Uttam Kumar Pansari Prop M/S Sanskriti ... vs Uttara Foods And Feeds Pvt Ltd on 3 December, 2024

BEFORE THE COURT OF SH. SURINDER S. RATHI, DISTRICT JUDGE
(COMM.)-11 CENTRAL, THC, DELHI

CS Comm. No.647/2021

Uttam Kumar Pansari
Proprietor M/s Sanskriti Traders
At: 2257/9, Gali Raghunadan,
Naya Bazar, Delhi-110006
Also At: 2735/15, Mohan Palace,
Naya Bazar, Delhi-110006 .....Pla

Vs.

M/s Uttara Foods and Feeds Pvt. Ltd.
Venkateshwara House, S.No114/A2, Pune
Sinhgad Road, Pune-411030 .....Defenda

Date of Institution	:	22.02.2021
Date of Final Arguments	:	03.12.2024
Date of Judgment	:	03.12.2024
Decision	:	Decreed

Judgment

1. This suit is filed by plaintiff for recovery of Rs.86,29,646/- alongwith interest @ 18% per annum as unpaid dues of goods sold.

Case of the Plaintiff

2. Case of the plaintiff as per plaint and the documents filed is that he is proprietor of M/s Sanskriti Traders at Naya Bazar, Delhi and is in the business of trading of Soya Maze and related goods. Defendant which is said to be a duly incorporated Private Ltd. Company at Pune, Maharashtra approached him in early 2014 for purchase of Soya and Maze in bulk quality for supply at their Varanasi, UP office. Plaintiff was told that the defendant is a subsidiary of BH Group which own brand name Venky's

and that payments would be made within 15-30 days and in case of delay interest @18% would be charged.

3. Plaintiff started carrying out sales with effect from 17.04.2014 onwards and up to 01.02.2018 sales were carried out by way of 103 invoices having a cumulative value of Rs.8,91,73,159/-. Goods were delivered at the address requested by the defendant to their satisfaction and all the sales were made through invoices. Plaintiff was maintaining a ledger of

all the sales made and payments received on account. There was a debit balance of Rs.2,57,63,423/- as in May 2015. When the dues were not cleared representatives of the defendant visited him at his office and gave a letter dated 15.05.2015 assuring him that 40% of this debit balance would be cleared by 26.06.2015 and remaining would also be cleared in due course. Some part payments were made but complete payments were not cleared despite this assurance and principal outstanding as in February 2018 is Rs.7,32,620/- and interest component was Rs.78,97,026/- taking the total outstanding to Rs.86,29,646/-.

4. It is pleaded that defendant used to make payments in HDFC Bank Chandni Chowk, account of plaintiff and last payment of Rs.2,25,120/- was received on 17.02.2020. When the dues were not cleared plaintiff was constrained to issue legal notice on 21.09.2020 whicih was neither replied nor complied. Plaintiff approached Central DLSA for Pre-Institution Mediation under Section 12A of Commercial Courts Act, 2015 where defendant did not appear and Non-Starter Report dated 11.02.2021 was issued. Plaintiff claims that cause of action arose on 17.02.2020 when last part payment was made and thereafter on 21.09.2020 when legal demand notice was made. In this backdrop, suit in hand is filed for following reliefs:

Prayer:

i. Pass a decree in favour of plaintiff and against the defendant to recove amount of Rs.86,29,646/- along with additional interest @18% per annum t realization;

ii. Pendente lite and future interest @18% p.a. may also be granted in favour plaintiff and against the defendant from the date of the institution of t realization;

iii. Cost of the suit may also be awarded in favour of the plaintiff and agai defendant.

iv. Any other or further relief which this Hon'ble Court may deem fit and pro also please be awarded in favour of plaintiff and against the defendant.

5. Summons of the suit was served upon the defendant and defendant entered apperance on 22.02.2022 through Mr. Anand Parashar, Advocate and filed WS.

Defendant's Case

6. Case of the defendant as per WS and the documents filed is that the suit of the plaintiff deserves to be dismissed on the ground that plaintiff has not approached this Court with clean hands. It is pleaded that there was no agreement between the parties that defendant would pay interest to the plaintiff and that the terms contained in the invoices are not binding on the defendant. Dismissal of the suit is also prayed on the ground that it is barred by limitation. It is pleaded that there was no running account between the parties and no payment was made on running account basis and that all payments were made on invoice basis during the year 2014 to 2018. However, during the course of arguments Ld. Counsel for defendant submits that actually payments were being made invoice wise only

initially during the year 2014-15 but subsequently payments were being made on account. This plea shows that contents of para 3 of the WS are factually incorrect and calls for taking of action against the AR and defendant company for perjury by issuance of notice under Section 379 BNSS (Section 340 Cr.PC).

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7. It is pleaded that the last invoice is dated 01.01.2018 and the suit is filed in February 2021 and hence it is time-barred. Objection of this Court having territorial jurisdiction is also taken.

8. In its reply on merits, it is admitted that plaintiff is proprietor of M/s Sanskriti Traders at Naya Bazar, Delhi and is a trader of Soya and Maze. It is denied by the defendant company that its representatives visited in plaintiff's office in 2014 for purchase of goods. It is rather pleaded that it is plaintiff who approached the defendant at their Varanasi office while claiming that plaintiff firm has its base in Varanasi and that he can supply Soya and Maze as per order. Defendant denied that they assured that payments would be made in 15-30 days. Defendant admits that the first sale was carried out on 17.04.2014 by the plaintiff at defendant's Varanasi office but it is reiterated that no order was placed with the plaintiff at Delhi. Defendant company has not denied that plaintiff carried out sale by way of 103 invoices having a cumulative value of Rs.8,91,73,159/-. However, it is reiterated that all payments were made on invoice basis and in support of this plea defendant has placed its own ledger on record. It is denied that any assurance was given that payment would be made before 30 days or that it was agreed that plaintiff is entitled to 18% interest on the same. It is also denied that defendant ever agreed that in case of dispute Delhi Courts will have jurisdiction. It is pleaded that it is for this reason only that between 2014 to 2021 no claim of interest was raised by the plaintiff.

9. Defendant deny plaintiff's claim that they were irregular in making payments or that they visited plaintiff's office on 15.05.2015 for settlement of dues. However, defendant admits issuing letter dated 15.05.2015 acknowledging debit balance of Rs.2,57,63,423/- and that 40% would be paid on or by 25.06.2015 and remaining 60% shall be paid

under a schedule. It is denied that the word Varanasi mentioned with the plaintiff's firm in the letter was added by them inadvertantly. It is admitted by the defendant that as in February 2018 there was a debit balance of Rs.7,31,666/- which they were supposed to pay to the plaintiff but it was the plaintiff who was not accepting the full and final payment in order to harass and pressurise the defendant. As such defendant stopped carrying out further purchase from the plaintiff as a result of which plaintiff filed the suit in hand for seeking exorbitant interest component of Rs.86,29,646/-. With these pleas dismissal of the suit was prayed.

