(2009) 05 DEL CK 0059

In the Delhi High Court

Case No : CS (OS) No. 1734 of 1993

Steelco (India) Pvt. Ltd. APPELLANT

Vs

Quality Steels and Forgings Ltd. RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2009) 05 DEL CK 0059

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Ravi Gupta, for the Appellant; Ex parte, for the Respondent

Judgement

Vipin Sanghi, J.—Initially the plaintiffs, namely, M/s Steelco India, a partnership firm acting through its partner Sh. S.N. Aggarwal, M/s Aggarwal Metal Corporation, a partnership firm acting through its partner Sh. Puran Chand Aggarwal and M/s Shree Shyam Steel-N-Alloys, also a partnership firm acting through its partner Sh. Brij Mohan Aggarwal, filed the present suit for recovery of Rs. 50,07,995/- and rendition of accounts and permanent injunction. Subsequently, during the pendency of the suit the plaint was amended on the ground that the business, assets and liabilities of the said three plaintiffs had been taken over by M/s Steelco (India) Pvt. Ltd., a private limited company incorporated under the Companies Act, 1956. Consequently, the three plaintiffs were substituted by M/s Steelco (India) Pvt. Ltd. The amended plaint has been signed and verified on behalf of the substituted plaintiff company by Sh. S.N. Agarwal who is the Director of the plaintiff company duly authorized to sign and verify the suit on behalf of the company by the resolution dated 9.12.2000.

2. The case of the plaintiff as stated in the plaint is as follows:

One of the erstwhile constituent of the plaintiff company, namely, M/s Steelco India & Associates had entered into an agreement dated 30.07.1990 with the defendant, where under M/s Steelco India & Associates was appointed as the sole distributor of the steel and alloy steel products of the defendant company, having its works at Madhavas, Halol Kalol Road, Tal Kallol-388220, Gujarat. According to the plaintiff, under this agreement the defendant had agreed to make supplies of various steel products to the plaintiff and the plaintiff was to act as the sole distributor of the defendant in the States of Uttar Pradesh, Punjab, Haryana, Rajasthan, Himachal Pradesh, Madhya Pradesh and Jammu & Kashmir. As per the terms of the agreement the erstwhile three constituent partnership firms M/s Steelco India, M/s Aggarwal Metal Corporation and M/s Shree Shyam Steel-N-Alloys used to purchase goods from the defendant company for further sale and distribution in Northern India and then used to reconcile their statements with the defendant pertaining to the goods ordered by them and goods received by them and the amount paid by them. Claims on account of defective and inferior goods and the orders which remained unexecuted were also periodically reconciled. As per the agreement, the defendant was not entitled to sell, deliver and supply goods directly to any person, firm or company in Northern India. But in case the defendant did effect direct sales, the defendant was obliged to intimate the three erstwhile constituent firms and transact business at terms which would be acceptable to them. The terms of the distributorship was agreed to be for the period of at least five years commencing from 01.08.1990. And in case of termination prior to the period agreed, the defendant was liable to pay to the plaintiff a sum of Rs. 10,00,000/-. The allegation of the plaintiff is that the defendant failed to make supplies to the plaintiff as per its purchase orders and eventually illegally terminated the distributorship agreement on 21.07.1993 vide Exh.PW-1/415.

3. The suit was filed on 23.7.1993. Summons in the suit were issued to the defendant on 3.8.1993 for 30.8.1993. Upon being served, the defendant filed its written statement. On 8.12.2000, plaintiff sought time to file amended plaint as a consequence of change in constitution of the plaintiffs from partnership firms to that of a private limited company. The Court granted time to the defendant directed to file the amended written statement after two weeks of filing of amended plaint.

4. On 04.12.2002 the Court recorded the position that written statement to the amended plaint has not been filed despite being given several opportunities for the same. The right to file the same was closed. The Court framed the following issues:

1. Whether the plaintiff is entitled for damages for un-executed orders by the defendant, if so for what amount? OPP.

2. Whether the plaintiff is entitled for damages for determination of distributorship agreement its expiry, of so for what amount? OPP.

3. Whether the plaintiff was appointed as the sole selling agent of the defendant in the Northern India? OPP.

4. Whether the defendant is not liable to pay any amount incurred by the plaintiff

for running the branch office of the defendant in Delhi? OPD.

