(2010) 12 DEL CK 0143

In the Delhi High Court

Case No : CS (OS) No. 2497 of 1999

Alok Gupta APPELLANT

Vs

Rubfila International Limited RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Evidence Act, 1872 — Section 114
Negotiable Instruments Act, 1881 (NI) — Section 138
Sales of Goods Act, 1930 — Section 61(2)

Citation : (2010) 12 DEL CK 0143

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Arun Birbal, for the Appellant; Mohana, for the Respondent

Judgement

V.K. Jain, J.—This is a suit for recovery of Rs. 1351521/- and rendition of accounts and a Counter Claim for recovery of Rs. 32,42,628/- The plaintiff, who is carrying business under the name and style of M/s Alok Enterprises claims that he was appointed as an agent by the Defendant for the sale of its products in northern India and the Defendant had agreed to pay a commission of 1% on the total sales made by him directly or made by the Defendant on the orders procured through him, along with reimbursement of telephone and office expenses. It is further alleged that Smt. Renu Gupta, wife of the plaintiff was also appointed as an officer of the Defendant company on a salary of Rs. 10,000/- per month and the Defendant had taken the premises of the plaintiff on rent of Rs. 5,000/- per month for using it as its office. It is also alleged that all office expenses including the salary of Smt. Renu Gupta was paid by the plaintiff and was added to the account of the Defendant, which its officers used to confirm from time to time.

2. It is further alleged that in a meeting held in the month of October 1997, at the factory of the Defendant with the Managing Director and Marketing Manager of the Defendant company, it was agreed that from 1st April 1997 the plaintiff

will be paid commission at a revised rate, on slab basis. This was followed by a meeting in Delhi with the Managing Director of the Defendant, when it was agreed that from 1st April 1998, the plaintiff will be paid commission at a revised rate of 2%. This was confirmed in a later meeting held in December 1998 between the plaintiff and Managing Director and Vice President of the Defendant company. It is alleged that a sum of Rs. 13,51,521/- is due to the plaintiff, whereas the Defendant is claiming a sum of Rs. 32Lacs from him. The plaintiff has accordingly claimed the aforesaid amount of Rs. 13,51,521/- along with pendente lite and future interest on that amount.

3. The Defendant has contested the suit. It is alleged in the written statement that there was no relationship of agent and principal between the parties. It is also alleged that the plaintiff has no locus standi to claim salary on behalf of some Smt. Renu Gupta and, therefore, the suit is bad for misjoinder for causes of action. On merits, it is alleged that in October 1996, the plaintiff, along with the his wife Smt. Renu Gupta, claiming themselves to be the owner of M/s Alok Enterprises, visited the Defendant in Palakkad, Kerala and desired to become agent of the Defendant in the entire Northern Region. The Defendant, however, was not immediately agreeable to appoint them as agent since another firm was already functioning as its agent in the Northern territory. The Defendant appointed Smt. Renu Gupta as its employee on 5th November 1996, on a monthly salary of Rs. 10,000/-. It was also agreed that the plaintiff will get a special commission of 1% on the orders procured by him and no commission will be allowed on the material purchased by him for Alok Enterprises, though it was only an oral understanding and no agreement was executed between the parties. It is also claimed that the Defendant had appointed Mr. Jacob Thomas to be stationed in Delhi for supervision and for canvassing their products in the Northern Region. It is further alleged that at the behest of Smt. Renu Gupta, the salary payable to her was adjusted from the balance receivable from the plaintiff. It is also claimed that the services of Smt. Renu Gupta were terminated w.e.f. 1st September 1998 and the amount which was payable to her was adjusted in the amount receivable by the Defendant from the plaintiff. It is alleged in the written statement that for the purpose of obtaining Central Excise as well as Sales Tax registration, the premises of the plaintiff were shown as rented by the Defendant, though there was no lease agreement between the parties and certain account adjustments were made in the amount paid by the plaintiff to the Defendant. It is also claimed that the entire office expenses at Delhi were met by the Defendant.

4. The Defendant has also filed a Counter Claim of Rs. 32,42,628/-. In the counter claim, it is alleged that it was agreed between the parties that Mrs Renu Gupta would get a special commission at 1% on the orders procured by her, but no commission will be allowed on the purchases made by the plaintiff for Alok Enterprises. It is also alleged that at the behest of Mrs Renu Gupta, the salary payable by the Defendant to her was adjusted from the balance receivable from the plaintiff. The counter-claim represents Rs. 29,52,317/- being the amount

outstanding against the plaintiff in the account which he had with the Defendant with respect to the goods purchased by him from time to time. This includes Rs. 14,274/- towards price of the material alleged to have been taken by the plaintiff from D.R. Trading Company. Rs. 22,588/- towards the price of the material taken back by the plaintiff from M.D.R. Tapes and Rs. 1,49,615/- towards the price of the goods taken back by plaintiff from M/s H-Lon Industries. The balance amount of Rs. 2,90,311/- represents interest at the rate of 12% per annum till the date of filing of the Counter Claim.

5. The following issues were framed on the pleadings of the parties

i. Was the plaintiff appointed as an agent by the Defendant for Northern India? If yes on what terms? OPP

ii. Was Mrs. Renu Gupta, wife of the plaintiff employed by the Defendant as a Marketing Executive at a monthly salary of Rs. 10,000/- with further right to get special commission of 1% for the material supplied on bookings effected by her? OPD

iii. To what amount, if any, is the plaintiff entitled to from the Defendant? OPP

iv. If issue No. 3 is decided in favour of the plaintiff, whether plaintiff is entitled to any interest and at what rate? OPP

v. To what amount is the Defendant entitled to from the plaintiff? OPD

vi. If issue No. 5 is decided in favour of the Defendant whether Defendant is entitled to interest from the plaintiff and at what rate? OPD

vii. Relief to the parties.