10. In the affidavit of admission denial to the plaintiff's documents defendant company has denied the GST registration certificate, the ledger, the legal

notice and postal receipts. It is interesting to observe that even though the legal notice was sent not only at the registered address of the defendant company but also at three other addresses through registered post and a presumption under Section 27 General Clauses Act is liable to be drawn qua the same but still defendant company is denying receipt of the same which again appears to be undue refusal to admit a document.

11. It is surprising to observe that even though in the body of the WS defendant has admitted that letter dated 15.05.2015 was issued by its employees to the plaintiff but even this document has been denied in the affidavit of admission denial. An oral plea is made that defendant is denying correctness, existence, execution, issuance and custody of this letter despite admitting it in the pleadings simply because they issued it and handed it over to the plaintiff on his request. This appears to be a contradictory plea and calls for action against the defendant under Order 11 Rule 4(6) CPC which provides that as and when a party unduly refuses to admit a document it shall be imposed exemplary cost. However, defendant company has accepted all the 103 invoices filed and relied by

the plaintiff. Defendant has placed on record its own ledger but the same has been partially denied by the plaintiff with a plea that it does not reflect entries of interest due and payable by it to the plaintiff.

Replication

12. Separate replication was filed by the plaintiff wherein he reiterated the pleaded case and denied the contentions of the defendant.

13. Upon completion of pleadings plaintiff moved an application under Order 12 Rule 6 CPC which was allowed by Ld predecessor vide order dated 05.12.2023 and a preliminary decree of Rs.7,31,666/- was passed with a direction that the payment be made on or by 10.01.2024 and on failing which plaintiff shall be entitled to 9% interest. Court is apprised that the payment was made with due interest. As far as remaining suit claim is concerned, following issues were identified by Ld. Predecessor on 14.12.2023:

Issues:

i. Whether the plaintiff is entitled to a decree for recovery of Rs.78, against the defendant? OPP

ii. Whether the plaintiff is entitled to interest, if so, at what rate an period? OPP

iii. Relief

14. To prove his case plaintiff stepped into the witness box as PW1 Uttam Kumar Pansari. Vide affidavit Ex.PW1/A he deposed on the lines of plaint and exhibited following documents:

i. True Copy of Registration Certificate is Ex.PW1/1;
ii. The photocopies of bills are Ex.PW1/2 (colly.).
iii. True attested copy of sheet is Ex.PW1/3;
iv. Certificate under Section 65B of Indian Evidence Act, 1872 is Ex.PW1/4;
v. The copy of letter issued by the defendant is Ex.PW1/5;
vi. The office copy of Legal notice dated 21.09.2020 is Ex.PW1/6;
vii. Postal receipts are Ex.PW1/7 (Colly.);
viii. Non-Starter Report dated 11.02.2021 is Ex.PW1/8.

15.He was crossexamined at length by Ld. Counsel for defendant company wherein he stated that the business with the defendant actually started

between 1998 and 1999 but the regular supply started from 2014 onwards when Shashi Bhushan, employee of the defendant approached him in February 2014. He denied the suggestion that no employee of defendant visited plaintiff at his Delhi office or that he approached the defendant at their Varanasi office. He accepted the suggestion that all the goods were supplied at Varanasi, UP. He reiterated that plaintiff's employees used to visit his office in Delhi not only for placing orders but also for approving the samples. He accepted the suggestion that the word Varanasi is mentioned in the invoices Ex.PW1/2 (colly.) as the address of the defendant as also for place of supply. He accepted that other than terms printed on the invoices there was no written agreement qua rate of interest payable by the defendant.

16.He denied the suggestion that defendant used to make payment invoice wise and not in round figures on account basis. He accepted that till such time defendant continued to make payment plaintiff did not demand any interest. He clarified that he is claiming interest only from 2015 onwards when defendant agreed to pay up debit balance of Rs.2.50 crores. He denied the suggestion that defendant has no office in Delhi. He accepted that the letter dated 15.05.2015 Ex.PW1/5 carries no reference of payment of interest.

17.On the other hand defendant examined DW1 Vinay Goyal its AR and North Zone Administrative officer. Vide affidavit Ex.DW1/A he deposed on the lines of WS and exhibited following documents:

i. Copy of Resolution dated 31.08.2020 is Ex.DW1/1;
ii. Copy of Letter of Authority dated 28.09.2020 is Ex.DW1/2;
iii. Authority Letter dated 26.11.2021 is Ex.DW1/3.
iv. Copy of Ledger Account is Ex.DW1/4.

18.An objection was taken by the plaintiff on exhibition of ledger Ex.DW1/4 claimed to be maintained by defendant company qua business carried out by it with the plaintiff. Submissions of both the sides heard on this issue.

19.The law in this regawrd is well settled. In commercial courts, a new provision has been inducted in the form of Order 11 Rule 6 CPC for proving the electronic record which is reproduced hereunder for ready reference:

Order 11 Rule 6 CPC: Electronic records.-

(1) In case of disclosures and inspection of Electronic Records (as defined in the Technology Act, 2000), furnishing of printouts shall be sufficient compliance of t provisions.

(2) At the discretion of the parties or where required (when parties wish to rely video content), copies of electronic records may be furnished in electronic form e addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on be filed by a party shall specify-

(a) the parties to such Electronic Record;

(b) the manner in which such electronic record was produced and by whom;

(c) the dates and time of preparation or storage or issuance or receipt of each electronic record;

(d) the source of such electronic record and date and time when the electronic r was printed;

(e) in case of email ids, details of ownership, custody and access to such email

(f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such dat the computer or computer resource;

(g) deponents knowledge of contents and correctness of contents;

(h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction such malfunction did not affect the contents of the document stored;

(i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic shall not be required to give inspection of electronic records, provided a declara made by such party that each such copy, which has been produced, has been made fro original electronic record.

(5) The Court may give directions for admissibility of Electronic Records at any s proceedings.

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(6) Any party may seek directions from the Court and the Court may of its motion directions for submission of further proof of any electronic record including meta logs before admission of such electronic record.

20. Admittedly, defendant did not file any affidavit under Order 11 Rule 6 CPC. Upon promulgation of Information Technology Act in the year 2000 Section 65B was introduced for admissibility of electronic records so as to grant admissiblity to electronic record. Submission of an affidavit under Section 65B of Indian Evidence Act as per format provided under Section 65B (4) is a prerequisite. For ready reference the same is reproduced hereunder:
Section 65 B : Admissibility of Electronic Records

(4) In any proceedings where it is desired to give a statement in evidence by vir
this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing
manner in which it was produced;
(b) giving such particulars of any device involved in the production of that
electronic record as may be appropriate for the purpose of showing that the
electronic record was produced by a computer;
(c) dealing with any of the matters to which the conditions mentioned in sub-
section (2) relate,
and purporting to be signed by a person occupying a responsible official
position in relation to the operation of the relevant device or the management
of the relevant activities (whichever is appropriate) shall be evidence of any
matter stated in the certificate; and for the purposes of this sub-section it
shall be sufficient for a matter to be stated to the best of the knowledge and
belief of the person stating it.

