

M/S Parivahan Road Carriers vs Apl Appollo Tubes Limited on 28 August, 2024

BEFORE THE COURT OF SH. SURINDER S. RATHI, DISTRICT JUDGE
(COMM.)-03 SHAHDARA, KARKARDOOMA, DELHI.

CS (COMM) No. 207/2024

Ram Pratap Goyal
Proprietor of M/s Parivahan Road Carriers
R/o 7477, Tel Mill Gali,
Ram Nagar, Delhi-110055
Also at:
6th Mile Stone, Behind Mata Mandir
UP Border, Chikamberpur, Ghaziabad, UP-201006

.....Plaintiff

Vs.

APL Apollo Tubes Limited
Through its Managing Director/Director
Regd. Office:37 Hargobind Enclave
Vikas Marg, New Delhi-110092

.....Defendants

Date of Institution	:	01.04.2024
Date of final argument	:	28.08.2024
Date of judgment	:	28.08.2024
Decision	:	Decreed

Judgment

1. This suit is filed by plaintiff for recovery of Rs.45,33,557/- alongwith interest

@18% per annum as unpaid dues of logistic services provided.

Plaintiff's case :

2. Case of the plaintiff as per amended plaint and the documents filed is that

plaintiff is proprietor of M/s Parivahan Road Carriers at Paharganj, Delhi and is engaged in the business of providing logistics and transportation services. In the course of business, on the asking of defendant which is a duly incorporated public limited company, an agreement was entered between the parties for providing transportation services to the defendant from 2016 onwards. Goods were transported on the asking of defendant by the plaintiff

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as and when required against issuance of GST paid invoices. Plaintiff had maintained a ledger of services provided and payments received on account.

3. The plaint cites 44 unpaid invoices cumulatively valuing Rs.19,72,557/-. It is pleaded that plaintiff has carried business with the defendant for Rs.2,95,66,135/- and on account of late payment interest of Rs.25,50,000/- is made out @18% per annum as per invoices.

4. The total amount of Rs.45,22,557/- was demanded from the defendant followed by issuance of legal notice dated 16.12.2023. However, the same

was neither replied nor complied and plaintiff has added Rs.11,000/- as notice fees taking the principal claim amount to Rs.45,33,557/-. Plaintiff approached Shahdara DLSA for Pre-Institution Mediation where defendant did not participate and Non-Starter Report dated 14.02.2024 was issued. In this backdrop the suit in hand was filed for following reliefs:

Prayer :

1. Pass a decree thereby directing the defendant (s) to pay to the plaintiff Rs.45,33,557/- ;
2. Direct the respondent to pay pendente lite and future interest @18%

sum of Rs.45,33,557/-;

3. Award the cost of the suit in favour of the plaintiff;

4. Pass such other order or further orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present suit in favour of plaintiff and against the defendant.

5. Summons of the suit was served upon the defendant on 23.04.2024.

Defendant entered appearance through Sh. Vineet Jain, Advocate and filed detailed Written Statement.

Case of the Defendant

6. Defendant has prayed for dismissal of the suit on the ground that it is devoid of cause of action and is based on false and concocted facts. The suit is filed to harass and humiliate the defendant and to extort money. While admitting that defendant company did avail plaintiff's logistic/transportation services but it is pleaded that the suit has been filed only on the basis of a ledger which too has incorrect entries in so far as payment of Rs.9,91,057/- made by defendant to him have not been mentioned. Likewise, there is no reference of debit notes placed by defendant for Rs.6,82,431/- and plaintiff has sought additional money of Rs.2,36,292/- citing invoices which were never received by the defendant. It is also pleaded that plaintiff has calculated compound interest which was never agreed between them. It is further pleaded that the interest component of Rs.25.50 lakhs is higher than the principal amount.

7. In its reply on merits it is not denied that plaintiff is proprietor of M/s Parivahan Road Carriers and had been providing logistic services to the defendant. It is, however, specifically denied that an agreement was entered between the parties. Availing the transportation services from plaintiff from 2016 is not denied. It is specifically denied that an amount of Rs.45,22,557/- is due as per ledger maintained by plaintiff including unpaid invoices and interest. It is denied that defendant is liable to pay interest on delayed payment out of Rs.2.95 crores @18% per annum or that the value of 44 unpaid invoices is Rs.19,72,557/-. Receipt of legal demand notice dated 16.12.2023 has not been denied. With these pleas dismissal of the suit is prayed.

8. Alongwith the WS defendant has placed on record calculation sheets containing details of invoices not received by the company, calculation sheet of debit notes, copies of debit notes, details of

payment of Rs.9,91,057/- and also detailed calculation containing invoice wise payment alongwith their own ledger of business carried out with plaintiff.