6. Issue No. 1 The plaintiff has come in the witness-box as PW-1 and has also produced his wife Mrs Renu Gupta as PW-2. The Defendant has products its Assistant Manager (Secretarial and Legal) Mr Sudhesh and has also produced a hand-writing expert Pandit Ashok Kashyap, who has been examined as DW-2.

7. In his affidavit, the plaintiff has alleged that in a meeting held on 04.11.1996 between him, his wife Mrs Renu Gupta, the Managing Director of the Defendant and Shri R J Menon, Marketing Manager of the Defendant, he was appointed as an agent in the Northern Region under an agreement between the parties. The terms of the agreement were reduced in to writing in the form of minutes of the meeting. He further stated that the Defendant had initially agreed to pay a commission of 1% on the total business procured by him at Delhi. According to him, in the meeting held on 1st October, 1997 at Kerala factory of Defendant in which he was represented by his wife, it was agreed that he will be paid commission of 2% instead of 1%, but shall not be reimbursed for the offices expenses. He also stated that reference in the minutes of the meeting held on 1st October, 1997 was to him only and in fact no commission was ever paid to his wife. He further stated that the commission at the rate of 2% was reiterated in the meeting held between him and the Managing Director of the Defendant at

Hotel Maurya Sheraton, New Delhi.

8. In rebuttal, DW-1 Mr Sudhesh has stated that in October, 1996, the plaintiff along with his wife Mrs Renu Gupta, claiming themselves to be the owner of Alok Enterprises visited their office in Palakkad, Kerala and expressed desire to become agent for the entire Northern Region. The Defendants, however, were not immediately agreeable to appoint them as agents since M/s Filatex was their agent of Northern Region. The plaintiff represented that they could buy the products of the Defendant and sell it to their customers, whereas Mrs Renu Gupta could act as the Marketing Executive for the Defendant in Delhi. The Defendant accordingly appointed Mrs Renu Gupta as its employee. It was also agreed that she would get special commission of 1% on the orders procured by her, but no commission would be payable on the material purchased for Alok Enterprises. According to him, there was no relationship of agency between the plaintiff and the Defendant. He has also stated that the plaintiff has filed the present suit as a counter-blast to the criminal complaints which they have filed against him u/s 138 of Negotiable Instruments Act at Coimbatore.

9. Ex.PW-1/36 purport to be the minutes of the meeting held at Palakkad, Kerala on 04th November, 1996. As per the minutes, four person, namely, the plaintiff Alok Gupta, his wife, Mrs Renu Gupta, Mr J.R. Rasiah and Mr R.J. Menon participated in the meeting. Clause 1 and 4 of the minutes which are relevant for this issue read as under:

1. It was discussed that Alok Enterprises to appointed as an agent for the company with effect from 1st November, 1996 for entire Northern Region. 4. Alok Enterprises to be paid a commission of 1% of basic price for all orders procured to be supplied directly by the company and all material purchased by it for re-selling.

10. The case of the Defendant is that this document does not bear signature of Mr R.J. Menon. The handwriting expert produced by Pandit Ashok Kashyap has opined that the purported signature of Mr R.J. Menon on this document does not tally with his admitted signatures on the documents PW-1/24, PW 1/P-14 and PW-1/28. It has also come in the testimony of DW-1 that Mr R.J. Menon has since expired. The Defendant has, however, not produced its Managing Director Mr J.R. Rasiah in the witness-box, to controvert the oral deposition of the plaintiff and no good reason has been assigned for not producing him in the witness-box. Since Mr R.J. Menon is stated to have died, it became more important for the Defendant to produce Mr J.R. Rasiah in the witness-box to controvert the case stated by the plaintiff on oath.

11. Section 114(g) of the Evidence Act provides that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

12. In Enuga Lakshmamma Vs. Vennapuse Chinna Malla Reddy (Dead) by Lrs., , there was dispute with respect to the date of birth of the plaintiff/Appellant. It

was noticed that the father of the plaintiff/Appellant was not produced as a witness. Supreme Court was of the view that non-examination of the father of the plaintiff/Appellant on the most material issue, namely, the birth date of the plaintiff will have to be regarded as fatal to the plaintiff''s case and the High Court was right in drawing adverse inference against the plaintiff on this aspect.

In Iswar Bhai C. Patel @ Bachu Bhai Patel Vs. Harihar Behera and Another, , the Appellant did not enter the witness-box to deny on oath. The statement of Defendant/Respondent No. 2 that it was at the instance of the Appellant that he had advanced a amount of Rs. 7,000/- to the Appellant by issuing a cheque on the account of Respondent No. 1. The Court was of the view that the Appellant having not entered the witness box and having not presented himself for cross-examination, an adverse presumption has to be drawn against him on the basis of the principles contained in Illustration (g) of Section 114 of Evidence Act.

13. Since the Defendant has neither produced Mr. J.R. Rasiah in the witness-box nor given any explanation for not producing him, an adverse inference needs to be drawn against the Defendant that had Mr J.R. Rasiah been produced in the witness box, he would not have controverted the deposition of the plaintiff with respect to the agreement reached between the parties in the meeting held on 04th November, 1996.

