

IN THE COURT OF SH. ARUN SUKHIJA,
ADDITIONAL DISTRICT JUDGE – 07, (CENTRAL DISTRICT)
TIS HAZARI COURTS, DELHI.

SUIT NO.:- 86/2016

UNIQUE CASE ID NO.:- 617716/2016

IN THE MATTER OF :-

**Ms. Lalita Agarwal, Proprietor
M/s. Shree Bankey Bihari Enterprises,
6161, Bahadurgarh Road, Delhi-110006.**

....Plaintiff

VERSUS

**1. M/s. Sethi Enterprises,
Plot No. E-29, Sanjay Colony,
Sector-23, Faridabad,
Haryana.**

**Also at:
Plot No. 58-A, Sector-58,
Faridabad-121004.**

**2. Mr. Deepak Sethi, partner
M/s. Sethi Enterprises,
Shoe Godown, Kheri Pool (Bridge),
Faridabad, Haryana.**

**3. Mr. Deepak Agarwal,
M/s. Sethi Enterprises,
Shoe Godown, Kheri Pool (Bridge),
Faridabad, Haryana.**

**4. Mr. Anil Hooda, Partner
Sethi Enterprises,
Shoe Godown, Kheri Pool (Bridge),
Faridabad, Haryana.**

....Defendants

SUIT FOR RECOVERY OF RS.33,31,365/- (RUPEES THIRTY THREE LAKHS THIRTY ONE THOUSAND THREE HUNDRED SIXTY FIVE ONLY) WITH PENDENTE-LITE & FUTURE INTEREST, COSTS, COURT FEE, LEGAL EXPENSES, ETC.

Date of institution of the Suit : 08/07/2014

Date on which Judgment was reserved : 13/07/2020

Date of Judgment : 27/07/2020

::- J U D G M E N T -::

By way of present judgment, this Court shall adjudicate upon suit for recovery of Rs.33,31,365/- (Rupees Thirty Three Lakhs Thirty one Thousand Three Hundred Sixty Five Only) with pendent-lite & future interest, costs, court fee, legal expenses, etc. filed by the plaintiff against the defendants.

CASE OF THE PLAINTIFF AS PER PLAINT

Succinctly, the necessary facts for just adjudication of the present suit, as stated in the plaint, are as under:-

- (a) The plaintiff is a proprietorship firm, to establish its entity, represented through its Proprietor Ms. Lalita Agarwal, who is acting through his son and also Manager of the firm, is carrying on the business of stock lots of surplus items including branded shoes of known companies and other allied items having its office in Delhi.
- (b) As per knowledge of the plaintiff, the defendant is a partnership firm acting through its partners i.e. defendants no. 2 to 4. The defendants jointly and

severally offered lot of shoes @ 5% of M.R.P. (Maximum Retail Price) of Reebok brand, not older than manufactured in 2012, shown segregated lot of such shoes, from other merchandise in the godown to the plaintiff and asked the price of such lot for the consideration of Rs.28,70,000/- with a pre-condition that before the goods will be delivered, all the consideration value which is Rs.28,70,000/- will have to be paid in advance.

- (c) The plaintiff as per the terms agreed made the Payment, in three tranche, Rs. 5,00,000/- (Rupees Five lac only) through Cheque/RTGS (Right to Gross Settlement) a system to remit money from one account to other account, No. 12383909, dated 29.04.2013, another amount of Rs. 5,00,000.00 (Rupees Five lac only) also on 29.04.2013 through cheque/RTGS No. 383910, further an amount of Rs. 15,00,000.00 (Rupees Fifteen lac only) on 30.04.2013 through Cheque/RTGS No. 12383911 and finally an amount of Rs. 3,70,000/- (Rupees Three lac seventy thousand only) on 05.06.2013 through RTGS/Cheque No. 12383922, cumulatively in all an amount of Rs. 28,70,000/- (Rupees Twenty eight lac seventy thousand only) was remitted making the all agreed payment in advance. During the course of remittance and thereafter even no supplies have been made and the same were avoided on one pretext or the other.
- (d) Despite several physical visits, telephonic and other reminders enforcing the delivery of the shoes as agreed or to refund the amount in case of inability to supply with the amount of escalation which has emerged due to the price rise being due legitimate payments receivables by the plaintiff, the defendants have failed to pay due amount to the plaintiff.
- (e) The said amount retained, till date not paid attracts an interest in accordance with the Sale of Goods Act, Section 34 of Civil procedure Code since the

transaction being a commercial transaction read with Interest Act followed by the other legislative provisions applicable on commercial transactions payable/compounded monthly, in accordance with law, the defendants are liable to pay the accrued interest. The total amount the defendant owes payable to plaintiff being principal of Rs. 28,70,000.00 (Rs. Twenty eight lac seventy thousand only) with accrued interest of Rs. 4,61,365.00 (Rs. Four lac sixty one thousand three hundred sixty five only) being the accrued interest @ 15%, rate being the Prime lending Rate charged by the commercial Banks in such commercial transaction.

- (e) The six legal notices dated 24.03.2014 at various last known addresses were sent by the plaintiff to the defendants giving an opportunity to pay the balance amount within 7 days from the date of receipt of the said legal notices which the defendants deliberately have failed to comply with. Out of the six legal notices sent to the defendants by Speed Post, the original receipts issued by Rohini Post Office, Delhi bearing ED 359020635 IN, ED 359020618 IN, ED 359020621 IN, ED 359020604 IN, ED 359020595 IN, ED 359020666 in all sent on 24.03.2014 at various addresses of the defendants, however, the four of such legal notices on various pretext and lame excuses have been returned unserved. However, the two legal notices sent to defendants No.4 and 1 have refused to take the delivery.

