the Kerala VAT authority. DW-1 relied upon the documents which are as under: -

Identification Mark	Description
Mark-A	Photocopy of consignment note issued by Fast and Safe Transport Pvt. Ltd. (Same is mentioned as Ex. DW-1/1 in the evidence affidavit).
Mark-B	Photocopy of e-mail dt.21/03/2015. (Same is mentioned as Ex. DW-1/2 in the evidence affidavit).
Mark-C	Photocopy of bank guarantee for Rs.1,55,250/- dt.23/05/2015. (Same is mentioned as Ex. DW-1/3 in the evidence affidavit).
Mark-D	Photocopy of e-mail dt.24/03/2014. (Same is

	mentioned as Ex. DW-1/4 in the evidence affidavit).
Mark-E & F	Photocopy of legal notice dt.08/02/2015 and 04/03/2015 respectively. (Same are mentioned as Ex. DW-1/5 and DW-1/6 in the evidence affidavit).
Ex. DW-1/7	Copy of legal notice dt.18/03/2015.
Mark-G	Photocopy of Form-8FA. (Same is mentioned as Ex. DW-1/8 in the evidence affidavit).
Mark-H	Photocopy of notice dt.29/03/2013 issued u/s 47(2) of Kerala VAT Act, 2003. (Same is mentioned as Ex. DW-1/9 in the evidence affidavit).
Ex. DW-1/10	Copy of Board Resolution 09/03/2015 authorizing Sh. M.M. Jose to depose on behalf of defendant.

DW-1 was also cross-examined on behalf of plaintiff and during his cross-examination he stated that he does not remember that previously whether any contract or service was given to the plaintiff. He stated that the goods were to be transported from Delhi to Kochi at their hotel premises and not via Bangalore. It is stated that they had downloaded the papers from the department website and then handed over the same to the plaintiff. He further stated that form No.8-FA was given to the plaintiff to transport the goods by train from Delhi to Kochi. He stated that he has given the bank guarantee of Rs.1,55,250/- to release the goods from the Kerala VAT authorities. He admitted that e-mail dt.18/12/2013 is written by his representative Sh. Hari Krishan. He further admitted that in December, 2012 he had given the order to the plaintiff for transport of the goods. He further admitted that he had stopped

the payment of Rs.1,18,000/- of the plaintiff. Further, he volunteered that the bank guarantee of Rs.1.55,250/- was paid because of the mistake committed by the plaintiff in the transportation. He further admitted that Park Hotel has instructed for releasing of the goods on payment of bank guarantee. Thereafter, defendant's evidence was closed on the statement of DW-1 on 26/10/2017.

Decision with reasons :-

6. The arguments were heard on behalf of both the parties at length and record has been carefully perused. Now, I shall give my issue-wise findings which are as under: -

Issue No.(a) & (b)

(a) Whether the defendant is not liable to make the payment to the plaintiff as due to the negligence of the plaintiff the defendant has suffered a loss of Rs.1,62,495/-? OPD

(b) Whether the plaintiff is entitled for the money decree as prayed for alongwith interest, if yes, then at what rate and for which period? OPP

The plaintiff has filed the present suit for recovery seeking recovery of Rs.1,20,000/- which is stated to be the transportation charges incurred by the plaintiff for transportation of the goods to the defendant from Delhi to Kochi. The plaintiff has based his case upon the invoice dt.05/12/2012 i.e. Mark-A. It is stated that despite delivery of goods and service of legal notice dt.04/03/2015 Ex. PW-1/B, the defendant has still not made the payment and rather issued a response dt.18/03/2015 being Ex. PW-1/C to the legal notice of the plaintiff. In the response issued by the defendant i.e. Ex. PW-1/C *inter alia* it was stated that the shipment from Bangalore to Kochi was done without valid documents and no original invoice/transport copy was accompanied due

to which the vehicle was intercepted by KVAT authorities at Walayar check post, Kerala for the want of original /proper documents. It has been further stated that due to the irresponsible and unprofessional conduct of the plaintiff, the defendant was forced to furnish bank guarantee of Rs.1,55,250/- to the VAT authorities. It is also stated in Ex. PW-1/C that the material transported by the plaintiff were having lots of breakages and damages.

