(2015) 04 DEL CK 0018

In the Delhi High Court

Case No : CS(OS) 4033/2014 and I.A. No. 26281 of 2014

Umesh Yarn Agencies APPELLANT

Vs

Mahaveer Forgings Pvt. Ltd. and Others RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 2(3), Order 37 Rule 37
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 4 AD 625

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Bharat Gupta, for the Appellant

Final Decision : Disposed off

Judgement

Hima Kohli, J.

1. The plaintiff has instituted the present summary suit under Order XXXVII of the CPC, praying inter alia for recovery of a sum of Rs. 49,92,857/- along with interest and costs. Counsel for the plaintiff submits that summons were issued in the suit in the prescribed format, vide order dated 23.12.2014, returnable before the Joint Registrar on 20.2.2015. On 20.2.2015, proof of service had been filed. However, the tracking report of the summons sent by speed post had not been filed. As a result, the case was adjourned by the learned Joint Registrar for 16.3.2015.

2. On 16.3.2015, it has been recorded that the defendants have been duly served and the affidavit of service was filed by the plaintiff with a tracking report. Despite the same, none had appeared on behalf of the defendants and nor have they filed their memo of appearance within the time prescribed under Order XXXVII of the CPC. Same is the position even today.

3. The matter was passed over on the first call to await the presence of the counsel for the defendants. Neither the defendants nor their counsel is present

on the second call.

4. Counsel for the plaintiff states that in view of the aforesaid position, the plaintiff is entitled to a decree under Order XXXVII Rule 2(3) of the CPC.

5. The plaintiff claims to be a registered partnership firm and the present suit has been instituted by Mr. Darshan Kumar Garg, one of the partners of the said firm. A copy of the certificate of registration of the plaintiff firm has been filed with the list of documents. The plaintiff firm is stated to be engaged in the business of sale and purchase of all kinds of yarns. In the year 2012, the defendants No. 2 and 3 representing themselves to be the Managing Director and Director of the defendant No. 1 company had approached the plaintiff for sale/ purchase of yarn. It is averred in the plaint that all the sale and purchase transactions between the plaintiff and the defendants were conducted through a contract based on certain terms and conditions as contained in the invoices raised by the plaintiff. It was agreed between the parties that the plaintiff would supply goods to the defendant No. 1 and the price of the goods would be paid within eight days from the date of dispatch and in case of any default/delay in payment, interest would be charged @ 24% per annum till the entire payment is received by the plaintiff. It is stated by learned counsel for the plaintiff that the defendants No. 2 and 3 had offered a personal guarantee for the payments to be made by the defendant No. 1.

6. Learned counsel for the plaintiff states that the defendant No. 1 through the defendant No. 3, had duly acknowledged in writing a legally enforceable debt of Rs. 73,11,719/-, as per the ledger account maintained by the plaintiff, as on 31.3.2013. In support of the said submission, reliance is placed on the invoices raised by the plaintiff on the defendant from time to time and collectively filed with the list of documents at pages 15 to 55. It is stated that the copies of the invoices that have been filed with the list of documents are certified copies obtained from the court of the learned ACMM, Meerut, before whom the plaintiffs complaint case against the defendants under Section 138 of the Negotiable Instruments Act, 1881 is pending adjudication. He draws the attention of the Court to the statement of account in respect of the defendant No. 1 company maintained by the plaintiff in due course of business for the period w.e.f. 1.4.2012 to 31.3.2013, whereunder as on 22.3.2013, a sum of Rs. 73,11,719/- has been shown as lying to the credit to the plaintiff. Further, learned counsel draws the attention of the Court to the statement of account in respect of the defendant No. 1 maintained by the plaintiff firm for the financial year commencing from April, 2013 to 10.2.2014 that shows an opening balance of Rs. 73,11,719/ - and a dosing balance of Rs. 49,92,857/-.

7. It is stated on behalf of the plaintiff that the defendant No. 1 had paid a sum of Rs. 18.50 lacs to the plaintiff during the financial year commencing from April, 2013 to 10.2.2014, as reflected in the statement of account. The details of the payments received by the plaintiff have also been set but in a tabulated statement contained in para 6 of the plaint. It is submitted that on 15.6.2013,

the plaintiff had purchased goods worth Rs. 14,07,507/- from the defendant No.l. Subsequently, amounts to the tune of Rs. 38,645/- and Rs. 9,00,000/- had become due and payable by the defendant No. 1 on account of rate difference and interest respectively and after adding the said amounts and reducing the sum of Rs. 14,07,507/- from the outstanding amount due and payable by the defendant No. 1 to the plaintiff a sum of Rs. 40,92,857/- was due and payable by the defendants to the plaintiff as on 31.12.2013. Adding to the interest component of Rs. 9,00,000/- calculated @ 24% p.a. to the aforesaid amount, the total amount due and payable by the defendants to the plaintiff comes to Rs. 49,92,857/-.

8. Learned counsel submits that in acknowledgement of the aforesaid debt, the defendant No. 1 had issued two cheques for Rs. 24,95,000/- and Rs. 24,97,857/- in favour of the plaintiff, as per details mentioned in para 8 of the plaint. When the aforesaid cheques were deposited by the plaintiff on 2.1.2014, in its bank account maintained with the Standard Chartered Bank at Barakhamba Road, Delhi, the same were returned unpaid with the remark "insufficient funds". The certified copies of the Return Memos dated 4.1.2014, issued by the plaintiffs bank have been filed alongwith the list of documents. Immediately thereafter, the plaintiff had issued a legal notice dated 13.1.2014 to the defendants calling upon them to pay a sum of Rs. 49,92,857/- along with interest @ 24% p.a., being the total amount of the dishonoured cheques, failing which the defendant was warned that the plaintiff would be compelled to initiate the legal proceedings against them. A copy of the legal notice dated 13.1.2014 along with the proof of dispatch through speed post and the tracking report obtained from the postal authorities has been filed alongwith the list of documents.

9. It is submitted by learned counsel for the plaintiff that neither did the defendants respond to the aforesaid notice, nor did they pay the value of the dishonored cheques. Resultantly, the plaintiff had to file a complaint case against the defendants under Section 138 of the Negotiable Instruments Act, 1881, which is pending consideration before the learned Metropolitan Magistrate at Meerut, U.P. and is listed on 27.4.2015, for summoning the defendants. Simultaneously, the plaintiff has filed the present summary suit under Order XXXVII CPC for a decree of the admitted amount, based on the two dishonoured cheques issued by the defendant No. 1, totalling to Rs. 49,92,857/-.

10. As noted above, despite the summons being served upon the defendants as prescribed in law, they have failed to enter appearance by filing their memo of appearance. As a result, the averments made in the plaint being unopposed are deemed to be correct. The Court has perused the averments made in the plaint and examined the documents filed by the plaintiff and is satisfied that the plaintiff is entitled to a decree of Rs. 49,92,857/-, along with interest @12% p.a. from the date of institution of the present suit, till realization. The plaintiff is also held entitled to costs of the suit. Decree sheet be drawn up accordingly.

11. The suit is disposed of, along with the pending application. File be consigned

to the record room.