21.The law in this regard is well settled. In case titled Anvar P.V. Vs. P.K.
Basheer, 2014 Latest Caselaw 592 SC wherein Hon'ble Supreme Court
held as under:

"22.....An electronic record by way of secondary evidence shall not be
admitted in evidence unless the requirements under Section 65-B are satisfied.
Thus, in the case of CD, VCD, chip etc., the same shall be accompanied by the
certificate in terms of Section 65-B obtained at the time of taking the docume
without which, the secondary evidence pertaining to that electronic record, is
inadmissible."

(Emphasis Supplied)

22.In case titled Eli Lilly and Company and Anr. Vs. Maiden
Pharmaceuticals Limited, 2016 Latest Caselaw 6858 Del wherein
Hon'ble Delhi High Court held as under:

"17.....At the time when documents including electronic record are filed, t
do not constitute evidence and become evidence only when they are tendered
into evidence and thus as per the aforesaid paragraphs also, the afffidavit
under Section 65B has to be filed at the time of tendering the electronic reco
into evidence.....

18. Through the ratio of Anvar P.V. supra, to me, appears to require the
certificate/affidavit under Section 65B of the Evidence Act to accompany the
electronic record."

23.In so far as not only defendant company has failed to file any Section 65B
alongwith its electronic record and no such attempt was made by the
defendant to address this legal anomaly despite an objection raised by Ld.
Counsel for plaintiff during crossexamination of DW1 the ledger
Ex.DW1/4 was deexhibited and was given Mark D1.

24.In his cross-examination DW1 stated that he is serving with defendant
since 2012. He added that the defendant company maintained separate file

containing invoices ledger and related documents qua each parties. He accepted that no specific contract was executed between the parties. He accepted that in the course of business defendant used to carry out purchase from the plaintiff and none of the 103 bills are disputed. He denied the suggestion that defendant company did not dispute the footnotes qua interest @18% available in each invoice apart from jurisdiction clause for Delhi Courts. He stated that letter dated 15.05.2015 was issued by defendant on the request of plaintifff. He denied that the ledger filed by the defendant is a manipulated document. He accepted that a correction entry of Rs.46,36,775/- was made without referring reason thereof in the WS. He accepted that from 01.04.2016 onwards defendant company is making payments to the plaintiff only in installments and not on each invoice basis. He could not disclose any Varanasi address of the

plaintiff but added that plaintiff told them that he has a godown at Varansi. He accepted that company used to make payments to the plaintiff in his bank account.

25. I have heard arguments of Sh. Ankit Kalra and Sh. S. K. Sharma, Ld. Counsels for plaintiff and Sh. Anand Parashar, Ld. Counsel for defendant. I have perused the case file carefully.

26. Now I shall dispose of individual issues framed in this case.

Issue No.1:

i. Whether the plaintiff is entitled to a decree for recovery of Rs.78, against the defendant? OPP

27. At the onset it would be appropriate to cull out the facts admitted by the parties in the pleadings, affidavit of admission denial and during the course of trial as well as final arguments. It is admitted case of both the sides that they had business relations since at least February 2014 whereunder plaintiff as a proprietor of M/s Sanskrti Traders at Naya Bazar Delhi-110006 used to sell and supply Soya and Maze in bulk quantity to the defendant, a Pune based company. All the supplies were made to their branch at Varanasi, UP. It is also admitted by both the sides that total sale was made by plaintiff by way of 103 invoices drawn between dates 17.04.2014 to 01.02.2018 at a cumulative value of Rs.8,91,73,159/-. It is also admitted that there is no dispute betwen the parties either qua short supply or quality of the goods sold. Admittedly, both the sides were maintaining a ledger account.

28. It is further admitted by both the sides that on 15.05.2015 employees of the defendant held a meeting with the plaintiff where they issued a letter Ex.PW1/5 whereby they acknowledged their liability and outstanding debit balance of Rs.2,57,63,423/- and assured the plaintiff that 40% of the same would be paid on or by 25.06.2015 and remaining 60% too would be paid in a scheduled manner. Admittedly, defendant continued to make

on account payments at least w.e.f. 01.04.2016 onwards and not on invoice basis and that as in February 2020 the debit balance was reduced to mere Rs.7,31,666/- . However, there is a slight difference in the amount

as according to plaintiff the debit balance is Rs.7,32,620/-.

29. As referred supra a Preliminary Decree already stands passed under Order 12 Rule 6 CPC in favour of plaintiff and against the defendant for Rs.7,31,666/- and the same also stands paid now the only dispute which needs to be adjudicated is the pre-suit interest component i.e. Rs.78,97,026/- and pendente lite and future interest @18% per annum.

30. While opening his submissions Ld. Counsel for plaintiff submits that the business relations between the parties are admittedly based on oral contract and no separate written agreement or MoU was signed. It is argued that all sales were made on the basis of orders received by the plaintiff at his Naya Bazar office. Although the plaint is silent as to how the orders were received but in the crossexamination PW1 stated that employees of the defendant company used to visit his ofice in Delhi and approved the samples before the sales and supplies were carried out. It is argued that once the defendant company has admitted all the 103 invoices Ex.PW1/2 (colly) not only in the pleadings but also in the affidavit of admission denial. The terms and conditions contained in these invoices which provide for making of payments within 5-15 days or is provided for charging of 18% interest has become a binding contract.

31. The relevant term reads "payment must be paid within 5/15 days otherwise an interest @18% per annum will be charged extra". It is submitted taht even though the invoice provided credit limit of 15 days but owing to the fact that defendant was a regular puchaser of goods plaintiff allowed it 30 days credit period.

32. Likewise, it is submitted that on the top of each invoice it is clearly mentioned "subject to Delhi jurisdiction". It is argued that having received the entire principal component the plaintiff is entitled to interest on all the late payments made by the defendant and hence plaintiff has a right to decretal of the balance suit amount. In order to show as to how plaintiff arrived at the interest component of Rs.78,97,026/- attention of this Court is drawn to interest calculation sheet Ex.PW1/3 consisting of four pages whereby it is shown that interest is charged w.e.f. 01.04.2015 on an opening debit balance of Rs.2,65,87,887/-. However it is accepted that plaintiff that he has not placed on record the ledger maintained by him to the business carried out with the defendant. It is surprising and rather astonishing to observe that primarily this suit is filed only on the basis of interest calculation sheet which has been created only for the purpose of filing the suit and was admittedly not maintained in the due course of business. In case the plaintiff was actually desirous of demanding interest on delayed payments on each delayed invoice he must have made debit entries for accrued interest in each FY between 2014 to 2021 and would have proved his ledger for FY 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21. I do not find any strength in the plea that instead of ledger plaintiff has filed and exhibited 103 invoices because bare perusal of all these invoices nowhere shows as to on what date the payments qua them were made.