9. The affidavit of admission denial of plaintiff's documents filed by the defendant is not as per Order 11 Rule 4 (2) CPC. In this defective affidavit of admission denial defendant has admitted all the invoices filed by plaintiff except invoice no. 2451, 3770, 3788, 4439, 5658, 1629, 2288, 2673 and 3252 and their corresponding e-way bills and bilties.

Replication

10. Separate replication was filed wherein plaintiff reiterated its pleaded case and denied the contentions of the defendant. Plaintiff took a stand that it did not receive payment of Rs.9,91,057/- as stated in the WS. He also termed the debit notes of Rs.6,82,431/- as illegal. It is also pleaded that bills related to Rs.2,36,292/- were duly served. It is pleaded that since e-way bills qua them were generated by the defendant company, the defendant can cross-check them at their end.

11. Separate affidavit of admission denial filed by plaintiff to the documents of defendant which too is found to be not in consonance with Order 11 Rule 4 (2) CPC. Plaintiff has, however, denied all the documents of the defendant.

12. Out of the pleadings following notional issues were identified by this Court on 29.05.2024:

Issues:

1. Whether plaintiff is entitled to recovery of Rs.45,33,557/- alongwith interest @18% p.a.? OPP

2. Relief

13. Evidence in this case was ordered to be recorded before Ld. LC Sh. Bharat Prakash, Advocate as per protocol created by this Court under Order 18 Rule 4 CPC read with Order 15A Rule 6(l) and (o) CPC as applicable to Commercial suits. Plaintiff's Evidence :-

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

i. Authority letter cum certificate of registration is Ex.PW1/1; ii. Account statement maintained by the plaintiff firm is Ex.PW1/2 (colly.); iii. Invoices are Ex.PW1/3 (colly.);

iv. Legal notice is Ex.PW1/4 (colly.);

v. Postal receipt is Ex.PW1/5;

vi. Tracking report is Ex.PW1/6 (colly.);

vii. GRs are Ex.PW1/7 (colly.);

viii. Non-Starter report is Ex.PW1/8;

15. In his cross-examination carried out by Ld. Counsel for defendant he stated that the principal sum of Rs.19,72,557/- pertains to 44 unpaid invoices out of total 175 filed as Ex.PW1/3 (colly.). He accepted that he calculated interest component of Rs.25.50 lakhs @18% but could not give detail of the specific amount on which the interest was applied. He also accepted that the invoices Ex.PW1/3(colly.) do not carry any acknowledgment from the defendant side.

He stated that defendant used to pay on account and not towards specific bills. He denied receiving Rs.9,91,057/- on 4 dates between 05.11.2016 and 17.01.2018. He denied that the goods transported by him were damaged/broken during transit. He denied any knowledge of debit notes issued by defendant company. He denied the suggestion that defendant company do not owe any money to him.

16. On the contrary defendant company examined DW1 Rajeev Kothari, its Authorised Representative. Vide his affidavit Ex.DW1/1 he deposed on the lines of WS and exhibited following documents:

i. Board Resolution dated 22.11.2022 is Ex.DW1/A;

ii. Calculation of amount for the invoice not received by defendant and calculation interest shown in ledger of plaintiff is Ex.DW1/B(colly.) iii. Calculation of debit notes raised by the defendant is Ex.DW1/C; iv. Calculation of amount transferred to the plaintiff but not shown in the ledger of plaintiff is Ex.DW1/D;

v. Calculation of payment on the basis of invoice to invoice is Ex.DW1/E (colly.) vi. Copy of debit notes is Ex.DW1/F (colly.) vii. True copy of ledger account is Ex.DW1/G (colly.)

17. In his cross-examination carried out by Ld. Counsel for plaintiff he accepted that the defendant company did receive invoices worth Rs.2,93,49,197/- from the plaintiff. He denied that defendant company never paid Rs.9,91,057/- to the plaintiff but accepted that their company has no proof of making this payment. He denied the suggestion that the company did not file details of 7 invoices for which plaintiff provided logistic services but defendant is denying the same. He denied the suggestion that defendant issued debit notes of Rs.6,82,431/- without any justification. He accepted the suggestion that some of the debit notes of around Rs.3.50 lakhs were issued only on the ground that plaintiff did not provide transport vehicle to the company on demand. He stated that debit notes of Rs.2 lakhs pertains to shortage of goods. He accepted that no legal notice was ever issued to the plaintiff complaining the above shortcomings.

18.I have heard of Sh. Vikas Garg, Ld. Counsel for plaintiff and Sh. Vineet Jain, Ld. Counsel for defendant and have perused the case filed carefully.