5. Whether the plaintiff is entitled to recover a sum of Rs. 50,07,779/- from the defendant? OPD.

6. Whether the plaintiff is entitled for interest from the defendant, if so, at what rate and for what period and on what amount? OPP.

7. Whether the defendant is liable to render accounts in respect of direct sales made by the defendant in the Northern India, if so, for what period?

8. Relief.

5. The defendant was proceeded ex parte on 17.05.2005. The plaintiff was directed to lead ex parte evidence on affidavits. The affidavits by way of evidence towards examination-in-chief of a total of four witnesses have been tendered on behalf of the plaintiff. These are the affidavits of:

(1) PW-1, Mr. S.N. Aggarwal, the Director of the plaintiff company, who has filed the affidavit in support of the claim in suit,

(2) PW-2, Mr. Jawahar Lal Beriwal, one of the witnesses to the agreement Exh.PW-1/17,

(3) PW-3, Mr. Ved Prakash Jain, also a witness to Exh.PW-1/17, and

(4) PW-4, Mr. Jagdish Narsingh Baad, the former Director (Technical) of the defendant company.

6. The plaintiff has made its claim in the suit under four heads. The first claim is for Rs. 27,84,635/- for loss of profit on account of non- supply of the goods against orders placed by the plaintiff between January 1992 to February, 1993. The second claim is for an amount of Rs. 10 Lacs on account of, what is claimed to be, the illegal termination of the distributorship agreement. Reliance has been placed on Clause 17 of the said agreement to raise this claim. The third claim is for an amount of Rs. 3,55,600/- by placing reliance on Clause 3 of the agreement. It is stated that under the said clause, on account of failure of the defendant to supply the goods, the monthly estimated expenses of Rs. 30,000/-, which were to be borne by the plaintiff ought to be shared by the defendant. The fourth claim is towards discounts on the defective supplies made by the defendant company to the plaintiff.

7. The plaintiff has also claimed the rendition of accounts by the defendant in respect of various supplies allegedly made by the defendant directly in the market in contravention of the sole distributorship agreement with the plaintiff. The plaintiff claims its commission/profits on all such sales @ 8% of such sales.

8. The first issue to be considered is the issue relating to the appointing of the plaintiff as the Sole Selling Agent of the defendant in the northern region, since the defendant has denied the execution of the agreement dated 30.07.1990 Exh.PW-1/17, whereby the plaintiff claims to have been appointed as the sole

distributor of the defendant company. All the claims of the plaintiff originate from the said agreement. The plaintiff in its evidence has proved the agreement dated 30.07.1990 Exh.PW-1/17. In his affidavit towards examination- in-chief, Ex.PW-1/A, Mr. S.N. Aggarwal, PW-1, has stated that the agreement dated 30.7.1990, Ex. PW-1/17 was executed on 30.07.1990. He has further stated that the carbon copy of the agreement, signed by Mr. R.A. Bhuraria as Managing Director of the defendant firm and by the deponent Mr. S.N. Aggarwal, as the partner of M/s. Steelco India, was retained by the plaintiff and the original typed copy was retained by the defendant. He states that the original agreement and the carbon copy of the agreement were typed and prepared simultaneously and were also signed at the same time. The agreement, Ex.PW-1/17 was witnessed by Mr. Ved Prakash Jain and Mr. Jawahar Lal Beriwal, whose signatures he has identified as he has seen them signing and writing. The carbon copy of the agreement dated 30.07.1990 has been exhibited as Exh.PW-1/17. The original letter dated 07.06.1990 bearing the signatures of Mr. R.A. Bhuraria, Managing Director of the defendant, stating that Mr. S.N. Aggarwal, proprietor Steelco India, is the sole authorized agent/stockist for the defendants products in Northern India is Exh.PW-1/18. Exh.PW-1/13 is the letter dated 12.12.1991 issued by the defendant company through its Director (Technical), J.N. Baad, stating that he had sent the agreement dated 30.07.1990 executed between the defendant company and Steelco India, including its associate firms Shree Shyam Rolling Mills and Aggarwal Metal Corporation, and assuring that the said agreement would be fully honoured in true spirit.