14. A reading of the minutes of the meeting held on 04th November, 1996 which is Ex. PW-1/36 does not convey a concluded contract for appointment of the plaintiff as the agent of the Defendant though it does show that the matter was discussed in that meeting. It would be pertinent to note here that this is not the case of the Defendant that no meeting in its office was held on 04th November, 1996 and the Defendant has not filed any minutes of that meeting. In para 4(c) of the written statement, the Defendant has specifically admitted that it was agreed during discussion in the meeting that the plaintiff would get a special commission of 1% on the orders procured by him though no commission would be allowed on the material purchases by him for his own firm M/s Alok Enterprises. Of course, the Defendant claims this to be only an oral understanding. The admission made in the written statement leave no doubt that the Defendant had agreed to pay commission to the plaintiff though no formal Agency Agreement was executed between the parties.

15. The clinching evidence which proves that the Defendant had agreed to pay commission to the plaintiff is the Statement of Account filed by the Defendant. Ex.DW-1/11 is the Statement of Account filed by the Defendant. This statement shows credit of Rs. 1,40,914/- in the account of the plaintiff on September 18, 1997, towards commission for 1996-97. This entry has later been reversed on 25th March, 1998 with an endorsement "commission payable transferred to Renu Gupta''s account". Had the Defendant not agreed to pay commission to the plaintiff, there could be no occasion for it to give credit of Rs. 1,40,914/- in his account towards commission for the year 1996-97.

16. Ex.PW-1/24 is the minutes of the meeting held at the office of the Defendant on 1.10.1997. Though during the course of admission/denial of documents, the Defendant denied this document, it was relied upon by DW-2, Shri Ashok Kashyap as a document bearing admitted signature of Defendant''s employee late Shri R J Menon for the purpose of comparison of question signatures of Shri R J Menon on Ex.PW-1/36 to PW-1/40 and PW-1/42 to PW-1/44 with his admitted signatures. Paras 2, 8 and 9 of these minutes read as under

2. Sales Commission payable to Mrs. Renu Gupta, Marketing Executive as an incentive would be given on slab wise sale of entire Northern Region as given below as per turnover based on the basic price. There will be no other reimbursement expenditure towards maintenance of office, including telephone expenses.

Upto 40 lacs - 1.5

Next 20 lacs - 2.0%

Next 10 lacs and above - 2.5%

8. The new set up to begin operation from 1st November, 1997. The Sales commission to the Marketing Executive will become operative with effect from 1.11.1997.

9. Rate of Commission from November, 1996 up to October, 1997 to be settled soon. It was mentioned that RIL agreed with Marketing Executive Mrs. Renu Gupta, a sales commission @1% of the basic price. However, based on actual expenditure it will be considered." The Defendant has not produced its Managing Director Mr. Rasiah to controvert the case of the plaintiff with respect to the decisions taken in that meeting. Hence, an adverse inference needs to be drawn against the Defendant that had Mr. Rasiah come in the witness box, he would not have controverted these minutes.

17. Moreover, this is not the case of the Defendant that no meeting was held in its office on 1st October, 1997. In para 6 of the plaint, the plaintiff alleged that in the meeting held in the month of October, 1997, at the factory of the Defendant with Mr Rasiah, Managing Director and Mr Memon, Marketing Manager, it was agreed that from 1st April, 1997, the Defendant will pay commission to the plaintiff at revised rate on slab basis. This allegation was not denied in para 6 of the written statement. While replying to para 6 of the plaint, the Defendant merely stated that the contents of para 2 are matter of record and need no reply. Thus, the written statement itself contains an admission not only about payment of commission but also modification of the rate of commission so as to give commission at a revised rate, on slab basis.

18. The Defendant also has specifically stated in the Counter Claim that it was agreed between the parties that Mrs Renu Gupta would get special commission at 1% on the orders procured by her. Relying upon Ex. PW1/24, it was contended by the learned Counsel for the Defendant that commission was payable to Mrs

Renu Gupta and not to the plaintiff Shri Alok Gupta. The facts and circumstances of the case, in my view, indicate that the commission was actually payable to the plaintiff irrespective of whether it was paid in his name or in the name of his wife Mrs Renu Gupta. This is an admitted case that both, the plaintiff Alok Gupta and his wife Renu Gupta, had visited the office of the Defendant and participated in the first meeting which was held on 04th November, 1996. In fact, the Defendant has specifically alleged in the written statement that in October, 1996, the plaintiff alongwith his wife Mrs Renu Gupta "claiming themselves to be the owner of Alok Enterprises" visited its office in Palakkad, Kerala and desired to become agent of the Defendant for the entire Northern Region, but, the Defendant was not immediately agreeable to appoint "them" as agent. It is also alleged in the written statement that the salary payable to Mrs Renu Gupta was adjusted from the balance receivable from the plaintiff. It is also alleged that the service of Mrs Renu Gupta were terminated w.e.f. 1st September, 1998 and the amount which was payable to her was adjusted in the amount receivable by the Defendant from the plaintiff.

19. Ex.PW-1/28 are the minutes of the meeting held at Hotel Maurya Sheraton on 27th July, 1998. Clause 3,6 and 15 of the minutes read as under:

3. M/s Alok Enterprises will not be paid any commission for the material purchased in their name. They will be given a margin of Rs 5/kg. on all purchases and 2% commission on all other customers of entire northern region.
6. M/s Alok Enterprises promised to work for only RIL.