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

Issue No. 1:

1. Whether plaintiff is entitled to recovery of Rs.45,33,557/- alongwith interest @18% p.a.? OPP

20. At the onset it would be appropriate to cull out the facts admitted by both the sides. It is admitted in the pleadings and through the documents filed that plaintiff Ram Pratap Goyal is proprietor of M/s Parivahan Road Carriers and is in the business of logistics and transportation. Defendant is admittedly a duly incorporated company and under a mutual understanding defendant had been availing logistic services from the plaintiff since 2016 onwards. Admittedly, defendant has been assigning transportation jobs which were executed by the plaintiff against GST paid invoices on the basis of e-way bills generated by the defendant company. Admittedly, defendant used to make payments on account through banking channel. Out of the 175 invoices filed and exhibited as Ex.PW1/3, defendant has admitted all the invoices except 9 invoices namely 2451, 3770, 3788, 4439, 5658, 1629, 2288, 2673 and 3252.

21. In his cross-examination DW1 Rajeev Kothari has accepted that his company has received invoices for Rs.2,93,49,197/- as against the plaintiff's claim of issuance of invoices worth Rs.2,95,66,135/-.

22. In order to discharge the onus of proving the above issue plaintiff has exhibited 175 invoices Ex.PW1/3 out of which cumulative value of Rs.19,72,557/- remained unpaid. As mentioned supra defendant has admitted all the invoices except 9 invoices namely 2451, 3770, 3788, 4439, 5658, 1629, 2288, 2673 and 3252. During the course of arguments it is submitted by Ld. Counsel for plaintiff that the first invoice no. 2451 is of 10.01.2017 and that as per plaintiff the same already stands paid by the defendant and is not being agitated in the suit in hand. It is submitted that likewise bill no. 3770 dated 29.08.2017, bill no. 3788 dated 29.08.2017, bill no. 5658 dated 08.12.2018 are already stands paid and are not being agitated in the suit in hand. As regards bill no. 4439 it is submitted that it is typographically wrongly mentioned by the plaintiff. The correct no. of 4439 is 4409 dated 13.01.2018. It is submitted that this fifth bill also stands paid is also not being agitated in the suit. As such out of 9 only four denied bills remains.

23.As regards remaining four bills available at bill no. 1629 dated 09.03.2020 is available at page no. 148, bill no. 2288 dated 18.07.2020 available at running page no. 84, bill no. 2673 dated 14.09.2020 available at page no. 65 and bill no. 3252 dated 17.02.2021 available at page no. 39. The cumulative value of these bills are Rs.87,669/-.

24.In order to prove these bills plaintiff has simply placed computer printouts alongwith affidavit under Order 11 Rule 6 CPC. Admittedly, no corresponding e-way bill or endorsement from the side

of defendant is available qua them. In this regard Ld. Counsel for plaintiff is relying on affidavit of admission denial filed by defendant for the documents of the plaintiff. Perusal of the affidavit shows that it is not in consonance with Order 11 Rule 4 (2) CPC and as such by virtue of Order 11 Rule 4 (3) CPC it is prayed that this evasive denial be not treated as legal denial of the documents and the proof thereof be dispensed with.

Order 11 Rule 4 CPC : Admission and denial of documents (2) The statement of admissions and denials shall set out explicitly, whether such party was admitting or denying:-

- (i) correctness of contents of a document;
- (ii) existence of a document;
- (iii) execution of a document;
- (iv) issuance or receipt of a document;
- (v) custody of a document.....

(3) Each party shall set out reasons for denying a document under any of the above grounds and bare and unsupported denials shall not be deemed to be denials of a document and proof of such documents may then be dispensed with at the discretion of the Court.

25. In this regard further submission is made that during the pendency of the suit plaintiff moved an application under Order 11 Rule 1 (6) CPC upon which on 10.07.2024 this Court directed the defendant to furnish the defendant's invoices as per numbers provided in the application and corresponding e-way bills but despite the same none of the documents were provided. Thereafter, plaintiff moved another application which was considered under Order 11 Rule 5 CPC which provide that in case the documents is not provided by the party between 7-15 days then Court can draw adverse inference against the party refusing to produce the documents. For ready reference the same is reproduced hereunder:

Order 11 Rule 1 CPC : Disclosure and discovery of documents (6) The plaintiff shall set out details of documents, which the plaintiff believes to be in the power, possession, control or custody of the defendant and which the plaintiff wishes to rely upon and seek leave for production thereof by the said defendant.

Order 11 Rule 5 CPC : Production of Documents (1) Any party to a proceeding may seek or the Court may order, at any time during the pendency of the suit, production by any party or person, of such documents in the possession or power of such party or person, relating to any matter in question in such suit.

(2) Notice to produce such document shall be issued in the form provided in Form No. 7 in Appendix C to the Code of Civil Procedure, 1908 (5 of 1908) (3) Any party or person to whom such notice to produce is issued shall be given not less than seven days and not more than fifteen days to produce such document or to answer to their inability to produce such document.