9. PW-2, Jawahar Lal Beriwal, has affirmed in his affidavit that an agreement was signed between the plaintiff and late Mr. R.A. Bhuraria. The same was signed at the office of Quality Steels and Forgings Limited at CD-157, Pitampura, New Delhi in his presence. The agreement dated 30.07.1990 was signed by the plaintiff and late Mr. R.A. Bhuraria and that he had witnessed the same. He had signed the original agreement and the carbon copy. He identified the signatures of Mr. S.N. Aggarwal, PW-1, and Mr. R.A. Bhuraria in the carbon copy of the agreement. The carbon copy of the agreement dated 30.07.1990 witnessed by PW-2 is exhibited as Ex.PW-1/17. He states that the original agreement and the carbon copy was also signed by Mr. Ved Prakash Jain, in his presence, whose signatures he has also identified. To the same effect is the evidence of Mr. Ved Prakash Jain, PW-3, in his affidavit Exh.PW-3/A. There has been no challenge to the evidence led by the plaintiff. I have, therefore, no difficulty in accepting the plaintiffs case that the parties had entered into an agreement dated 30.07.1990, Exh.PW-1/17. The rights of the parties are, therefore, governed by the said agreement. By the said agreement the plaintiff was appointed as the sole distributor of the defendants product in the various States in Northern India. Issue No. 3 is, therefore, answered in favour of the plaintiff and against the defendant.

10. In support of claim of Rs. 27,84,635/- for loss of profit on account of unexecuted orders, plaintiff states that as per the agreement dated 30.07.1990 it

was agreed that the defendant will compensate the plaintiff for the orders which would remain unexecuted. It is stated that at the time of termination of agreement, many orders of the plaintiff remained unexecuted. From 01.01.1992 to 31.05.1993 the plaintiff placed orders with the defendant company for Rs. 3,76,50,500/-. But against this the defendant had only supplied the goods worth Rs. 58,26,119/-. Accordingly, it is claimed that defendant company had failed to supply goods worth Rs. 3,18,24,381/-. plaintiff claims that the margin of profit as per their balance sheet is @ 8.75%. The plaintiff claims that at this rate the liability of the defendant on account of loss of profit comes to Rs. 27,84,635/-. It is also claimed that defendant company had admitted through its letters that the goods as ordered by the plaintiff could not be supplied on account of various constraints and problems which the company was facing in the manufacturing of steel and steel products in their plants.

11. PW-1 has proved the various orders for procurement of steel and steel products from the defendant as Exh.PW-1/25, Exh.PW-1/26, Exh.PW-1/27, Exh.PW-1/28, Exh.PW-1/29, Exh.PW-1/30, Exh.PW-1/31, Exh.PW-1/32, Exh.PW-1/33, Exh.PW-1/34, Exh.PW-1/35, Exh.PW-1/36, Exh.PW-1/37, Exh.PW-1/38, Exh.PW-1/39, Exh.PW-1/40, Exh.PW-1/41, Exh.PW-1/42 & Exh.PW-1/43. These purchase orders span the period 01.01.1992 to 28.02.1993.

12. PW-1 has proved on record the various purchase orders placed by the plaintiff from time to time on the defendant beginning 01.01.92 as Exhibits P-1/25 to P-1/43.

13. In para 22 of the plaint as originally filed, the plaintiff had claimed that purchase orders worth Rs. 3,18,24,381/- were not executed by the defendant. The details of the orders not executed by the defendant were contained in Annexure P-4 of the plaint. The defendant filed its written statement to the originally filed plaint. A perusal of para 22 of the written statement shows that the defendant had not denied the non-execution of the purchase orders to the aforesaid extent. However, the defendant has sought to put the blame on the plaintiff by stating that the hundis issued by the plaintiff were not honoured. The defendant claims that about Rs. 88 Lakhs for recoverable from the plaintiff for supplies made. Para 23 of the amended plaint contains the same averments as are contained in para 22 of the originally filed plaint. As noticed the defendant did not file the amended written statement. The plaintiff has also relied on the testimony of Sh. J.N. Baad, PW-4 as contained in his affidavit PW-1/4A dated 03.05.2004 wherein he states that he had signed the letter dated 20.05.1992 Ex.PW1/14 and letter dated 31.03.1993 Ex.PW-1/179 as Director (Technical) of the defendant company. In these two communications, the defendant company acknowledged that the value of the supply orders that remained unexecuted between 1.1.1992 and 06.05.1992 (in Ex.PW1/14) stood at Rs. 1,69,10,552.25, and between 23.05.1992 to 28.02.1993 (in Ex.PW1/179) stood at Rs. 1,49,73,828.75.

