

Satish Aggarwal vs Anil Gupta And Ors on 7 January, 2025

Satish Aggarwal Vs. Anil Gupta And Ors.

DLCT010013962020

IN THE COURT OF SH. DEEPAK GARG,
DISTRICT JUDGE-COMMERCIAL COURT-09
(CENTRAL DISTRICT), TIS HAZARI COURTS, DELHI.

CIVIL SUIT (COMMERCIAL) NO.:- 235/2020

IN THE MATTER OF :-
Sh. Satish Aggarwal
Proprietor,
M/s Singhal Agencies
1/8-B, Asaf Ali Road,
New Delhi-110002

... Plaintiff

VERSUS

1.

Anil Gupta 307/5, Shahzada Bagh Industrial Area, Daya Basti, Delhi-110035

2. M/s Hotsun Appliances 307/5, Shahzada Bagh Industrial Area, Daya Basti, Delhi-110035

3. Prakhar Gupta Proprietor M/s Hotsun Appliances 307/5, Shahzada Bagh Industrial Area, Daya Basti, Delhi-110035 .. Defendants Satish Aggarwal Vs. Anil Gupta And Ors.

SUIT FOR RECOVERY OF RS.40,92,046/-

Date of institution	:	31.01.2020
Date on which Judgment was reserved	:	19.12.2024
Date of Judgment	:	07.01.2025

::- J U D G M E N T -::

1. By way of present judgment, this court shall adjudicate upon suit filed by the plaintiff against the defendants for re-covery of Rs.40,92,046/- alongwith pendent elite and future interest @ 21% per annum.

PLAINTIFF'S CASE

2. Brief facts necessary for just adjudication of the present suit, as stated in the plaint, are as under:-

i. The plaintiff is carrying on his business of trading and institution of stainless steel sheets, coils and other engineering industrial raw material under the name and style of M/s Singhal Agencies as its sole proprietor having stores at Steel Chambers, A-48, Wazirpur Industrial Area, Delhi-110052.

ii. The defendant no. 1 representing himself as the proprietor of the defendant no. 2 contacted the plaintiff for purchase of SS Sheets and Coils & other related material being so required for his business purpose.

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iii. Assuring the regular business dealing with the plaintiff, the defendant no. 1 has also sought certain credit facility against purchase from the plaintiff and after certain negotiations with the defendant, the plaintiff agreed to grant a 30 days credit facility to the defendant from the date of delivery of goods subject to payment of an interest @ 21% per annum upon all delayed payments beyond the said credit period of 30 days. iv. During the course of business the plaintiff had effected sale of a large quantity of stainless steel sheets and coils as required by the defendant against the tax invoices.

v. During regular course of business, the plaintiff had been maintaining an open and current account in the name of the defendant no. 2 being the sole proprietorship concern of the defendant no. 1 in its computerized accounting process, being regularly maintained by recording all sales made to the defendant which were being set off and adjusted against the payments received from the defendant, with due and proper inclusion of interest as agreed between the parties against delayed payments.

vi. Compelled by failure of the defendant to make the payment long overdue, the plaintiff served legal notice dated 12.11.2018 to the defendant. However, after service of said notice, the defendant made a payment of Rs.2,00,000/- in cash on 01.10.2018 with an assurance Satish Aggarwal Vs. Anil Gupta And Ors.

for soon making the balance payment of the plaintiff as well, however, since then neither the defendant has made any payment nor he is responding to the calls and demands of the plaintiff.

vii. Upon failure of the defendant to pay the balance amount as assured, the plaintiff served another legal notice dated 19.09.2019 seeking inter alia the payment of the balance amount of Rs.38,32,153/-(Rs.9,00,092/- as principal outstanding amount and Rs.29,32,061/- due on account of interest payable @21% per annum as on 31.08.2019 but despite service of the notice, the defen-

dants have failed to make any payment to the plaintiff. Hence, the plaintiff has filed the present suit against the defendants.

DEFENDANT'S CASE

3. In the written statement, the defendants have averred that the suit is not maintainable in law nor in facts as plaintiff has concealed various important and material facts.

4. It is further averred that the defendant no. 1 has been wrongly impleaded in the present suit as he has never been the proprietor of M/s Hotsun Appliances. In fact there is no priv- ity of contract between the defendant no. 1 and the plaintiff.