33. In the absence of ledger maintained in due course of business plaintiff is

per se unable to satisfy the Court as to payment of which invoice was delayed by what period. The interest calculation sheet at the best is assessment of accrued interest as per plaintiff as borne out of the entries in the ledger and is nothing but a calculation sheet and not an evidence. Section 28 of Bhartiya Sakshya Adhiniyam, 2023 (Section 34 of

Indian Evidence Act) do provide some credence to the books of accounts regularly kept in the course of business. For ready reference the same is reproduced hereunder:

Section 28 of Bhartiya Sakshya Adhiniyam, 2023 : Entries in books of account including those maintained in an electronic form when relevant

"Entries in books of account, including those maintained in an electronic regularly kept in the course of business, are relevant whenever they refer into which the Court has to inquire, but such statements shall not alone b evidence to charge any person with liability.

Illustration:

A sues B for Rs.1,000/- and shows entries in his account books showing B t indebted to him to this amount. The entries are relevant, but are not suff without other evidence, to prove the debt."

34. An interest calculation sheet is admittedly not a book of account regularly

kept in the course of business. On the contrary the fact that the plaintiff has withheld the ledger and not placed this pivotal document on record calls for drawing of an adverse inference against the plaintiff under Section 119 of Bhartiya Sakshya Adhiniyam, 2023 (Section 114 (g) of Indian Evidence Act). For ready reference the same is reproduced hereunder:

Section 119 of Bhartiya Sakshya Adhiniyam, 2023: Court may presume existence of certain facts

Illustration

The Court may presume-

(g) That evidence which could be and is not produced would, if produced, be unfav the person who withholds it;

35. In case titled Krishan Dayal Vs. Chandu Ram, 1969 SCC Latest

Caselaw 133 Del while discussing the effect of withholding of material documents like account book it was observed that:

"Question then arises as to what is the effect of the withholding of materia account books. In this respect I find that according to illustration (g) und Section 114 of the Evidence Act, the evidence which could be and is not prod would, if produced, be unfavorable to the person who withholds it. The princ underlying the above illustration has been applied by their Lordships of the Supreme Court in cases wherein a party in possession of material document do not produce the same. It has accordingly been held that the non-production o

material document by a party to a case would make the Court draw an inferen
against that party, (see in this connection Atyam Veerraju and others v. Pec
Venkanna and others and Union of India v. Mahadeolal Prabhu Dayal.
The principle underlying illustration (g) under Section 114 of the Evidence
has also been applied to a suit for rendition of accounts wherein a party to
suit withholds material account books. A Division Bench of the Calcutta High
Court (Mookerjee and Panton, JJ.) in the case of Debendra Narayan Singh v.
Narendra Narayan Singh and others held:- "In a suit for accounts, the non-
production of account books by the party who has custody of them justifies t
presumption under Section 114(g). Evidence Act, that they have been withheld
because if produced, they would have been unfavorable to his case. If he is
plaintiff and is claiming accounts though withholding papers, his suit is li
be dismissed: Upendra Kishore v. Ram Tara Chand Ram v. Brojo Gobind Doss. If
he is the defendant who is liable to render accounts, the Court will proceed
the footing of evidence furnished by the plaintiff, and in doing so, may mak
reasonable presumptions against him".

36. In case titled Union of India Vs. Mahadeolal Prabhudayal, 1965 Latest

Caselaw 43 SC Hon'ble Supreme Court while discussing judgments
passed by Privy Counsel ruled that:
"If it is found that a party to a suit breaches its application to give full d
relevant facts and materials, the Court shall invoke the presumption attached
Section 114(g) of the Evidence Act."

37.Evidently plaintiff has not placed any proof to show that there was a delay in making of payment by the defendant which calls for imposing of 18% per annum interest but since the ledger maintained by the defendant company qua the plaintiff is on record, as per settled legal proposition the plaintiff is well within his rights to rely on ledger maintained by the defendant Mark D1 (Ex.DW1/4) qua the sales made by the plaintiff and payments made by the defendant. The law in this regard is well settled.

38.In case titled Purushottam v. Gajanan, 2012 SCC OnLine Bom 1176
Hon'ble Bombay High Court held as under:
"8. Therefore, in my opinion, as long as, the judgment and order in Wr
Petition No. 869 of 1997 is in force and admittedly not challenged by
of the parties, it was not open for the trial Court to allow productio
documents to confront the original defendant i.e. the petitioner herei
is different matter if the production is allowed for confronting the
witnesses of the party. This Court is not inclined to express any opin
about the said aspects and it is left open for the parties to take app
proceeding in that respect. However, as concluded by this Court in Wri
Petition No. 869 of 1997, the defendant i.e. petitioner herein cannot

confronted by the plaintiff by producing documents during the course
crossexamination..."
(Emphasis Supplied)

39.In case titled Mohammed Abdul Wahid Vs. Nilofer & Anr., 2023

Latest Caselaw 926 SC Hon'ble Supreme Court held as under:

26. "To conclude the issue at hand- The freedom to produce documents for eith
the two purposes i.e. cross examination of witnesses and/or refreshing the me
would serve its purposes for parties to the suit as well. Additionally, being
precluded from effectively putting questions to and receiving answers from ei
party to a suit, with the aid of these documents will put the other at risk o
able to put forth the complete veracity of their claim- thereby fatally compr
the said proceedings. Therefore, the proposition that the law differentiates
a party to a suit and a witness for the purposes of evidence is negated."

40. In case titled Miss T.M. Mohana v. V. Kannan, 1984 SCC Online Mad 145 Hon'ble Madras High Court held as under:

"That the production of documents for the purpose of cross-examination
can be availed only for a witness of a party and not the party themsel
an untenable argument. Also, that the "Plaintiff's witnesses" would no
be witnesses for the plaintiff, but also the plaintiff himself. "

41. Before appreciating the interest calculation sheet Ex.PW1/3 of the plaintiff with ledger Mark D1 filed by the defendant three issues deserve to be dealt with. Firstly whether this Court has territorial jurisdiction. Second whether suit is within limitation and third whether plaintiff is entitled to charge interest in terms of conditions provided in the foot of the invoices.

42. As far as territorial jurisdiction is concerned, the governing law is Section 20 CPC. For ready reference the same is reproduced hereunder:

Section 20 CPC: Other suits to be instituted where defendants reside or cause of action arises

Subject to the limitations aforesaid, every suit shall be instituted in Court
the local limits of whose jurisdiction-
(a) the defendant, or each of the defendants where there are more than one, a
time of the commencement of the suit, actually and voluntarily resides, or ca
on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the

commencement of the suit actually and voluntarily resides, or carries on bus
or personally works for gain, provided that in such case either the leave of
Court is given, or the defendants who do not reside, or carry on business, or
personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.
1[* * *]

2[Explanation].-A corporation shall be deemed to carry on business at its sol
principal office in [India] or, in respect of any cause of action arising at
where it has also a subordinate office, at such place.