In its defense, the defendant has stated that the consignor i.e., Park Hotels, Mathura Road, New Delhi has not been added as a necessary party to the present case and, hence, the suit is bad for non-joinder of necessary party. The suit is further defended on the ground that the plaintiff in complete violation of the contract between the plaintiff and the Park Hotels transported the consignment to Kochi through a different transporter i.e. “M/s Fast & Safe Transporter Pvt. Ltd.” and the transportation of the consignment from Bangalore to Kochi was done without valid original documents and in particular the Form-20 as required by the Kerala VAT authorities. Therefore, the main defence of the defendant in the present case is that due to the defaults of the plaintiff, the consignment was stopped during routine checking at Walayar check-post, Kerala and the Kerala VAT authorities had confiscated the documents. Thereafter, the defendant had to rush to the check post and inform the tax authorities about the purpose and use of the consignment in the hotel and produced the relevant documents. It is stated that some proceedings have been initiated by the Kerala VAT authorities and accordingly the defendant had to submit a bank guarantee for an amount of Rs.1,55,250/- in order to release the consignment. Defendant further alleges that it incurred Rs.3,230/- towards bank guarantee charges and Rs.4,015/- towards transportation charges till the Walayar check post. Therefore, it is further stated that in fact the plaintiff owes Rs.1,62,495/- to the defendant and to the Park Hotels, Delhi. However, the defendant has not filed any set-off or

counter-claim in the present proceedings.

The present suit pertains to recovery of the transportation charges of the transporter, i.e., the Plaintiff and the consignee, i.e., the Defendant. The argument of the defendant that the suit is bad for non-joinder of necessary party i.e. the consignor/Apeejay Park Hotels is bereft of any merit as it is an admitted position between the parties that the defendant was to make the payment for transportation of the goods which was done by the plaintiff. Therefore, in these circumstances the court does not consider the consignor/Apeejay Park Hotels to be a necessary party in the present suit as the present controversy can very well be adjudicated in the absence of the said party/consignor. If at all the defendant wanted to prove the relationship between the parties it could have always got the consignor summoned as a witness in the present case, however, the defendant chose not to examine the consignor as a witness in the present case.

During the cross examination of the plaintiff, he stated that there was no fixed time limit for delivery of the consignment. He admitted that further transportation from Bengaluru to Kochi was done by an associate service provider of the plaintiff i.e. Fast & Safe Transport Pvt. Ltd. who is the day to day carrier of the plaintiff for the purpose of transportation of goods from Bangalore to Kerala. He admitted that he received all the original computer generated documents required for the purpose of transportation of the consignment, however, he states that the Kerala Entry Form was to be given or to be sent by the defendant at the Kerala border which was not done. He further stated that it is mandatory for consignee to provide all the forms and due to non-availability of the said form the defendant had to pay refundable bank guarantee to the Kerala VAT authorities. On the other hand, defendant's authorized representative has stated during the cross-examination that all the

relevant documents including the forms were given to the plaintiff for the purpose of transportation of the goods. The defendant further admitted that he had stopped the payment of plaintiff's transportation cost of Rs.1,18,000/- due to the payment of bank guarantee which had to be given by the defendant allegedly due to the default of the plaintiff. Therefore, upon comprehensive perusal of the documents alongwith the evidence led by the parties, it is quite apparent that goods were transported by the plaintiff and were actually received by the defendant. The arguments of the defendant that the goods were delivered by some other transporter from Bangalore to Kochi and not the plaintiff is also devoid of any merits as the defendant has failed to point out any contractual obligation of the plaintiff to have delivered the goods itself and not through some associate transporter. Even otherwise, the defendant has not pointed out any specific loss or injury which was incurred to the defendant on account of transportation of goods from Bangalore to Kochi by a different transporter. Furthermore, it is common knowledge that the transporters avail the services of any associate transport companies for long distance transportation of goods, however the liability of the primary transporter still remains intact towards the consignee.