5. It is further averred that Sh. Prakhar Gupta s/o Sh. Anil Gupta is the proprietor of M/S Hotsun Appliances.

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6. It is averred by the defendants that both the invoices in question dated 30.05.2014 do not bear the genuine acknowl- edgment from defendant no. 2 or its employees and the al- leged goods mentioned in both the invoices were never deliv- ered to the defendant no. 2 by the plaintiff and no document has been placed on record by the plaintiff to prove the deliv- ery of goods against proper acknowledgment.

7. It is further averred that the alleged invoices are not bind-

ing upon the defendant no. 2 as the printed invoices contains ".....(Dotted)" blanks in column "Terms and Conditions reads as under:-

Interest will be charged @ 21% per annum if payment is not made within days"

and the same are not filled and acknowledged by the defendants, hence no liability can be fastened upon the defendant no. 2 on the basis of alleged invoice amount and alleged interest in the absence of any mutually agreed contract.

8. Both the invoices in question were denied by the defen-

dants and it is further averred by the defendant that alleged ac- knowledgment on second invoice dated 30.05.2014 for Rs.12,33,776/- is not signed by defendant no. 2 or any em- ployee and/or agent of the defendant no. 2 and the same is forged and fabricated invoice.

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9. It is further averred by the defendants that suit is barred by limitation since both the alleged invoices pertain to the period 30.05.2014 whereas the present suit has been filed on 06.01.2020.

The limitation of three years can be reckoned from the date of alleged default. As both the invoices are dated 30.05.2014, then the alleged default has occurred on 30.06.2014 and thus the limitation for filing the suit for recovery has expired on 29.05.2017.

10. It is further averred that defendant no. 2 had never paid an amount of Rs.2,00,000/- in cash to the plaintiff on 01.10.2018 and the entry in the ledger of the plaintiff dated 01.10.2018 in this regard is false and frivolous and the same has been deliberately created by the plaintiff to extend the period of limitation for filing the present suit. It is further averred that it is evidence from the fact that alleged legal notice is dated 12.11.2018 and as per the case of the plaintiff, after service of notice the defendant paid an amount of Rs. 2,00,000/- in cash on 01.10.2018, which itself reveals that alleged ledger entry is manipulated and self contradictory and in totality it is prayed that the present suit is liable to be dismissed.

REPLICATION

11. Plaintiff has filed the replication controverting the allega-

tions of the defendants in the written statement and the contents of the plaint has been reiterated and reaffirmed.

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ISSUES

12. On the basis of the pleadings following issues were settled on 13.02.2024 :

i. Whether the plaint is not maintainable as plaintiff is guilty of suppression of material facts? (OPD) ii. Whether the suit is barred by limitation as alleged by defendants?

iii. Whether the plaintiff is entitled for the recovery of the amount as claimed in the plaint? (OPP) iv. If the issue no. (iii) is decided in affirmative, whether the plaintiff is entitled for the pendente-lite and future interest, if so at what rate and for what period? (OPP) v. Relief.

EVIDENCE OF THE PLAINTIFF

13. In order to prove its case, plaintiff Sh. Satish Aggarwal has examined himself as PW1, who filed his evidence by way of affidavit Ex.PW1/A and has relied upon the documents as under:

i. Copy of invoice as serial No. 25 dated 30.05.2014 is Ex.PW1/1 (OSR).

ii. Copy of invoice No. 26 dated 30.05.2014 is Ex. PW 1/2 (OSR).

iii. Copy of Confirmation of Account 01.04.2014 to 31.03.2015 dated 01.04.2015 is Ex. PW 1/3.

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iv. Copy of Confirmation of Account 01.04.2015 to 31.03.2016 dated 01.04.2016 is Ex. PW 1/4. v. Copy of statement of account maintained by the plaintiff in the name of M/s Hotsun Appliance of the Defendant for the period from 01.04.2014 to 24.12.2019 is Ex. PW1/5.

vi. Copy of legal notice dated 12.11.2018 is Ex. PW1/6. vii. Copy of postal receipts No. ED809658511IN is Ex.

PW1/7.

viii. Copy of postal receipts No. ED809658349IN is Ex.