(Emphasis Sup

43. The law on Section 20 CPC has been crystallised by Hon'ble SC in case titled ABC Laminart Private Ltd. and Anr. Vs. A P Agencies, Salem,

1989 Latest Caselaw 85 SC Hon'ble Supreme Court has ruled that in a contractual matter the jurisdiction of Court arises from four aspects:

(1) Where defendant resides or voluntary works for gain.
(2) Where the Contract is entered;
(3) Where the Contract is to be performed;
(4) Where moneys have to be paid under the contract.

44. Out of the four components as far as first part is concerned, admittedly defendant company is located in Pune, Maharasthra and the contract of sale was to be executed at Varanasi, UP. However, according to plaintiff oral contract was entered at his Naya Bazar, Delhi address and as per invoice Ex.PW1/2 running page 128 there is specific printed stipulation that the payment is to be made at HDFC Bank Chandni Chowk, Delhi. Hence, this is covered under four conditions propounded by Hon'ble Supreme Court and hence this Court has territorial jurisdiction.

45. As far as the objection qua limitation is concerned it is submitted by Ld. Counsel for the defendant that plaintiff is seeking recovery of interest, which according to the pleaded case itself was due and payable in the year 2014-15 itself while the suit in hand was filed in February 2021. It is submitted that this case is not a case covered under Article 1 of Schedule

attached to Limitation Act but is covered under Article 15 where an invoice is payable after the expiry of credit period.

46. On the contrary, it is submitted by Ld. Counsel for plaintiff that his is a case of continuation cause of action because sales were carried out right from 2014 to 2018 and regular payments were made on account and hence his case should be covered under Article 1 of Schedule Attached to Limitation Act. For ready reference Article 1, Article 14 & 15 of Schedule attached to Limitation Act, 1963 are reproduced hereunder:

Schedules to Limitation Act

Article	Description of suit	Period of limitation	Time from whi
1.	For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties	Three Years	The close of th last item admit entered in the be computed as
14.	For the price of goods sold and delivered, where no fixed period of credit is agreed upon	Three years	The date of goods.
15.	For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit	Three years	When the per

47. Once the plaintiff's case is found to be not covered under Article 1, it should by necessary legal implication fall under Article 14 & 15 where under the three years period of limitation starts from the date of delivery

of goods under Article 14 and starts from the date after expiry of initial Bill payment credit period under Article 15. Law in this regard is well settled by landmark judgment of Hon'ble Diovision Bench of High Court of Delhi in case title "Manish Garg Vs. East India Udyog Limited" decided by Division Bench led by HMJ A.K. Sikri and HMJ Arun Kumar in RFA decided on 30.03.2001. In this case, an appeal was filed against the Order of Ld. ADJ, wherein plaintiff's suit claim for Rs. 4 lacs against the unpaid dues of goods sold / supplied was partly dismissed by referring the bills to be time barred and only a decree of Rs. 36,404/- was

passed. For better understanding of facts, it would be appropriate to quote Para 2 of the judgement.

> "2.The plaintiff had filed the suit for recovery of amount against supply of g
> respect of various other bills as well. However, the learned Additional Distri
> Judge by impugned judgment and decree held that the claim in respect of these
> which were prior in time to the aforesaid bills, was time barred and thus reje
> rest of the claims and decreed the claim in respect of the aforesaid bills onl
> were found to be within limitation. The plaintiff has filed this appeal challe
> finding of the Trial Court holding rest of the claims as time barred."

48. In the Manish Garg Case, the plaintiff had filed suit qua recovery of sales

made with effect from 12.02.1994 onwards and the suit was filed on 15.02.1999. There was an agreement of 60 days credit period between the parties which attracted Article 15 of Limitation Act, 1963. Upon calculating the three years period back from the date of filing of the suit i.e. 15.02.1999, it was found that only five bills were found to be within the limitation. This can be understood as per the Para 3 of the judgement of Hon'ble Division Bench as under:

> "3.The plaintiff had filed statement of account (Exhibit Public Witness 1/5
> starts from 12/02/1994 and gives the details of various bills raised from t
> time when the material was supplied to the defendant. It also mentions vari
> payments made by the defendant to the plaintiff, credit of which has been g
> in the statement of account. Suit for recovery was filed on 15.02.1999. Art
> of the Limitation Act prescribes limitation for a suit filed for particular
> sold and delivered. Period of limitation is three years which is to be dete
> from the date of delivery of goods. However, as per the agreement between t
> parties, 60 days credit was to be given to the defendant for making payment
> Under, article 15 of the Limitation Act, the limitation starts from the dat
> expiry of fixed period of credit. On this reckoning by counting the period
> limitation of three years backward from 15.02.1999 when the suit was filed,
> trial Court held that claim in respect of aforementioned five bills only wa
> limitation."

49. The Division Bench led by HMJ Sh. A.K. Sikri discussed the

contentions raised by the plaintiff before the Trial Court in Para 4, as under;

> "4. The case of the plaintiff before the Trial Court was that entire claim wa
> the period of limitation in view of the provision of Article 1 of the Limitat
> inasmuch as it was a case of mutual, open and current account and the three y

limitation period was to start from the closing of the year in which the last admitted or proved is entered in the account. Plaintiff's submission was that payment was made on 26.07.1997 and the date of close of that year was

31.03.1998. The suit filed on 15.02.1999 was very much within the period of limitation if three years period is to be reckoned from 31.03.1998. This cont was rejected by Ld. Trial Court holding that provision of, article 1 of the Limitation Act had no application.

Before us, in this appeal, the Ld. Counsel for plaintiff/appellant l argument to the aforesaid aspect. The Ld. Counsel submitted that various paym made by the defendants would show that those payments were made on account inasmuch as there were certain payments in round figures and even odd figure payments did not tally with the amount mentioned in the bills from which it c clearly be inferred that payment did not relate to any specific bill but were account. We had summoned the record and perused the statement of account (Exb Public Witness 1/56) the genuineness of which is not in doubt. The perusal of statement of account confirms the truthfulness of the stand taken by the plaintiff/appellant. Therefore, to this extent there cannot be any dispute vi payment made by the defendant to the plaintiff were not in respect of specifi bills/supplies and could be treated as payment made on account. However, whether, Article 1 of the Limitation Act would still apply on the facts of th a question to be decided. To appreciate the controversy let us first re-produ provision of Articles-Description of period of limitation Time from which sui begins to run."

50. Upon discussing the facts in the Manish Garg's case, the Hon'ble Division

Bench came to the conclusion that in so far as it is not the case of shifting balances or mutual demands, there was no application of Article 1, the relevant portion of the judgement qua this conclusion is Para 8, same is reproduced hereinunder :-

"8. Thus for an account properly to be called Mutual account there must mutual dealing in the sense that both the parties come under liability u each other. In this case, this ingredient is not satisfied. It was simpl of the debtor and creditor only and not a case of mutual obligations whi will in the ordinary way result in enforceable liabilities on each side. Mutual Account is when each has a demand or right of action against the other."