14. The figures given in PW-1/14 and PW-1/179 indeed add up to Rs.

3,18,24,381/- as contained in Annexure P-4 to the plaint. From the aforesaid evidence it is clear that there was shortage in supply made by the defendant in response to the various purchase orders issued by the plaintiff. The defendant has failed to substantiate its defence that the Hundis issued by the plaintiff were not being honoured and that it was of this reason that the defendant could not make supplies. It must, therefore, be accepted that there was shortage of supply on behalf of the defendant for which the plaintiff was not responsible.

15. Counsel for the plaintiff has relied on Clause 17 of the agreement which, inter alia, provides that in case the defendant company is unable to supply the goods as ordered by the Sole Distributor and the agreement cannot be performed out on account of the companies going into liquidation or for any other reason, the defendant shall inter alia pay damages, losses and all other charges payable in respect of the orders which shall remain unexecuted. Mr. Gupta submits that even otherwise under Sections 73 and 74 of the Contract Act, the plaintiff is entitled to recover damages for the loss of profit suffered on account of non-supply of goods by the defendant against various purchase orders placed by it.

16. I see merit in the submission of Mr. Gupta. Since the plaintiff had been appointed as its Sole Distributor, and the defendant company was obliged to supply the goods required by the Sole Distributor by virtue of Clause 2 of the agreement, the failure of the defendant to supply the same did constitute breach of the agreement by the defendant which would entitle the plaintiff to claim the damages suffered on that account. Clause 2 of the agreement Ex.PW-1/17 reads as follows:

The SOLE DISTRIBUTOR shall submit his requirements of the companys products at the Branch Office of the Company at Delhi or head office 501-3, World Trade Centre, Sayaji Gunj, Baroda- 390005, which would be forwarded to the Companys works at Madhavas, Halol Kalol Road, Tal Kalol- 389330 and the goods required by the SOLE DISTRIBUTOR shall be supplied and sold and delivered to the party of the Second Part from the Companys office at Delhi.

17. The question that now arises is as to what is the quantum of damages to which the plaintiff would be entitled.

18. PW-1 in his affidavit has stated that the margin of profit was 8.75% as per the balance sheet and is also the most appropriate rate for compensation of suitable compensation. From 01.01.1992 to 31.03.1993 the plaintiff placed orders with the defendant for Rs. 3,76,50,500/-. Out of this defendant company supplied goods worth Rs. 58,26,119/-. The unexecuted order for the supply of goods comes out to Rs. 3,18,24,381/-. The plaintiff claims 8.75% as the net profit that it could have earned on the unexecuted order of worth Rs. 3,18,24,381/- which comes out at Rs. 27,84,635/-. The balance sheet of the plaintiff as on 31.3.1992 has not been proved on record. However, the same has been filed along with the compilation tendered by the plaintiff. The said balance

sheet cannot be looked into and acted upon. Even otherwise, this balance sheet shows that the gross profit for the year ending 31.3.1992 translates to about 8% as claimed by the plaintiff. It is not the figure of gross profit which would be relevant. It is the figure of net profit, which would be relevant. On the other hand there is no other evidence led by the defendant and there is no challenge to the evidence led by the plaintiff. In my view profit of 8.75% claimed by the plaintiff is on the higher side. Considering the nature of wholesale trade in which the plaintiff was engaged, a reasonable rate of return would be 4%. The unexecuted orders were to the tune of Rs. 3,18,24,381/-. The net profit that the plaintiff could earn on the said amount, computed at the rate of 4% would come to Rs. 12,72,975.25. Accordingly, the plaintiff is held entitled to damages of Rs. 12,72,975.25 on the various unexecuted orders between 1.1.1992 and 31.5.1993 worth Rs. 3,18,24,381. Issue No. 1 is answered accordingly.