PW1/8.

ix. Copy of legal notice dated 19.09.2019 is Ex. PW1/9. x. Copy of postal receipts No. ED817807053IN is Ex.

PW1/10.

xi. Copy of track consignment report is Ex. PW1/11. xii. Copy of postal receipts No. ED817807067IN is Ex.

PW1/12.

xiii. Copy of track consignment report is Ex. PW1/13. xiv. Copy of summary of sales / outward branch, transfer register is on record and the same is Ex. PW1/14. xv. Copy of the Non-Starter Report is on record and the same is Ex. PW1/15.

xvi. The signature at point 'A' and 'B' on my affidavit are Ex.

P1.

xvii. Copy of my Statement of Truth is Ex. PW 1/16. xviii. Certificate u/S 65-B of Indian Evidence Act is Ex.

PW1/17.

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14. This witness was cross-examined by Ld. counsel for the defendants which will be discussed in the later part of the judgment.

EVIDENCE OF THE DEFENDANT

15. The defendants have filed the affidavit in support of their evidence but had not produced any witness to support their case despite several opportunities given by the court to lead the DE.

ISSUE WISE FINDINGS Issue no. 1

(i) Whether the plaint is not maintainable as plaintiff is guilty of suppression of material facts?(OPD)

16. It is settled law that a person who approaches Court for granting relief, equitable or otherwise, is under a solemn obligation to candidly & correctly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. He owes a duty to the court to bring out all the facts and desist from concealing/suppressing any material fact within his knowledge or which he could have known by exercising due diligence expected of a person of ordinary prudence. The doctrine is often stated as those seeking Equity must do Equity or Equity must come with Clean Hands.

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17. If a petitioner is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to summarily deny relief to such person to prevent an abuse of the process of law and reject the Petition on this ground alone without going to the merits of the case. The Apex Court has repeatedly invoked and applied the rule that a person who does not disclose all material facts has no right to be heard on the merits of his grievance. (Reliance G. Jayshree and others v. Bhagwandas S. Patel and others (2009) 3 SCC 141 and Dalip Singh v. State of U.P. (2010) 2 SCC 114).

18. The onus was on the defendant to disclose the material facts which ought to have been disclosed by the plaintiff before the court and the failure to make such disclosure would render the plaintiff ineligible to seek relief from the court.

19. In the present case, defendants have denied the business relations and any business transactions with the plaintiff. They further denied with regard to placing of any purchase order with the plaintiff against the invoices/bills in question. These aspects would be decided by the Court while discussing the later issues regarding the entitlement of the plaintiff to recover the amount in question but the defendants have miserably failed to show as to what material facts have been suppressed by the plaintiff, which is of such nature that the plaintiff is not entitled to any relief from the Court. Hence, this issue is decided against the defendants and in favour of the plaintiff.

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Issue no. 2

(ii) Whether the suit is barred by limitation as alleged by the defendants? (OPD)

20. The onus to prove this issue was on the defendant.

21. It is averred by the defendants in the written statement that both the invoices on which reliance is placed by the plaintiff are dated 30.05.2014 and the plaintiff could have filed the suit for recovery only within three years from the date of said alleged invoices i.e. till 30.05.2017, hence the present suit filed on 31.01.2020 is barred by limitation.

22. Per contra, Ld. Counsel for the plaintiff has admitted that the invoices are dated 30.05.2014 but it is stated that before the expiry of the limitation period for the recovery of the suit amount, the defendant paid an amount of Rs.10,85,000/- through cheque on 30.11.2015 and further an amount of Rs.2,00,000/- in cash on 01.10.2018 towards purchase of the goods from the plaintiff in discharge of their liability which would amount to acknowledgment of liability and due to the said payment, the limitation got extended and hence the present suit is within limitation.

23. It is settled law that a suit for recovery of money due must be filed within three years from the date it is legally recoverable. Under the Limitation Act, such a suit must be filed *Satish Aggarwal Vs. Anil Gupta And Ors.*

within three years from the date on which the right to recover the money arises i.e. when the debt becomes due and payable.

24. I may note here that for the price of goods sold and deliv-

ered where no fixed period of credit is agreed upon the period of limitation is 3 years from the date of delivery of goods. It is provided under Article 14 of the Schedule to the Limitation Act unless and until it is a case of mutual, open and current account (covered by Article 1 of the said Schedule) which is admittedly not the case herein.