The only issue which appears to be existing between the parties is that allegedly due to the default of the plaintiff, the defendant had to give a bank guarantee of Rs.1,55,250/- to the Kerala VAT authorities for the release of goods. It is admitted by the defendant that the payment was not released to the plaintiff. The defendant has not filed any set-off or counter-claim in the present case despite stating that the plaintiff owes Rs.1,62,495/- to the defendant. As regards the issue of furnishing the bank guarantee is concerned, the defendant has stated that it is not liable to make payment to the plaintiff till the bank guarantee amount is refunded by the Kerala VAT authorities. Such argument/submission of the defendant is completely unjustified as the

defendant has admitted the receipt of goods and does not dispute the condition of goods in the written statement. The defendant cannot keep its obligation of making the payment to the plaintiff in abeyance until a decision is arrived by the Kerala VAT authorities. In fact, the defendant does not have any cause of action to recover the payment made towards bank guarantee unless it is adjudicated that the goods were transported in violation of any particular Act, rules or regulations. It appears that the issue remains pending with the relevant authorities and, therefore, the defendant does not have any cause of action as on date against the plaintiff to seek recovery of Rs.1,62,495/- as stated. The defendant would be required to prove the default, neglect or violation by the plaintiff in order to be entitled to such amount from the plaintiff, but as reasoned above, the cause of action for seeking such recovery would not arise until adjudication of the alleged violation is done by the appropriate VAT Authorities. It is an admitted position that the goods have been delivered to the defendant and, therefore, the defendant is in fact liable to make the payment as stated in the invoice Mark-A of Rs.1,18,188/- to the plaintiff. The plaintiff has completed its part of the obligations and the defendant cannot be expected to wriggle out or delay its part of the obligations on the ground that a bank guarantee/security had to be furnished by the defendant due to the defaults of the plaintiff. Needless to say, the defendant would be at liberty to institute appropriate proceedings against the plaintiff if the cause of action arises in favour of the defendant and by proving the plaintiff's default.

In these circumstances, the plaintiff is hereby held entitled to a decree against the defendant for an amount of Rs.1,18,188/- as mentioned in the invoice Mark-A. The plaintiff has also prayed for pendente lite and future interest @ 2% per month. In my considered opinion, the rate of interest claimed by the plaintiff is found to be excessive and the plaintiff is entitled to receive a pendente lite and future interest @ 10% per annum from the date of

the filing of the suit till the date of realisation of the decreed amount.

Hence, issue no.(a) & (b) are decided against the defendant and in favour of the plaintiff.

7. **Issue no.(c) -**

(c) **Relief** – In view of the findings given on issues no.(a) & (b), documents placed on record, pleadings of the parties and evidence led by the parties, the plaintiff has proved its case on the scale of preponderance of probabilities. Accordingly, the suit of the plaintiff is hereby decreed and following reliefs are awarded to the plaintiff: -

A. A money decree for a sum of Rs.1,18,188/- (Rupees One Lakh Eighteen Thousand One Hundred And Eighty Eight Only) as principal amount alongwith pendente lite and future interest @ 10% per annum from the date of institution of the suit till the date of realisation.

B. Costs of the suit.

Decree sheet be prepared accordingly. File be consigned to record room after completing the necessary formalities.

BHARAT
AGGARWAL

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AGGARWAL
Date: 2020.07.20 14:18:47 +05'30'

(BHARAT AGGARWAL)

Civil Judge, Delhi (West)-02

Pronounced, through video conferencing through Cisco Webex Application, on 20/07/2020.

IN THE COURT OF SH. BHARAT AGGARWAL, CIVIL JUDGE,
(WEST)-02, TIS HAZARI COURTS, DELHI
SUIT NO.610079/2016

Sh. S.D. Thakur, Proprietor
M/s Green Freight Carrier

Plaintiff

Versus

ITMA Hotels India Pvt. Ltd.

Defendant

THROUGH CISCO WEBEX VIDEO CONFERENCING

Date:20/07/2020 (2.00 P.M to 2.10 P.M.)

Present:- Ms. Shweta Garg, Ld. Counsel for the plaintiff. (Mobile No.9818274143) (E-mail ID of Ms. Shweta Garg : Shweta.d14@gmail.com)

Sh. Ashkrit Tiwari, Ld. Counsel for the defendant. (Mobile No.7708748786) (E-mail ID office@kmpnlaw.com)

Vide separate judgment announced today through video conferencing through Cisco Webex Application, the suit of the plaintiff has been decreed with costs of the suit.

Decree sheet be prepared accordingly. File be consigned to record room after completing the necessary formalities.

A copy of this order be sent to the Ld. Counsel for plaintiff as well as Ld. Counsel for defendant and also to the filing branch Tis Hazari Court, Delhi for uploading the same on the official website of the District Courts.

BHARAT
AGGARWAL

Digitally signed by
BHARAT AGGARWAL
Date: 2020.07.20
14:39:31 +05'30'

Bharat Aggarwal

C.J-02, West, THC, Delhi

dt.20/07/2020