19. Issue No. 2 framed by the Court pertains to the claim for damages on account of determination of the distributorship agreement by the defendant prior to its expiry. Mr. Gupta submits that the distributorship agreement, Exhibit PW-1/17 provided that the same shall remain in force for a period of five years. Clause 17 of the said agreement prohibited the defendant company from terminating the agreement on the ground of any alleged breach of the terms of the agreement before the expiry of the period of five years. It further provided that in the eventuality of the agreement being terminated the defendant company shall be liable to pay the damages for the remaining unexpired period of the agreement, subject to a minimum amount of Rs. 10 lakhs. The plaintiff claims the said minimum amount of Rs. 10 lakhs by placing reliance on Clause 17 of the distributorship agreement. Exhibit P-1/415 the registered communication received from the defendant dated 21.7.1993 states that the defendant had decided to wind up its business with the three erstwhile constituents of the plaintiff. Since the period of distributorship agreement was five years and the same was to take effect from 1.8.1990, it is evident that the distributorship agreement was terminated before the expiry of five years and the said termination was in contravention of Clause 17 of the said agreement. At the time when the said agreement was terminated, there was still a period of two years to go. From the finding on issue No. 1, it is clear that the net profit/income that the plaintiff would have earned over the unexpired portion of the agreement would have been in excess of Rs. 10 lakhs, which has been claimed by the plaintiff by reference to Clause 17 of the Distributorship agreement. Since the agreement had been breached by the defendant by its termination, the plaintiff is entitled to claim damages on account of its termination. For the aforesaid reasons I hold that the plaintiff is entitled to damages of Rs. 10 lakhs on account of early termination of the agreement. Issue No. 2 is decided accordingly.

20. The next claim made by the plaintiff is referable to issue No. 4 which reads as follows:

Whether the defendant is not liable to pay any amount incurred by the plaintiff for running the branch office of the defendant in Delhi? OPD.

21. This claim is founded upon Clause 3 of the agreement which reads as follows:

Total Co- establishment expenses at Delhi will be borne by the SOLE DISTRIBUTOR, such as Godown Rent, Godown Keepers Salary, Godown Watchman, Office Rent, Office Assistants Salary, Conveyance Expenses, Steno/ typing. Telephone Expenses, which are estimated @ Rs. 30,000/- (Thirty thousand only) per month.

In case, the Co. fails to send goods to the SOLE DISTRIBUTOR and its associate firms Shri Shyam Rolling Mills & Agarwal Metal Corporation to the extent of at least Rs. 20,00,000/- (Rs. Twenty lacs only) per month then the liability of the SOLE DISTRIBUTOR to pay the Company shall be responsible for the same. The Co. Delhi branch office premises is owned by the SOLE DISTRIBUTOR.

22. The case of the plaintiff in support of this claim is that though the plaintiff had agreed to bear the establishment expenses quantified at about Rs. 30,000/- per month, but in case the defendant company failed to send the goods to the plaintiff and its other constituents to the extent of at least Rs. 20 lakhs per month, then the liability of the plaintiff distributor to pay the company branch expenses would stand reduced proportionately and that the defendant would be liable for the same. The plaintiff states that after 1.4.1992, the defendant did not supply and sell the goods worth about Rs. 20 lakhs per month as had been agreed. Consequently, the defendant became liable to pay the expenses incurred by the plaintiff in running the branch office of the defendant company at Delhi. In support of this claim, the plaintiff relies on Exhibit PW-1/14 dated 20.5.1992 which tabulates the various supply orders executed, and not executed, by the defendant between the period 01.1.1992 to 06.05.1992 and also relies on Exhibit PW-1/179 dated 31.3.1993 which also tabulates the various orders placed, executed and not executed by the defendant during the period 23.05.1992 to 28.02.1993. Mr. Gupta submits that the said claim is being made for the period 1.4.1992 onwards and upto May, 1993. The orders executed after 1.4.1992 and upto February 1993, in my view are only relevant since the last order placed by the plaintiff with the defendant was dated 28.2.1993. As is evident from Exhibit PW-1/179, plaintiff did not place any orders for the months of March, April and May, 1993 and, therefore, would not be entitled to claim any expenses incurred for the months of March, April and May, 1993. The period for which the plaintiff would be entitled to claim partial expenses from the defendant by placing reliance on Clause 3 of the Distributorship agreement would be from 1.4.92 to 28.2.1993 which translates to eleven months. The minimum purchase orders that the defendant should have executed in the eleven month period so as to ward off any liability under Clause 3 of the agreement would have been Rs. 20,00,000 x 11 = Rs. 2,20,00,000/-. The orders executed as aforesaid are only to the tune of Rs. 43.86 lakhs i.e approximately Rs. 44 lakhs. The orders executed therefore translate to only about 1/5th of the order which ought to have been executed. Consequently, the defendant would be liable to bear the

expenses to the extent of 80% i.e. 4/5th of the total expenses of Rs. 30,000/- per month. This translates to Rs. 24,000/- per month for a period of eleven months which adds upto Rs. 2,64,000/-. Accordingly I hold that the plaintiff is entitled to recover Rs. 2,64,000/- towards establishment expenses for the Delhi office of the defendant under Clause 3 of the Distributorship agreement. Issue No. 4 is decided accordingly.