15. If M/s Alok Enterprises shows excellent performance and clears all pending dues by Aug end, they can be considered for a sole selling agent from 1st Sept. onward." The Defendant has admitted the signatures of Mr R.J. Memon and Mr Jacob Thomas on this document during the course of admission/denial of documents on 09th December, 2009. Clause 3 referred above is yet another proof that the plaintiff was to be paid commission by the Defendant and in the meeting held on 27th July, 1998, it was decided that the commission would be given to him at the rate of 2%, but he would get it only on the sale made ot other customer of Northern Region and he will not get any commission on the materials purchased in the name of Alok Enterprises. This meeting was attended not only by the plaintiff Alok Gupta, but also by his wife Mrs Renu Gupta. Admittedly, neither any salary was actually paid by the Defendant to Mrs Renu Gupta nor was any commission paid to her.

20. From the facts and circumstances discussed above, it appears to me that both plaintiff Alok Gupta and Mrs Renu Gupta were working together and under an arrangement between the parties, commission was to be paid to the plaintiff which initially was fixed at 1%, was modified w.e.f. 1st November, 1997 so as to make it 1.5% on sale upto Rs 40 lacs, 2% on the sale for next Rs 20 lacs and 2.5% on the sale of next Rs 10 lacs and above. It was further modified in the meeting held on 27th July, 1998 when the plaintiff promised to work only for the Defendant. Adjustment of the salary of Mrs Renu Gupta against receivables from

the plaintiff is yet another circumstance, indicating that the plaintiff as well as his wife Mrs Renu Gupta were acting in unison and irrespective of whether the commission was to be paid in the name of the plaintiff and in the name of his wife Mrs Renu Gupta, the actual beneficiary was the plaintiff Alok Gupta. It would be pertinent to note her that Mrs Renu Gupta is not independently claiming either any commission or her salary from the Defendant. She has come in the witness-box as PW-2 and has supported the case of the plaintiff. I find no merit in the contention of the learned Counsel for the Defendant that amount of commission can be claimed by Mrs Renu Gupta and not by the plaintiff. I, therefore, hold that though the plaintiff was not formally appointed as an agent of the Defendant for the Northern Region, he was entitled to commission in terms of the agreement contained in the minutes of the meeting held on 04th November, 1996 (PW-1/36), 1st October, 1997 (Ex.P-1/24) and 27th July, 1998 (Ex.PW-1/28).

21. It was pointed by the learned Counsel for the Defendant that on Ex.PW-1/36 which purports to be the minutes of the meeting held at the office of Defendant on 04th November, 1996, the address of the branch office of the Defendant has been shown as F-11 Pandav Nagar though admittedly, the aforesaid premises had not been taken on rent by 04th November, 1996, which, in turn, indicates that Ex.PW-1/36 is the forged document. The contention of the learned Counsel for the plaintiff in this regard was that though this document represents the minutes of the meeting held on 04th November, 1996, the minutes were recorded after the Defendant had already taken the premises in F-11 Pandav Nagar on rent and, therefore, it cannot be said to be a forged document. I, however, need not go into this aspect of the matter since the evidence produced on record clearly proves that the Defendant had agreed to pay commission to the plaintiff.

It was also contended by the learned Counsel for the Defendant that the signature of Mr R.J. Menon on this document had been forged by the plaintiff, as is evident from the opinion of DW-2 Mr Ashok Kashyap. Mr R.J. Menon, who was the best witness with respect to the signature, bearing on this document having expired, it is not possible to say with certainty that his signature on this document have been forged. The opinion of the handwriting expert cannot be substitute for the direct evidence and is meant only to assist the Court in arriving at an appropriate conclusion. The Defendant did not make a request to the Court to send documents to CFSL/FSL for comparison of the disputed signatures with the admitted signatures of Mr. R.J. Menon and give opinion as to whether the disputes signatures tally with the admitted signatures or not. It rather chose to engage a private handwriting expert. It is well-known that such private handwriting experts are produced in the Court only if they agree to support the case set up by the party which engages them. Hence, not much reliance can be placed on the opinion given by a private handwriting export. It would be useful here to refer to the decision of Supreme Court in Gulzar Ali Vs. State of H.P., , where the accused had produced a handwriting expert to show that the opinion of the Government examiner of questioned documents was faulty. The High Court had observed that there was an inter alia tendency on the part of an expert witness to support the view of the person who called him and, therefore, it preferred the opinion of the Government examiner PW-20 M.L. Sharma. It was held by the Supreme Court that the aforesaid observation of the High Court could not be down staged for many so called experts had been shown to be remunerated witnesses making themselves available on hire to pledge their oath in favour of the party paying them. Relying upon the aforesaid decision of the Supreme Court, this Court in Deepa Arora v. Saurabh Arora and Anr. FAO No. 3/05 decided on 10th December, 2007 declined to rely upon the testimony of the handwriting expert produced by the Objector before the Court holding that not much importance could be attached to the testimony and report of the handwriting expert. In fact, way back in 1933, Lahore High Court in Diwan Singh v. Emperor AIR 1933 Lah 561 quoted with approval the following passage

It must be borne in mind that an expert witness, however, impartially he may wish to be, is likely to be unconsciously prejudiced in favour of the side which calls him. The mere fact of opposition on the part of the other side is apt to create a spirit of partisanship and rivalry, so that an expert witness is unconsciously impelled to support the view taken by his own side. Besides, it must be remembered that an expert is often called by one side simply and solely because it has been ascertained that he holds views favourable to its interests.

Taylor in his work on the "Law of Evidence" 12 Edition, Volume-I observed as under:

Perhaps the testimony which least deserves credit with a jury is that of skilled witnesses. These witnesses are usually required to speak, not to facts, but to opinions; and when this is the case, it is often quite surprising to see with what facility, and to what an extent, their views can be made to correspond when the wishes or the interests of the parties who call them. They do not, indeed, willfully misrepresent what they think, but their judgments become so warped by regarding the subject in one point of view, that, even when conscientiously disposed, they are incapable of forming an independent opinion. Being zealous partisans, their belief becomes synonymous with faith as defined by the apostles, and it too often is; but ''the substance of things hoped for, the evidence of things not seen''.