25. In the present case, as per the case of the plaintiff, the goods were supplied to the defendant on 30.05.2014 vide two bills i.e. bill no. SA/025 and SA/026 in the sum of Rs.9,51,316/- and Rs.12,33,776/- respectively and hence the period of limitation of 3 years started from 30.05.2014.

26. However, there is an exception with respect to acknowl-

edgment of debt and if the debtor acknowledges the debt in writing before the expiry of limitation period, the limitation period resets and starts afresh from the date of acknowledgment and it is so provided under Section 18 of the Limitation Act. Similarly, part payment also extends the period of limitation which is provided under Section 19 of the Limitation Act.

27. In the present case, it is further the case of the plaintiff that the defendant made part payment of Rs.10,85,000/- to the plaintiff on 30.11.2015 vide cheque. This fact has not been denied by the defendant in the written statement.

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28. Hon'ble Supreme Court of India in Jiwanlal Achariya vs. Rameshwar Lal Agarwalla AIR 1967 Supreme Court 1118 held that a cheque to be an acknowledgment of the payment in the handwriting of a person giving the cheque, within the meaning of proviso to Section 19 and the fresh period of limitation to be begun therefrom. To the same effect is the judgment of in Rajesh Kumari vs. Prem Chand Jain AIR 1998 Delhi, 80 and in both the judgements of Hon'ble High Court of Delhi in Sh. Rakesh Gupta vs. Khoday India Limited and Anr. CS (OS) 2150/2010 date of decision 07.11.2012 and Mrs. Veena Jain vs. Sunil Sood CS (OS) 1177/2003 date of decision 23.07.2012 both decided by Hon'ble High Court of Delhi.

29. In view of the above, the payment of Rs. 10,85,000/- by the defendant to the plaintiff through cheque on 30/11/2015 would extend the period of limitation.

30. However, it is further the case of the plaintiff that defen-

dant made further part payment of Rs. 2 lakhs in cash on 01.10.2018 and further the defendant was also liable to pay the interest @ 21 % per annum on the delayed payments which have been duly reflected in the ledger account ExPW1/5.

31. It is the case of the plaintiff that the invoices of the plaintiff contains a clause with regard to interest and it states that interest will be charged @ 21% per annum on delayed payment Satish Aggarwal Vs. Anil Gupta And Ors.

and hence, the plaintiff is within its rights to claim the said interest vide various entries till 24.12.2019 as reflected in the ledger ExPW1/5 filed by the plaintiff and it would extend the period of limitation. In my view, this argument has no merit.

32. It is settled law that any entry with regard to the interest chargeable on delayed payment, would not extend the period of limitation. The court agrees with the contention of Ld. Counsel for the defendant that such an interest clause in the bill/invoice cannot frustrate the provision with regard to the period of limitation provided under the Limitation Act and such a clause has nothing to do with the date of starting of limitation. Similarly, cash payment by the buyer to the seller and any sales return would also not extend the period of limitation.

33. In my view, for the part payment to extend the limitation within the meaning of Section 19 of the Limitation Act it is necessary that the acknowledgment of the payment must be handwriting or in a writing signed by the person making the payment. Payment made in cash, if any, would not satisfy the requirement of Section 19 of the Limitation Act and would not extend the period of limitation. Reliance is placed on M/S Continental Advertising Pvt. Ltd. vs. M/S Karan and Company RFA no. 577 of 2006 decided by Hon'ble High Court of Delhi vide order dated 15/10/2018 wherein it is held that the cash payment simplicitor will not qualify for ex-

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tension of limitation under Section 18 and 19 of the Limitation Act.

34. If the period is computed accordingly the present suit could have been filed within three years of 30.05.2014 i.e. till 30.05.2017. However, the present suit has been filed on 31.01.2020 and hence the present suit is barred by limitation. Even the date of approaching for pre-institution mediation i.e. 26.11.2019 is barred by limitation.

35. In view of the above, this issue with regard to limitation is decided in favour of defendants and against the plaintiff.