51. Having concluded that the cited case is not covered under Article 1, the

Bench concluded that case is covered under Article 15 in so far as there was 60 days credit period contract between the parties. In such a situation, the Bench ruled that as and when the buyer makes lumpsum payments on account and does not pay bill wise, the seller like the plaintiff in cited case as well as in case in the hand has a right to adjust it against the oldest unpaid bill. Section 60 of Indian Contract Act, 1872 is very clear in this regard, same is reproduced hereinunder;

> "60. Application of payment where debt to be discharged is not indicated- the debtor has omitted to intimate, and there are no other circumstances in to which debt the payment is to be applied, the creditor may apply it at hi discretion to any lawful debt actually due and payable to him from the debt whether its recovery is or is not barred by the law in force for the time b the limitations of suits."

52. Plain reading of this statute shows that as and when in cases where payments are received without any indication or rider from the debtor then the creditor discretion to apply it against any lawful debt due and payable. The statue further provides that such payments can be adjusted even against the dues which are barred by limitation.
53. While concluding that the Hon'ble Division Bench led by Justice A.K. Sikri concluded that once a case is not covered in Article 1 then it covers under Article 14 and 15 and payments made in account can be adjusted against the oldest bill. This conclusion is arrived at Para 9. For ready reference the same is reproduced hereinunder;

> "9.Thus, applying the aforesaid principles, it clear that in the insta account in question was not mutual, open and current account not was i case reciprocal demands. The learned Trial Court was therefore right i holding that Article 1 of the Limitation Act did not apply. In fact in case payment was made by the defendant from time, as per, Section 60 o the Indian Contract Act, it was open to the plaintiff to adjust the pa received against any of the bill at his discretion. Therefore, in orde save limitation the plaintiff could adjust the payment made against th oldest bills. But Section 60 of the Contract Act would not extend limi period."
>
> (Emphasis suppl

54. In another judgment of Division Bench of Hon'ble High Court of Delhi, titled as "Bharath Skins Corporation Vs. Taneja Skins Company Pvt. Ltd., Latest Caselaw 6272 Del decided on 21.12.2011, the Division Bench heard an appeal against an order passed by Single Judge of Hon'ble High Court which dealt with a case where sales were made by way of invoices but the payments were not made as per individual invoices but only part payments were made on account in lumpsum and

the suit demanded the debit balance as per ledger maintained and not for non payment of specific invoices.
55. While critically analyzing the Order of single Judge, the Bench came to conclusion that Article 1 did not have any application in so far as the account was not "mutual, open and current account" but concluded that it was a "non-mutual, open and current account". While concluding so

the Bench observed:

> "19. In the instant case, the account between the parties was an open, runni
> non-mutual account".
> "20. In case of a running and non-mutual account between the buyer and selle
> when goods are delivered by the seller to the buyer, the value of the goods
> in the debit column and when amounts are paid by the buyer to the seller, th
> entered in the credit column. The difference is continuously struck in the c
> balance. In such a case, when the buyer defaults to make balance payment, th
> seller's action is not for the price of goods sold and delivered but for the
> at the foot of an account. Thus, Article 14 would have no application in sui
> recovery of money due on a running and a non-mutual current account between
> buyer and seller."

56. With above observations, the Division Bench concluded that in such cases where there are 'open, running but non-mutual accounts', Article 14 of the Limitation Act too would not apply. Having so concluded the Bench further observed in Para 24, same is reproduced hereinunder;

> "24. There being no Article in the Schedule to the Limitation Act, 1963, dea
> with suits for recovery of money due on running and current but non-mutual
> accounts, in such circumstances, the residual article viz. Article 113 appli
> such suits.

57. As such the Hon'ble Division Bench observed :-

> 25. Under Article 113, the period for limitation for filing a suit is three ye
> the same begins to run when the right to sue would accrue when claim was denie
> in response to the legal notice dated 26.06.1985 on 13.07.1985 but since Rs. 7
> was paid on 13.07.1985 and 24.07.1985 (Rs. 2000/- on the former date and Rs.
> 5000/- on the later date), limitation would commence from 24.07.1985. The suit
> being filed on 02.09.1985, governed for purposes of limitation by Article 113
> would be within limitation.

58. Evidently, the Hon'ble Division Bench allowed the period of limitation of three years to start not from the date of delivery of goods under the last

bill or expiry of credit period but from the date of last payment received on account.

59. Now upon inter-se comparison between the stand taken by Division Bench of Hon'ble High Court of Delhi in "Manish Garg Vs. East India Udyog Limited" in March 2001 with the stand taken by Hon'ble Division Bench in "Bharath Skins Corporation Vs. Taneja Skins Company Pvt. Ltd. in December 2011, it is found that the later judgment is per incurium. The facts in the Manish Garg case were identical to the fact in the Bharath Skins case, as also to the case in hand. The Division Bench of Hon'ble High Court of Delhi had taken a stand that in case such accounts which are not 'open, current and mutual', the calculation of limitation has to be carried as per Article 14 & 15 of Limitation Act. The conclusion arrived at in Judgment Bharath Skins, ought to have discussed the earlier stand taken & law crystallized, gave a contradictory finding that such cases

would be covered under residuary provision of Article 113.

60. It goes without saying that for a trial Court like the situation in which this Court find itself to set of two judgments passed by co-equal Bench of the same High Court are cited, it is the older judgement which shall prevail. The later judgment is apparently and evidently is per incurium. If the later Division Bench was desirous of altering and changing of law, it could have referred the matter to the Hon'ble Chief Justice of Delhi for constituting a Full three Judge Bench after giving its opinion for a need for review of dictum laid by Manish Garg's case.

61. For the foregoing reason, applying the celebrated principles of Interpretation of Law and binding judgments, this Court is bound to follow the dictum laid by the Division Bench of Hon'ble High Court of Delhi in Manish Garg Case as the binding law instead of Bharath Skins Case.

62. In case titled "Indian Oil Corporation Ltd Vs. Municipal Corporation & Anr" (1995) 4 SCC 96, Hon'ble Supreme Court categorically ruled that an earlier decision taken by the Court cannot be overruled by the co-equal Bench of the Same Court. Any deviation would be treated as misunderstanding of Law of Precedent.

63. In another case titled "N. Bhargavan Pillai by LR's & Anr Vs. State of Kerla" 2004, Latest Case law 291 SC, Hon'ble Supreme Court while discussing Law of Precedent ruled that the word in-curia literally means carelessness and in practice perincuriam is taken to mean ignoratiaum. It is also ruled that although it is a principal of English Courts but the same has been adopted by the Hon'ble Supreme Court of India & is now part and parcel of Doctrine of Precedent as a matter of law.