Taking into consideration of the facts and circumstances of the case including the failure of the Defendant to produce its Managing Director in the witness box, not much reliance can be placed on the opinion of PW-2 Mr. Ashok Kashyap. The issue is decided accordingly.

22. Issue No. 2

It is not in dispute that Mrs Renu Gupta, wife of the plaintiff, was employed by the Defendant as a Marketing Executive at the monthly salary of Rs. 10,000/-. This has been expressly admitted in the written statement and, therefore, no evidence was really required to prove this averment of the plaintiff. Ex.P-24, which is an admitted document, is the letter appointing Mrs Renu Gupta as Marketing Executive w.e.f 1st November, 1996 at the salary of Rs. 10,000/- per month. As regards commission payable to Mrs Renu Gupta, while deciding issue No. 1, I have taken a view that the actual beneficiary of the commission was plaintiff Alok Gupta, irrespective of whether it was payable in his name or in the name of Mrs Renu Gupta. Admittedly, Mrs Renu Gupta has not initiated any proceeding against the Defendant for recovery of arrears of her salary. It is also not in dispute that as per agreement between the parties, the salary of Mrs Renu Gupta shall be adjusted against the amount which the plaintiff had to pay the Defendant towards price of the goods purchased by him. In her affidavit Mrs Renu Gupta has stated that there was an understanding between the parties that the amount of salary will be reimbursed by the Defendant to the plaintiff. The issue is decided accordingly.

23. Issue No. 3 and 5

These issues are inter-connected and can be conveniently decided together. Admittedly, no amount has been paid by the Defendant to Mrs Renu Gupta towards her salary for the period from November, 1996. In her affidavit, Mrs Renu Gupta has stated that she continued in the service of the Defendant from 5th November, 1996 till August, 1999. The case of the Defendant, however, is that her services were terminated w.e.f. 1st September, 1998. Even if it is assumed that the services of Mrs Renu Gupta were terminated w.e.f 1st September, 1998, the Defendant is liable to pay salary to her for the period from November, 1996 to August, 1998 which comes to Rs 218666/-. Though it is stated in the affidavit of DW-1 Mr Sudhesh that the salary of Mrs Renu Gupta was always paid to her from the company, there is no proof of any such payment. As noted earlier, it is admitted in the written statement that the salary of Mrs Renu Gupta was to be adjusted against the receivables from the plaintiff. In her affidavit, Mrs Renu Gupta has stated that she was paid salary by the plaintiff. Since the Defendant had agreed that the salary of Mrs Renu Gupta shall be paid by the plaintiff and would be reimbursed by it, plaintiff is entitled to adjustment of Rs. 2,18,666/- being the salary of Mrs Renu Gupta for the period from 05th November, 1996 to 31st August, 1998.

24. The plaintiff has also claimed adjustment of Rs. 1,70,000/- towards rent from November, 1996 to August, 1999. In his affidavit, the plaintiff has stated that premises No. F-11, Pandav Nagar, belonging to him were taken by the Defendant at a monthly rent of Rs. 5,000/- for its office purposes w.e.f 1st November, 1996. He has also stated that his wife Mrs Renu Gupta as well as Mr Jacob Thomas, another employee of the Defendant were posted in Delhi office. He has further stated that in September, 1995, Mr Jacob Thomas was transferred back to Kerala and in his place Mr Runy Chandy was appointed to look after the business of Defendant at Delhi. The Defendant has not produced either Mr Jacob Thomas or Mr Runy Chandy to controvert the deposition of the plaintiff in this regard. In

fact, this is not at all the case of the Defendant that neither Mr Jacob Thomas nor Mr Runy Chandy was ever posted at Delhi. This is also not the case of the Defendant that it was running office from some premises other than F-11, Pandav Nagar during the period from November, 1996 to August, 1999. This is an admitted case of the parties that Mrs Renu Gupta was appointed as an employee of the Defendant-company w.e.f. 5th November, 1996. This is not the case of the Defendant that Mrs Renu Gupta was functioning from some place other than F-11, Pandav Nagar. It has been stated in the written statement that for the purpose of obtaining central excise and sales tax registration, the premises of the plaintiff were shown as rented by the Defendant and certain account adjustments were made in the amount paid by the plaintiff to the Defendant. It is also alleged in the written statement that entire office expenses at Delhi were met by the Defendant. By claiming that entire ''expenses for the Delhi office'' were met by it, the Defendant has admitted that it had an office in New Delhi. The appointment letter of Mrs Renu Gupta Ex.P-24 shows that her location was based at New Delhi. This is yet another proof of the Defendant having an office in Delhi. As noted earlier, this is not the case of the Defendant that its office was functioning from some premises other than the premises of the plaintiff. If the premises of the plaintiff were taken on rent, it would be immaterial that no lease agreement was executed between the parties since the premises could have been let out without a written lease agreement. Ex.P-1/23, which is an admitted document, is the statement made by Mr Jacob Thomas, authorized signatory of the Defendant for the purpose of obtaining sales tax registration. In this statement, he has given the address of Defendant-company as F-11 Pandav Nagar, Delhi-91. In Clause 5 of the statement, he expressly stated that the business premises have taken on rent from Shri Alok Gupta at the rate of 5,000 per month. The signature of Mr Jacob Thomas on this document has been admitted by Defendant during admission/denial of documents conducted on 09th December, 2009. DW-1 has also admitted the handwriting and signature of Jacob Thomas on Ex.PW-1/23. He has also admitted that Mr Jacob Thomas was posted at Delhi and was their Marketing Executive. He did not deny the statement made in Ex.PW-1/23. Neither Mr Jacob Thoms nor Mr Runy Chandy has been produced in the witness-box to controvert the deposition of the plaintiff about their posting in Delhi and working for the Defendant-company in the premises taken from the plaintiff at F-11, Pandav Nagar, Delhi. This is not the case of the Defendant that it had made payment of rent for the premises at F-11, Pandav Nagar to the plaintiff. Hence, the plaintiff is entitled to adjustment of Rs. 1,70,000/- which was payable to him towards rent of the premises let out to the Defendant-company.