Issue no. 3

(iii) Whether the plaintiff is entitled for the recovery of the amount as claimed in the plaint? (OPP)

36. The onus to prove this issue was on the plaintiff.

37. In order to prove its case, the plaintiff Sh. Satish Aggarwal has examined himself as PW1 and he has categorically deposed that on the basis of the orders placed by the defendant, the plaintiff supplied goods to the defendants vide two invoices Ex.PW1/1 and Ex.PW1/2. He has further proved copy of confirmation of account for the period 01.04.2014 to 31.03.2015 and 01.04.2015 to 31.03.2016 as Ex.PW1/3 and Ex.PW1/4 respectively. He has further deposed that as per statement of account Ex.PW1/5 an amount of Rs.9,00,092/- is Satish Aggarwal Vs. Anil Gupta And Ors.

due and outstanding against the defendants being principal amount. He has also proved the legal notice dated 12.11.2018 sent by the plaintiff to the defendants as Ex.PW1/6 and copy of postal receipts in respect of dispatch of the legal notice as Ex.PW1/7 and Ex.PW1/8 and tracking report as Ex.PW1/11. He has also proved the legal notice dated 19.09.2019 as Ex.PW1/9 and copy of postal receipts in respect of dispatch of the legal notice as Ex.PW1/10 & Ex.PW1/12 and tracking report as Ex.PW1/13. He has also proved the summary of sales/outward branch, transfer register as Ex.PW1/14.

38. PW1 has been cross examined by Ld. Counsel for the de-

fendants in which he deposed that plaintiff had verbal talks with the defendant for providing credit facility and plaintiff executed documents for providing the said credit facility against said purchase and that the plaintiff supplied stainless steel coils to the defendants under the said two bills worth Rs. 22,00,000/- approximately. He admitted that there is acknowledgment of the defendant only on the bill Ex.PW1/2 and there is no acknowledgment on the bill Ex.PW1/1 and that after seeing the initials, he could not tell who exactly had taken the delivery of those goods under the said bill Ex.PW1/2. He further denied the suggestion that the plaintiff never supplied the goods in question to the defendants and further admitted that there is no acknowledgment of the defendant on the copy of the confirmation of account Ex.PW1/3 and Ex.PW1/4. He further stated that he did not remember the exact date of payment Satish Aggarwal Vs. Anil Gupta And Ors.

of Rs.2,00,000/- in cash but either the defendant no. 1 or defendant no. 3 had come personally and had handed over the said amount to him and that he did not issue any separate receipt in regard to the said cash payment.

39. The present suit was initially filed by the plaintiff against Sh. Anil Gupta (defendant no. 1) and M/s Hotsun Appliances (defendant no. 2) stating that defendant no. 1 represented himself as proprietor of defendant no. 2 for purchase of 'SS Sheets and Coils' for his business purposes and there was default in payment of money.

40. Both the defendants no. 1 and 2 filed their joint written statement in which it was stated that defendant no. 1 has been wrongly impleaded in the present suit and that he is not the proprietor of defendant no. 2 i.e. M/s Hotsun Appliances and that there is no privity of contract between the defendant no. 1 and the plaintiff.

41. This written statement was signed by Sh. Prakhar Gupta S/o Sh. Anil Gupta as proprietor of defendant no. 2 i.e. M/s Hotsun Appliances. Subsequently, on the application of the plaintiff U/O I Rule 10 CPC, the said Sh. Prakhar Gupta was also impleaded as defendant no. 3 in the present suit and the amended memo of parties filed by the plaintiff is on record in this regard.

42. In the written statement, the defendants have denied the business relationship between the plaintiff and the defendants.

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Defendants have denied both the invoices and it is stated that both the invoices in question dated 30.05.14 are forged and fabricated and that the alleged goods mentioned in both the said invoices were never delivered to the defendant no. 2 by the plaintiff. The acknowledgment on one of the bill dated 30.05.2014 has also been denied.

43. As per the case of the plaintiff, the defendants made pay-

ment of Rs.10,85,000/- through cheque on 30.11.2015 which is reflected in this ledger Ex.PW1/5 filed by the plaintiff. The defendants in their written statement have not specifically denied the payment of the said amount to the plaintiff.

44. Order VIII Rule 4 CPC provides that where the defendant denies an allegation of fact, it must be denied specifically. Rule 5 of the said Order further provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, shall be taken to be admitted except as against the person under disability.