EX-PARTE PROCEEDINGS

As per Order dated 05.04.2017, the defendant no.2 was proceeded ex-parte based upon the report of the Process Server from the Court of Civil Judge, Faridabad, Haryana . As per the report defendant No.2 as refused to accept the summons and the same has been affixed on some conspicuous part of the house of defendant No.2.

The defendants no. 1, 3 and 4 were served by way of publication in the “Rashtriya Sahara” newspaper, but despite service, the defendants no.1, 3 and 4 have not appeared and proceeded ex-parte vide Order dated 05.09.2019.

EX-PARTE EVIDENCE OF THE PLAINTIFF AND DOCUMENTS RELIED UPON BY PW-1

The plaintiff in order to prove its case led plaintiff’s evidence and got examined Sh. Karan Agarwal as PW-1. The PW-1 has filed his evidence by way of affidavit wherein he reiterated and reaffirmed the contents of the plaint. PW-1 in his testimony has relied upon the documents:-

1. Photocopy of D-VAT Form issued by the Department of Value Added Tax, Govt. of NCT of Delhi is **Mark-A (Colly.)**.
2. Special Power of Attorney dated 26.05.2014 is **Ex.PW-1/1**.
3. The statement of bank account of Syndicate Bank from 01.04.2013 to 15.03.2014 is **Ex.PW-1/2 (6 pages)**.
4. The photocopy of legal notice dated 24.03.2014 is **Ex.PW-1/3 (6 pages)**.
5. Postal receipt of Speed Post dated 24.03.2014 are **Ex.PW-1/4 (Colly.)**.
6. The return envelopes of speed post are **Ex.PW-1/5 (Colly.) (4 envelopes)**.
7. The return envelopes of speed post refused by defendant is **Ex.PW-1/6**.
8. The tracking report of all the speed post envelopes sent to the defendant is **Ex.PW-1/7**.
9. The Certificate under Section 65-B of the Indian Evidence Act, 1860 is **Ex.PW-1/8**.

This Court heard ex-parte final arguments, as advanced by Ld. Counsel for the plaintiff through Video Conferencing. I have perused the material available on record.

FINDINGS AND CONCLUSIONS OF THE COURT

The present suit of the plaintiff is well within the period of limitation. In the present case, the plaintiff/PW-1 has proved on record the documents, as mentioned in his testimony, showing the liability of the defendant to pay the principal amount along-with interest to the plaintiff. The defendants have not filed the Written Statement to contest the suit of the plaintiff. The defendants have also not cross-examined PW-1 to contradict or disprove the case of the plaintiff. When the defendants have chosen not to appear and when the case of the plaintiff has gone un-challenged, un-controverted, un-rebutted and duly corroborated by the documents, this Court has no reason to disbelieve the version of the plaintiff. Hence, the plaintiff is entitled for the recovery of amount of Rs. 28,70,000/- (Rupees Twenty eight lac seventy thousand only) from the defendants.

The Plaintiff has sought the interest @ 15% per annum. However, in view of the facts and circumstances of the present case, the interest of justice would be served, if the plaintiff is granted simple rate of interest @ 9% p.a. from 05.06.2013 (i.e. last date of final installment through RTGS) till the filing of this case.

Section-34 CPC postulates and envisages the pendent-lite interest at any rate, not exceeding 6% and future interest at any rate, not exceeding the rate, at which nationalized banks advance loan. Keeping in mind the mandate of the said proposition, the interest of justice would be served if the plaintiff is granted pendent-lite simple rate of interest @ 6% per annum and future simple rate of interest @ 9% per annum till its realization.

Applying priori and posteriori reasoning, this Court is satisfied that plaintiff has been able to prove its case against the defendant for the aforesaid amount.

RELIEF

From the discussions, as adumbrated hereinabove, I hereby pass the following

FINAL ORDER

- a. A decree of Rs.28,70,000/- is passed in favour of the plaintiff and against the defendants jointly and severally alongwith simple rate of interest @ 9% p.a. from 05.06.2013 till filing of the case. The plaintiff is also granted pendent-lite simple rate of interest @ 6% per annum and future simple rate of interest @ 9% per annum till its realization and the same is also payable by the defendants jointly and severally.
- b. The cost of the suit is also awarded in favour of the plaintiff and against the defendant.

Decree-sheet be prepared accordingly.

File be consigned to Record Room after due compliance.

**Announced through video conferencing on
this 27th day of July, 2020.**

**ARUN
SUKHIJA**
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by ARUN
SUKHIJA
Date: 2020.07.27
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**(ARUN SUKHIJA)
ADJ-07 (Central)
Tis Hazari Courts, Delhi**

CS No. 86/16(ID no.617716/2016)

Bankey Bihari Enterprises

Vs.

Sethi Enterprises and Ors.

27.07.2020

The Judgment has been pronounced through cisco webex video conferencing.

Present: Ms. Rashmi Jain and Shri Akhil Kumar Beniwal, Ld. Counsels for the Plaintiff.

Defendant is already ex-parte.

Vide Separate Judgment announced through video conference the suit of the Plaintiff is decreed in terms of the Judgment. Decree Sheet be prepared accordingly. File be consigned to record room after due-compliance.

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SUKHIJA
Date: 2020.07.27
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(Arun Sukhija)
ADJ-07/Central/Tis Hazari Courts,
Delhi/27.07.2020