64. Five Bench of Judges of Hon'nle High Court of MP, in case titled

"Jabalpur Bus Operator Association VS State of MP", 2003(4) JCR 325, MP, 2003 (1) MPHT 226, has ruled that in case of conflict between two decisions of the Apex Court, Benches comprising of equal number of judges, decision of earlier Bench is binding unless explained by the latter Bench of equal strength, in which case the latter decision is binding, decision of a larger Bench is binding on smaller Benches. Therefore, the decision of earlier Division Bench, unless distinguished by latter Division Bench, is binding on the High Courts and the Subordinate Courts. Similarly, in presence of Division Bench decisions and larger Bench decisions, the decisions of larger Bench are binding on the High Courts and the Subordinate Courts. The common thread which runs through various decisions of Apex Court seems to be that great value has to be attached to precedent which has taken the shape of rule being followed by it for the purpose of consistency and exactness in decisions of Court, unless the Court can clearly distinguish the decision put up as a precedent

or is per incuriam, having been rendered without noticing some earlier precedents with which the Court agrees.

65. With regard to the High Court, a Single Bench is bound by the decision of another single Bench. In case, he does not agree with the view of the other Single Bench, he should refer the matter to the larger Bench. Similarly, Division Bench is bound by the judgment of earlier Division Bench. In case, It does not agree with the view of the earlier Division Bench, it should refer the matter to larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of latter Division Bench shall be binding. The decision of larger Bench is binding on smaller Benches.

Doctrine of "Stare-decisis":

The doctrine "Stare-decisis" commonly called "The doctrine of precedent" means adherence to decide cases on settled principles and not to disturb matters which have been established by judicial decisions.

66. Appreciating the facts of this case in the light of above settled legal proposition since there was no mutuality of claims plaintiff is not within his rights to claim that the suit is covered under Article 1. In the absence thereof evidently every invoice has to be treated as a standalone cause of action and limitation qua each one of them has to be calculated individually. In the case in hand, as on date, all the 103 invoices stand duly paid and only the interest component for delayed payment is being agitated, the law of limitation would apply right from the period when the cause of action is arisen. Accordingly, the interest payable for delayed payments during 2014-15, 2015-16 and 2016-17 are found to be barred by

limitation and only interest components which have accrued three years prior to filing of the suit i.e. w.e.f. 01.04.2017 onwards and not prior to 01.04.2017. Hence the interest components of 2015-16 of Rs.31,32,415/- and interest component of 2016-17 i.e. Rs.21,37,965/- i.e. total of Rs.52,70,380/- are found to be barred by limitation. Now the three interest heads of 2017-18 for Rs.14,34,482/-, of 2018-19 for Rs.8,01,595/-, of 2019-20 for Rs.2,97,356/- and of 2020-21 for Rs.93,213/- remains to be adjudicated.

Issue no. 2:

ii. Whether the plaintiff is entitled to interest, if so, at what rat which period? OPP

67. As regards the entitlement of the plaintiff to claim interest is concerned, Ld. Counsel for defendant submits that there was no written contract between the parties which could say that the defendant is liable to pay interest on delayed payments. It is submitted that although it is correct that in all the 103 invoices there is a stipulation of 18% interest but as per him an oral understanding has arrived at between the parties as per which defendant is not liable to pay interest.

68. Law in this regard is well settled. Even otherwise this submission is hit by Section 95 of Bhartiya Sakshya Adhiniyam, 2023 (Section 92 of Indian Evidence Act). For ready reference the same is reproduced

hereunder:

Section 95 of Bhartiya Sakshya Adhiniyam, 2023: Exclusion of evidence of oral agreement

> "When the terms of any such contract, grant or other disposition of property any matter required by law to be reduced to the form of a document, have bee proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument o representatives in interest, for the purpose of contradicting, varying, addi subtracting from, its terms:
>
> Proviso (1). -- Any fact may be proved which would invalidate any document, which would entitle any person to any decree or order relating thereto; such fraud, intimidation, illegality, want of due execution, want of capacity in contracting party, want or failure of consideration, or mistake in fact or l

> Proviso (2). --The existence of any separate oral agreement as to any matte which a document is silent, and which is not inconsistent with its terms, ma proved. In considering whether or not this proviso applies, the Court shall regard to the degree of formality of the document.
>
> Proviso (3). --The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contra grant or disposition of property, may be proved.
>
> Proviso (4). --The existence of any distinct subsequent oral agreement to re modify any such contract, grant or disposition of property, may be proved, e cases in which such contract, grant or disposition of property is by law req be in writing, or has been registered according to the law in force for the as to the registration of documents.
>
> Proviso (5). -- Any usage or custom by which incidents not expressly mention any contract are usually annexed to contracts of that description, may be pr Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.
>
> Proviso (6). -- Any fact may be proved which shows in what manner the langua of a document is related to existing facts.

69. In case titled Smt. Gangabai w/o Rambilas Gilda Vs. Smt. Chhabubai w/o Pukharajji Gandhi, 1981 Latest Caselaw 190 SC dated 06.11.1981 Hon'ble Supreme Court held as under:

> "Sub.s (1) of Section 92 declares that when the terms of any contract, grant other disposition of property, or any matter required by law to be reduced t form of a document, have been proved according to the last section, no evide of any oral agreement or statement shall be admitted, as between the parties any such instrument or theirr representatives in interest, for the purpose o contradicting, varying, adding to, or subtracting from, its terms And the fi provisio to Section 92 says thatany fact may be proved which would invalidat any document, or which would entitle any person to any decree or order relat thereto; such as fraud, intimidation, illegality, want of due execution, wan capacity in any contradicting party, want or failure of consideration, or mi inf act or law. It is clear to us that the bar imposed by sub section (1) of 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature an of the transaction must be gathered from the terms of the document itself an

evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms."

70. In case titled Karan Madaan and ors. Vs. Nageshwar Pandey, 2014 Latest Caselaw 1608 Del dated 26.03.2014 Hon'ble Delhi High Court held as under:

"Section 92 of the Evidence Act, inter alia, provides that where the terms o grant or other deposition of property have been proved according to Section and in this case the execution and registration of the instrument of sale is disputed by the defendant, no evidence of any oral agreement, or statement s

be admitted, as between the parties to such instrument, for the purposes of contracting, varying, adding to or subtracting from its terms."

71. Admittedly, nothing has been filed by defendant on record to show that they ever resented, opposed or protested imposition of 18% interest on delayed payments.

72. The defendant has already admitted all the 103 invoices not only in the WS but also in the affidavit of admission denial.

73. Even as per Section 34 of CPC in case the cause of action is arising out of a commercial transaction a rate of interest higher than 6% can be applied which can go up to the contractual rate of interest i.e. 18% in the case in hand. As such I do not find any strength in the plea of defendant that even though there is a delay in payment of invoices beyond 30 days, defendant is not entitled to pay any interest to the plaintiff.