45. In para no. 12 of the plaint, the plaintiff has categorically mentioned about the payment of Rs.10,85,000/- by the defendants to the plaintiff but there is no specific denial of the said payment in the corresponding para of the written statement by the defendants. Further no evidence has been led by the defendants to show that the said amount was not paid to the plaintiff through cheque

in discharge of the liability. Hence, the Satish Aggarwal Vs. Anil Gupta And Ors.

payment of the said amount through cheque is deemed to be admitted by the defendants.

46. When the defendants are denying the business relation-

ships between the parties and are further denying the receipt of goods under the invoices dated 30.05.2014, it is not clear why the said payment of Rs.10,85,000/- was made by the defendants to the plaintiff on 30.11.2015. As stated above, no evidence in this regard has been led by the defendants and the plea of the defendants denying the business relationship, in view of the said payment to the plaintiff, falls flat on the ground and remains unproved.

47. It is the case of the plaintiff that atleast one of the invoices i.e. invoice bearing Serial no. 26 dated 30.05.2014 in the sum of Rs.12,33,776/- bears the signatures of the representative of the defendants in respect to the receipt of goods. The acknowledgment on the said invoice is on record but the defendants have not led any evidence to disprove the same.

48. Under Section 104 of Bhartiya Sakshya Adhiniyam, 2023, the defendant is expected to prove its defence and assertions made against the plaintiff, though initial burden to prove is on the plaintiff, but once it is discharged onus shifts on to the other side to disprove the same.

49. The defendants have not led any evidence in this case. As the defendants have refrained from entering into the witness box, not submitting themselves for the cross examination by Satish Aggarwal Vs. Anil Gupta And Ors.

the learned counsel for the plaintiff, adverse inference is liable to be drawn against the defendants. Their pleading remains pleading only and not translated into proof. Any suggestions made to PW1 in the cross examination does not take case of the defendants anywhere unless the defendants are able to discharge its burden to prove certain facts alleged against the plaintiff as required under Section 104 of Bhartiya Sakshya Adhiniyam, 2023 by leading evidence. Any pleading without evidence is not the evidence and proof at all. Therefore, in the absence of the evidence of the defendant, it is needless to say that the defendant has failed to prove its defence. Reliance is placed on Vidyadhar vs. Manik Rao and anr. reported in AIR 1999 SC 1441.

50. Further Section 119 of Bhartiya Sakshya Adhiniyam, 2023 allows the court to draw certain presumptions based on the facts of the case and the conduct of the parties. One such presumption is that if a party fails to produce evidence which it is within its power to produce, the court may draw an adverse inference against that party. Clause (g) of the said provision provides that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it.

51. In terms of Section 105 of Bhartiya Sakshya Adhiniyam, 2023 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circum-

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stances, if any, which would disentitle the plaintiff to the same.

52. In the present case, the testimony of the witness of the plaintiff is convincing and truthful and has remained unimpeachable. It is corroborated by documentary evidence. As stated above, there is nothing in cross examination of PW1 to shake his credit. There is no ground for me to disbelieve the same. The defendant has not led any evidence in its defence and has miserably failed to prove its case.

53. After considering all the facts and circumstances, I hold that the plaintiff has been able to prove its case by preponderance of probability that the goods in question were sold by the plaintiff to defendants and the defendants are liable to pay the principal amount of Rs.9,00,092/- .

54. Accordingly, this issue is decided in favour of the plaintiff and against the defendants.

Issue No. 4 :

(iv) In case issue no. (iii) is decided in affirmative, whether the plaintiff is entitled for any interest and extent thereof? OPP

55. In view of the above discussions, since the court has come to the conclusion that the suit of the plaintiff is barred by time, no order is required to be passed with regard to this issue.

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Issue no. 5

(v). Relief.

56. Since the suit of the plaintiff is barred by time, this suit is accordingly dismissed. No order as to the costs.

57. File be consigned to Record Room, after due compliance.

DEEPAK GARG Date:

2025.01.07 14:48:25 +0530 Announced in the open Court on (Deepak Garg) 07 Day of January, 2025 th Distt. Judge, (Comm. Court)-09, Central District, THC : Delhi