25. The plaintiff has also claimed an amount of Rs. 6,32,010/- towards expenses incurred by him on the office of the Defendant-company in Delhi. In his affidavit by way of evidence, the plaintiff has stated that as per agreement dated 04th November, 1996, all office expenses, including telephone expenses, fax expenses, photocopying, conveyance, payment to staff appointed for cleaning

purposes and messenger, etc. were to be initially borne by him and the Defendant was to reimburse that amount to him. Clause 5 of the minutes of the meeting held at the office of the Defendant on 04th November, 1996, (Ex.P-1/36) reads as under:

All the expenses including the salary of Mrs Renu Gupta, telephone and other office expenses be incurred by Alok Enterprises for RIL Delhi to be subsequently reimbursed by Rubfila International Ltd., Palakkad in addition to commission.

26. Ex.D-2 and D-3 are the documents filed by the Defendant. Ex.D-2 is the letter written by Mrs Renu Gupta to Shri R.J. Menon, sending details of travelling, office expenses, salary and telephone bill, whereas D-3 are the details of travelling and conveyance for the month of December, 1996. In both these documents, F-11, Pandav Nagar, Delhi has been shown as the address of the Defendant-company and telephone number given in these documents also is of Delhi. The Defendant itself has placed on record a letter dated 24th December, 1998, addressed to Mr Runy Chandy. Vide this letter, he has been appointed at Delhi office of the Defendant-company. Since this is a document filed by the Defendant, it can be read against it even if it has not been proved in evidence. These documents also prove that the premises of the plaintiff were being used by the Defendant for running its office and expenses were being incurred in connection thereto.

27. The Defendant, therefore, is liable to reimburse all the office expenses incurred by the plaintiff in respect of its Delhi office at F-11, Pandav Nagar. Ex. Pw-1/5 is an interoffice memo regarding reimbursement expenses. It is signed by Mr Jacob Thomas on 13th March, 1997. As per this document, the expenses for December, 1996, January, 1997, February, 1997 and March, 1997 amounted to Rs. 30,690/-, 64,160/-, 67,872/- and 47,203/- respectively coming to a total sum of Rs. 2,32,825/-. As noted earlier, Mr Jacob Thomas has not been produced in the witness box to controvert the case of the plaintiff in this regard and to say that his interoffice memo does not bear his signature. No explanation has been given by the Defendant for not producing Mr Jacob Thomas in the witness box. When the plaintiff stated, on oath, that this document was signed by Mr Jacob Thomas, it was obligatory for the Defendant to produce him in the witness box if it was disputing the signature of Mr Jacob Thomas on this document. This document finds corroboration from the Statement of Account Ex.DW-1/11 filed by the Defendant. There is a credit of this amount on March 31, 1997 towards Delhi office expenses from November 1996 to 31st March, 1997. Later, this amount has been debited to the account of Defendant on March 25, 1998. It was pointed out by the learned Counsel for the plaintiff that though the interoffice memo alleged to have been signed by Mr Jacob Thomas, acknowledging office expenditure, amounting to Rs. 2,32,825/-, purports to be signed on 13th March,1997, it contains the amount of commission up to 27th March, 1997, which could not have been possible on 13th March, 1997. I find that the plaintiff has not been cross-examined with respect to this discrepancy. He was not asked

to explain, how the expenses upto 27th March, 1997 were acknowledged on 13th March, 1997. In the absence of his cross-examination on this aspect, the plaintiff did not get an opportunity to explain this discrepancy. In any case, since these expenses have been admitted in the Statement of Account Ex.DW-1/11 filed by the Defendant, it is difficult to deny their adjustment to the plaintiff, particularly when there is no explanation for giving credit for this amount to the plaintiff in the first instance. Had this amount not been payable to the plaintiff, the Defendant would not have credited the same in the account of the plaintiff on 31st March, 2007 towards daily office expenses. The entry, whereby this amount was debited in the account of the plaintiff on March 25, 1998 shows that the amount was transferred to the account of Mrs Renu Gupta. Transfer of the amount to the account of Mrs Renu Gupta also shows that the Defendant-company acknowledged its liability to pay the aforesaid amount towards office expenses. though it decided to give credit for this amount in the account of Mrs Renu Gupta after debiting the same in the account of the plaintiff. Admittedly, this amount has not been paid by the Defendant even to Mrs Renu Gupta. As noted earlier, the office expenses were payable to the plaintiff and not to Mrs Renu Gupta. The Defendant, therefore, had no justification for debiting this amount in the account of the plaintiff on 25th March, 1998. The plaintiff therefore is entitled to adjustment of this amount from the amount which is payable by him to the Defendant-company.