74. Now the court shall endeavour to ascertain as to how the calculation has been made qua the interest by the planitiff in Ex.PW1/3. As discussed supra, during the period 01.04.2017 onwards plaintiff has been carrying out sales and defendant has been making payments on account as mentioned in the ledger Mark D1 filed by the defendant. Ld. Counsel for plaintiff has taken the Court through the interest calculation while referring to the ledger filed by the defendant as also the invoices Ex.PW1/2 to show that the interest was calculated only on the basis of admitted debit balance and the no. of days of delay. It is pointed out that every time the defendant made payments on account the debit balance was reduced correspondingly and interest was calculated for the reduced amount on the balance payment till receipt of next payment. The manner of calculations appears to be rational and this Court do not find any flaw in the method adopted by the plaintiff.

75. Section 379 BNSS (Section 340 Cr.PC) be issued against the AR and

defendant company for pleading are factually incorrect facts .Let a separate file be created for this purpose.

76. The law with regard to perjury is well settled. In case titled Chajoo Ram vs Radhey Shyam & Anr., 1971 Latest Caselaw 89 SC dated 23 March, 1971 Hon'ble Supreme Court held that:

> "7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious an the conviction is reasonably probable or likely. No doubt giving of fal evidence and filing false affidavits is an evil which must be effective curbed with a strong hand but to start prosecution for perjury too read and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be order when it is considered expedient in the interests of justice to punish t delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima faci case of deliberate falsehood on a matter of substance and the court sho be satisfied that there is reasonable foundation for the charge..." (Emphasis sup

77. In case titled M/s Gokaldas Paper Products Vs. M/s Lilliput Kidswear Ltd. and Anr., 2023 SCC OnLineDel 2191 dated 05.04.2023 wherein Hon'ble Delhi High Court held that:

> Perjury, is the act of knowingly and wilfully making false statements under the intent to deceive or mislead the court. It is a serious criminal offence at the very heart of the judicial process by undermining the integrity of th presented in Court. The act of contempt can be purged or remedied, by the of party, but in contrast, perjury cannot. Simply recanting or correcting a fal statement cannot undo the act. Affidavits in a court of law have sanctity an be taken casually. Thus, a false statement to the Court has to necessarily i adverse action.

78. The legal demand notice was not replied by the defendant despite due service. As per case titled Jayam Company Vs. T. Ravi Chandaran 2003 (3) RCR (Cr.) 154 Madras presumption is drawn against defendant that they have admitted the contents of the legal notice.

79. In another case titled as Metropolis Travels & Resorts (I) Pvt. Ltd. Vs. Sumit Kalra and Ors., 2002 Latest Caselaw 714 Del wherein it was observed that :

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> "13. There is another aspect of the matter which negates the argument of the respondent and that is that the appellant served a legal notice on the respond

vide Ex. PW1/3. No rely to the same was given by the respondent. But in spite of the same, no adverse inference was drawn against the defendant. This court in the case of Kalu Ram Vs. Sita Ram 1980 RLR 44 observed that service of notice having been admitted without reservation and that having not been replied in that eventuality, adverse inference should be drawn because he kept quite over the notice and did not send any reply. Observations of Kalu Ram's case (supra) apply on all force to the facts of this case. In the case in hand also despite receipt of notice, respondent did not care to reply nor refuted the averments of demand of theamount on the basis of the invoices/ bills in

question. But the Ld. Trial court failed to draw inference against the respondent".

(Emphasis Supplied)

80.Ld. Counsel for plaintiff has also relied upon case titled as Krishan Kumar Aggarwal Vs. Life Insurance Corporation 2010 Latest Caselaw 3344 Del wherein Hon'ble Delhi High Court observed that:

> "65. No explanation has been rendered by the respondent as to why letter dated 23rd August, 2008 and the legal notice send by the appellant were not repudiated or even replied. Despite due receipt, the respondent did not bother to even send any response to the letter dated 23rd August, 2008 or the legal notice, the contents whereof would be deemed to have been admitted. In the judicial precedents reported in Rakesh Kumar Vs. Hindustan Everest Tool Ltd. MANU/SC0396/1988:
>
> (1988) 2 SCC 165 & Hirallal Kapur Vs. Prabhu Chaudhary MANU/SC/0189/1988 : (1988) 2 SCC 172 it was held by the Supreme Court that a categorical assertion by the landlord in a legal notice if not replied to and controverted, can be treated as an admission by a tenant.
>
> "66. In a Division Bench proceedings of this court reported in Metropolis Travels and Resorts Vs. Sumit Kalra MANU/DE/0562/2002 : 98 (2002) DLT 573 (DB), no adverse inference was drawn against the respondent for failure to reply the legal notice on consideration of the facts and circumstances of the case. Reference was made to proceedings reported in Kalu Ram Vs. Sita Ram wherein it had been observed that service of notice being admitted without reservation and that having not been replied, in that eventuality, adverse inference should be drawn".

(Emphasis Supplied)

81.As per judgments of Division Bench of Hon'ble High Court of Delhi, plaintiff has been successful in showing on record that non-reply of legal notice by the defendant calls for drawing of presumption as to correctness of the facts contained therein.

82.The interest is payable as per Section 34 CPC. For ready reference, Section 34 CPC is reproduced hereunder:

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Section 34 CPC: Interest

(i)"Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal

sum for any period prior to the institution of the suit, with further interest at such rate not exceeding 6% per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.

(ii).Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed 6% per annum but shall not exceed the contractual rate or interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions. Explanation (i) In this sub-section, "nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970.

Explanation (ii) For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

Where such a decree is silent with respect to the payment of further interest (on such principal sum) from the date of the decree to the date of the payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

(Emphasis Supplied)

83.Section 34 CPC provides that plaintiff will be entitled the interest at the rate at which Court finds reasonable. For a general suit, the rate of interest prescribed is 6% and for commercial suit, the Parliament promulgates that rate of interest may increase from 6% to a rate which is found reasonable. Plaintiff is accordingly entitled to only the rate at which RBI has issued Circular for Commercial suits.

84.As far as the interest is concerned, rate applicable to Commercial transaction shall be payable. As per RBI notification dated 30.08.2022 issued vide Press Release no.2022-2023/794 whereby advisory issued by RBI to Schedule Commercial banks of accepting deposit rates @ 9.05% per annum.

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85.In view of the above, the suit of the plaintiff is decreed with cost for Rs.13,13,323/- with 9% interest pendente lite and till realization. Lawyer's fees is assessed as Rs.25,000/-.

86.Decree sheet be prepared accordingly. File be consigned to Record Room after due compliance.

Digitally signed by SURINDER SURINDER S RATHI S RATHI Date:

2024.12.17 16:59:34 +0530 (SURINDER S. RATHI) District Judge, Commercial Court -11 Central District, THC Delhi/03.12.2024 CS Comm No.647/2021 page 32 Uttam Kumar Pansari Vs. M/s Uttara Foods and Feeds Pvt. Ltd.