(4) The Court may draw an adverse inference against a party refusing to produce such document after issuance of a notice to produce and where sufficient reasons for such non-

production are not given and order costs.

Section 119 of Bhartiya Sakshya Adhiniyam, 2023 (Section 114g of Evidence Act: 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 unfavourable to the person who withholds it;

26. 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 material account books. In this respect I find that according to illustration (g) under Section 114 of the Evidence Act, the evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it. The principle underlying the above illustration has been applied by their Lordships of the Supreme Court in cases wherein a party in possession of material document does not produce the same. It has accordingly been held that the non-production of a material document by a party to a case would make the Court draw an inference against that party, (see in this connection *Atyam Veerraju and others v. Pechetti Venkanna and others* and *Union of India v. Mahadeolal Prabhu Dayal*. The principle underlying illustration (g) under Section 114 of the Evidence Act has also been applied to a suit for rendition of accounts wherein a party to the 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 the 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 the plaintiff and is claiming accounts though withholding papers, his suit is liable to 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 on the footing of evidence furnished by the plaintiff, and in doing so, may make all reasonable

presumptions against him".

27. 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 disclosure of relevant facts and materials, the Court shall invoke the presumption attached to Section 114(g) of the Evidence Act."

28. Failure of the part of the defendant to deny the above four invoices in the manner provided followed by failure to produce the documents is found to be sufficient for drawing adverse inference about the genuinity of these four documents for Commercial Court.

29. While addressing the Court it is submitted by Ld. Counsel for defendant that the ledger filed and relied by the plaintiff Ex.PW1/2 is not reliable in so far as it does not carry any entry for payments of Rs.9,91,057/- made by defendant. It is admitted by DW1 during his cross-examination and conceded by Ld. Counsel for defendant that apart from baldly claiming the making of this payment to the plaintiff defendant has not placed on record any document in order to discharge onus under Section 106 of Bhartiya Sakshya Adhiniyam, 2023 (Section 103 Evidence Act) in the absence thereof the plea of defendant of paying Rs.9,91,057/- is found to be not proved.

Section 106 of Bhartiya Sakshya Adhiniyam, 2023 : Burden of Proof as to particular fact The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration:

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

30. Likewise, another plea raised is issuance of debit notes worth Rs.6,82,431/-

which are exhibited as Ex.DW1/F. However record reveals that there is nothing to show that they ever served on the plaintiff and are endorsed by the plaintiff as a proof of acknowledgment. During his cross-examination DW1 stated that more than half of the debit notes pertain to non-sending of vehicle by the plaintiff on demand. It is not the pleaded case of the defendant company that in case the plaintiff does not send the vehicle on demand the plaintiff would be issued debit notes by the defendant. Similarly, no proof has been filed on record qua issuance of debit notes in the name of damage or short delivery of the property.

31. The last figure referred to in the WS is Rs.2,36,292/- under the head invoices not received but as discussed supra five of the nine invoices already stood paid and the value of remaining four was

Rs.87,669/- which too has been concluded to be not proved by defendant and presumption has already been drawn against it. As such plaintiff is entitled to Rs.19,72,557/-.

32.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 it has admitted the contents of the legal notice.

33.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 :

"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 respondent 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 the amount on the basis of the invoices/bills in question. But the Ld. Trial court failed to draw inference against the respondent".

(Emphasis Supplied)

34.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 23 rd August, 2008 and the legal notice sent 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)

35.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.

Interest

36.As regards the plaintiff's claim of Rs.25.50 lakhs interest on total business invoices issued of Rs.2.95 crores between 2016 to 2022 @18% per annum it is submitted that all the invoices carry an endorsement that "interest of 18% per annum will be charged on outstanding bills". Admittedly, there is no endorsement qua the credit period on any of these invoices. Ld. Counsel for plaintiff concedes that neither in the text of the plaint nor through any document plaintiff has explained as to how he arrived at this figure. In the absence of any cogent evidence the claim of Rs.25.50 lakhs has remained unsubstantiated. Even during the course of final arguments, Ld. Counsel for plaintiff submits that he is not pressing his claim of interest of Rs.25.50 lakhs.

37.As regards the suit claim of interest of 18% on the claimed amount is concerned, in the suit in hand the interest is payable as per Section 34 CPC. For ready reference, Section 34 CPC is reproduced hereunder:

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 an-

num 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)

38. 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.

39. 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.

Relief

40. In view of the above, suit of plaintiff is accordingly decreed with cost for Rs.19,72,557/- with 9% interest w.e.f. 01.04.2021 onwards (as per last sale) pendente lite and till realization. Lawyer's fees is assessed as Rs.35,000/-.

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

(SURINDER S. RATHI) District Judge, Commercial Court -03 Shahdara District, KKD
Delhi/28.08.2024