28. Ex.PW-1/15 is the breakup of expenses, amounting to Rs. 3,99,906 /- which is signed by none other than the Managing Director of the Defendant-company on Ex.PW-1/51. A perusal of Ex. Pw-1/51 shows that this amount represented Delhi office expenses of Defendant from April, 1997 to October, 1997. The Defendant does not claim payment of this amount to the plaintiff. Hence, the plaintiff is entitled to adjustment of this amount against the price of the goods which he purchased from the Defendant-company. Thus, the total amount which the plaintiff can adjust towards office expenses comes to Rs. 6,32,010.

29. The plaintiff has also claimed adjustment of three cash payments alleged to have been made by him to the Defendant. First payment amounting to Rs. 5,94,200/- is stated to have been made on 22nd July, 1998, the second payment amounting to Rs. 6,98,000 /- is stated to have been made on 05th August, 1999 and the third payment of Rs. 2,78,640/- is stated to have been made on 17th August, 1999. Ex.PW-1/6 is a voucher signed by Mr Jacob Thomas, acknowledging payment of Rs. 6,98,000/- received from the plaintiff. Ex.PW-1/7 is the cash voucher signed by Mr Jacob Thomas, acknowledging receipt of cash payment, amounting to Rs. 5,94,200/- from the plaintiff on 22nd July, 1998 and Ex.P-3 is the receipt of cash payment of Rs. 2,78,640/- received by Mr Runy Chandy on 30th August, 1999. Ex.P-3 has been admitted by Defendant during admission/denial of documents carried out on 09th December, 2004. The Defendant has also admitted signatures of Mr Jacob Thomas on Ex.PW-1/6 and PW-1/7. In his affidavit by way of evidence, the plaintiff has specifically stated, on oath, about payment of Rs. 6,98,000/- and 5,94,000/- to Mr Jacob Thomas

and Rs. 2,78,640/- to Mr Runy Chandy. Neither Mr Jacob Thomas nor Mr Runy Chandy had been produced in the witness box to controvert the deposition of the plaintiff in this regard. Admission of signatures of Mr Jacob Thomas on Ex.PW-1/6 and Ex.PW-1/7 and signature of Mr Runy Chandy on Ex.P-3, coupled with the failure of the Defendant to produce them in the witness box to controvert the deposition of the plaintiff in this regard, is sufficient to prove receipt of the aforesaid three payments by the Defendant through the above-referred officials. This is not the case of the Defendant that Mr Jacob Thomas and/or Mr Runy Chandy were not authorized to receive cash payment from the plaintiff or that they had misappropriated that amount. The Defendant, therefore, must give adjustment of these amounts to the plaintiff.

30. The Defendant has also claimed a sum of Rs. 1,86,477 from the plaintiff being the price of the material alleged to have been taken by him from three firms D.R. Trading Company, M.D.R. Tapes and M/s H-Lon Industries. No evidence has, however, been produced by the Defendant to prove that any material was received by the plaintiff from any of these three firms. Since the Defendant has failed to prove receipt of any such material by the plaintiff, it is not entitled to any amount out of Rs. 1,86,477, claimed by it in this regard.

31. According to the Defendant, it had supplied goods worth Rs. 27,65,840/- to the plaintiff. Since the plaintiff is entitled to adjustment of Rs. 2,18,666/- towards salary paid to Mr. Renu Gupta, Rs. 1,70,000/- towards rent of the premises taken on rent from the plaintiff, Rs. 6,32,010/- towards office expenses, and Rs. 15,70,640/- towards cash payment received from the plaintiff, the remaining amount payable to it towards price of the goods sold to the plaintiff comes to Rs. 1,74,524/-.

32. Though the plaintiff has claimed a sum of Rs. 13,51,521/- towards commission, he has not been able to prove his entitlement with respect to the whole of this amount. As noted earlier a sum of Rs. 1,40,914/- was credited by the Defendant in the account of the plaintiff on 18th September, 1998 towards commission for the year 1996-97. The Defendant cannot escape its liability to pay the aforesaid amount to the plaintiff. The plaintiff is, therefore, entitled to adjustment of this amount against the amount of Rs. 1,74,524/- payable by him to the Defendant.

33. As per Clause 4 of the minutes of the meeting held on 04th November, 1996 (Ex.PW-1/36), the plaintiff was to be paid a commission for all orders procured to be supplied directly by the company (Defendant) and all materials purchased by the plaintiff for re-selling. The learned Counsel for the plaintiff fairly conceded that no evidence has been led by the plaintiff to prove the order procured by him for direct supply by the company. It is difficult to accept that the plaintiff was not in a position to give details of such orders, if any, procured by him. If a person procures an order for another person, he would definitely be having all the particulars pertaining to that order such as the name of the purchaser, date of the order, quantity of the goods to be supplied and the price at which the goods

were to be supplied. Therefore, it was not at all difficult for the plaintiff to provide all those details to the Court. As regards the material purchased by the plaintiff for re-selling, though there is evidence showing the value of the goods purchased by the plaintiff from the Defendant-company from time to time, there is no evidence to prove what was the value of the goods which the plaintiff had re-sold to others or which were purchased by him for re-selling. It was contended by the learned Counsel for the plaintiff that since the plaintiff does not have any manufacturing facility all the goods purchased by him from the Defendant-company were meant only for re-selling and were actually sold by him. However, in the absence of specific evidence to prove that all the goods which the plaintiff purchased from the Defendant were meant for re-selling and were actually re-sold by him, it is difficult to say that he was entitled to commission on all the purchases made by him from the Defendant-company.