23. The plaintiff makes a further claim of Rs. 8,67,759/- on account of loss suffered due to supply of sub-standard goods. plaintiff states that as per the agreement the duty was cast upon the defendant to supply the goods in strict conformity with the technical specifications communicated by the plaintiff. The plaintiff also claims that there was a usual practice between the parties to either give credit on account of defective goods or to adjust the amount paid for defective goods towards other bills whenever defendant company delivered goods which were strictly not in conformity with the order placed. It is alleged that the defendant company has not settled the claims of plaintiff towards the quality complaints since 01.01.1992. PW-1, Sh. S. N. Aggarwal, in his testimony has stated that some of the goods supplied by the defendant through its Delhi branch were rejected. The intimation regarding rejection of the goods along with copies of the respective test reports were sent to the defendant. He has proved on record various communications and invoices in respect of which the goods were rejected. He has also proved on record the various test reports in relation to the defective goods. I may note that though the affidavit towards examination-in-chief of Mr. Sunil Kapoor of Ess kay Metallurgical Laboratory was filed by the plaintiff, the same has not been tendered in evidence as the said witness has not appeared before the Court. Since PW-1 is not the author of the said test report, these report cannot be taken to be proved. The plaintiff relies upon Exhibit PW-1/21, being a debit note for quality compliance stated to have been issued on 31.5.1993 for Rs. 8,61,759/-. He also relies on PW-1/15 issued by Shri J.N. Baad, Director Technical dated 20.5.1992 wherein he states that he has personally seen and accepted most of the forged rounds lying in the plaintiffs godown. He further states that he is sorry to state that practically all the supplies have ultrasonically failed. He also relies on Exhibit PW-1/184 issued by Sh. J.N. Baad, General Manager, Finance and Administration of the defendant dated 30.5.1983 wherein the defendant acknowledges the serious quality problems and untimely supplies against the pending orders.

24. Since the test reports have not been duly proved on record, and it was absolutely essential for the plaintiff to have done so to be able to sustain this claim, I am of the view that the plaintiffs claim for damages on account of supply of defected goods cannot be sustained. I may also note that the claim is founded upon a circular dated 7.1.1993 allegedly issued by the Delhi Alloys Steel Traders Association (regd.) which gives the rates for sub-standard materials as being discounted by 18 to 28%. Even this circular has not been proved on record. I accordingly hold that the plaintiff is not entitled to any amount on account of the alleged supply of sub-standard goods by the defendant. Issue No. 5 is decided

accordingly.

25. Coming to issue No. 6, since the transaction between the parties was commercial, in my view the plaintiff is entitled to claim interest. The plaintiff has made a claim for interest at the rate of 12%. In my view, considering the fact that the defendant is a sick company, interest at the rate of 8% per annum would meet the ends of justice. Accordingly I hold that the plaintiff would be entitled to claim interest from the date of filing of the suit till realization at the rate of 8 % per annum.

26. So far as issue No. 7 is concerned, I am not inclined to decide the same in favour of the plaintiff and to require the defendant to render accounts in respect of the alleged sales made by the defendant in Northern India. PW-1 in his testimony has named a few firms to whom the defendant allegedly made direct supplies in contravention of the distributorship agreement. However no details of such alleged supplies was even furnished. No witness from any of these firms was summoned by the plaintiff. There is no basis for the plaintiff to assume that goods were directly supplied by the defendant to any of these firms or to any other firm. No material has been placed on record. Accordingly I hold that the defendant is not liable to render accounts to the plaintiff for any period.

27. Mr. Gupta, on instructions of Mr. S.N. Aggarwal, who is present in Court that the plaintiff does not press the relief for permanent injunction against the defendant as claimed in the plaint. 28. In view of the aforesaid, the suit is decreed in favour of the plaintiff and against the defendant for a sum of Rs. 25,36,975/- along with interest at the rate of 8% per annum from the date of filing of the suit till realisation. However, the decree shall not be executed without obtaining permission of the BIFR. plaintiff shall be entitled to costs.