34. In terms of the agreement reached between the parties in the meeting held on 1st October, 1997 (Ex.PW-1/24), the sale commission became payable on slab basis in respect of the sale of entire northern region. Though as per the minutes, the sale commission was payable to Mrs Renu Gupta who was employed as Marketing Executive with the Defendant-company, I have, while deciding issue No. 1, come to the conclusion that the commission was in fact payable to the plaintiff irrespective of whether it was to be paid in his name or in the name of his wife Mrs Renu Gupta. There is no evidence to prove the sales made by the Defendant-company in northern region w.e.f. 1st November, 1997 when the agreement reached in the meeting held on 1st October, 1997 was to come into force. The minutes also stipulated that there will be no reimbursement of expenditure towards maintenance of office, including telephone expenses, etc. It is not known whether these expenses have been claimed by the plaintiff and/or his wife Mrs Renu Gupta or not. Till the total value of the sale made by the Defendant in the northern region w.e.f 1st November, 1997 is known, the amount of commission payable to the plaintiff in terms of the minutes of the meeting held on 1st October, 1997 cannot be worked out. As and when such amount is worked out, the reimbursement, if any, already taken by the plaintiff towards maintenance of office, including telephone expenses, etc. for the period 1st November, 1997 onwards will have to be deducted from that amount. At this stage, no adjustment can be given to the plaintiff except for the amount of Rs. 1,40,914/- already acknowledged in the account books of the Defendant-company.

35. As per the decision taken in the meeting held at Hotel Maurya Sheraton on 27th July, 1998 (Ex.PW-1/28), the plaintiff was not to be paid any commission for the material purchased in the name of his firm Alok Enterprises, but was to be paid 2% commission sale made to on all other customers of entire northern region. The amount of commission payable to the plaintiff in terms of the decision taken in the meeting held on 27th July, 1998 cannot be worked out unless the amount of sale made by the Defendant to all customers other than the plaintiff, in the entire northern region is known. Since the sale figure of the

Defendant-company for the northern region is not known, the plaintiff cannot be given any further adjustment at this stage towards the commission payable to him.

After giving adjustments of Rs. 1,40,914/-, out of the amount of Rs. 1,74,524/-, the net amount payable by the plaintiff to the Defendant comes to Rs. 33,610/-. The issues are decided accordingly.

36. Issue No. 4

In view of my finding on issue Nos. 3 and 5, the plaintiff is not entitled to any interest from the Defendant-company. The issue is decided accordingly.

37. Issue No. 6

The plaintiff has claimed a sum of Rs 290311.61/- towards interest from the plaintiff. The Counter Claim, however, does not indicate from which date interest has been claimed by the Defendant-company. No agreement for payment of interest has been either pleaded or proved by the Defendant-company. However, since this is a suit for price of goods sold and delivered, interest can be awarded to the Defendant u/s 61(2) of Sale of Goods Act. Considering all the facts and circumstances of the case, I deem it appropriate to award interest to the plaintiff at the rate of 12% per annum on the amount of Rs. 33,610/-

38. The amount of interest of Rs. 33,610/- at the rate of 12% per annum for the period from 1st April, 2001 till the date of filing of Counter-Claim comes to about Rs 323. The Defendant, therefore, is entitled to recover that amount from the plaintiff towards interest. The issue is decided accordingly.

39. Issue No. 7

In view of my finding on other issues, the Defendant is entitled to a decree for Rs. 33,933/- against the plaintiff alongwith pendente lite and future interest at the rate of 12% p.a.

Since the amount of commission payable to the plaintiff in respect of the decisions taken in the meeting held on 31st October, 1997 and 31st July, 1998 cannot be worked out unless the Defendant provides figures of the sale made by it in the northern region w.e.f 1st November 1997, the plaintiff is entitled to a decree for rendition of account with respect to commission payable to him w.e.f. 1st November, 1997. The plaintiff will get commission on slab basis in terms of the minutes of the meeting held on 1st October, 1997, in respect of all the sales made by the Defendant in the entire northern region. The reimbursement, if any, already obtained by the plaintiff and/or his wife Mrs Renu Gupta towards maintenance of office, including telephone expenses, etc for the period from 1st November, 1997 will be set off against the amount which is found payable to the plaintiff towards commission in terms of the decision taken in the meeting held on 1st October, 1997.

The amount of commission payable to the plaintiff w.e.f 27th July, 1998 will be carried out at the rate of 2%, but, he will not be entitled to any commission for the material purchased in the name of Alok Enterprises w.e.f 27th July, 1998. The Defendant is directed to furnish figures of the sale made by it in the northern region w.e.f 1st November, 1997. The Defendant will give separate figures one for the sales made by it in the northern region w.e.f. 1st November, 1997 to 26th July, 1998 and the other with respect to the sales made to customers other than Alok Enterprises in the northern region w.e.f 27th July, 1998. The Defendant will also furnish figures of the reimbursement, if any, paid to the plaintiff and/or his wife Mrs Renu Gupta towards maintenance of office, including telephone expenses, etc. w.e.f 1st November, 1997. The figures in terms of this order will be given within eight weeks. The Defendant will work out the amount payable to the plaintiff towards commission in terms of this judgment and will file details thereof in the Registry along with sale figures as well as the amount of reimbursement, if any, given to the plaintiff and/or his wife Mrs Renu Gupta towards the maintenance of office expenses, including telephone expenses, etc. w.e.f 1st November, 1997, along with sales figures. The parties shall be at liberty to apply to the Court for appointment of a Local Commission, if required, for taking accounts from the Defendant-company in terms of this order.

Taking into consideration all the facts and circumstances of the case, there shall be no order as to costs. The suit and Counter Claim are decreed accordingly.

Decree sheet be prepared in terms of this judgment.

