

Ram Pratap Goyal vs Apollo Metalex Privated Limited on 8 July, 2024

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

CS (COMM) 641/2023

RAM PRATAP GOYAL (Proprietor)
M/s Parivahan Road Carriers
R/o 7477, Tel Mill Gali,
Ram Nagar, Delhi-110055
Also at :
6th Mile Stone, Behind Mata Mandir,
U.P. Boarder, Chikamberpur,
Ghazibad, UP

.....Plaintiff

Versus

APOLLO METALEX PRIVATE LIMITED
Through its Managing Director
37, Hargobind Enclave, Vikas Marg
New Delhi

.....Defendant

Date of Institution	:	13.12.2023
Date of final argument	:	08.07.2024
Date of judgment	:	08.07.2024
Decision	:	Decreed

SUIT FOR RECOVERY OF Rs. 35,24,233/- ALONGWITH PENDENTE LITE
AND FUTURE INTEREST @ 18% PER ANNUM

JUDGMENT

1. This suit has been filed by plaintiff company against the defendant firm for recovery of Rs. 35,24,233/- alongwith interest @ 18% per annum as unpaid dues of logistic services provided to the defendant.

Plaintiff's case :-

2. Case of the plaintiff as per plaint is that he is carrying on business of providing transportation and logistic services in the name and style of M/s Parivahan Road Carriers, having offices at Ram Nagar, Paharganj and CS No. 641/23 RAM PRATAP GOYAL Vs APOLLO METALEX PRIVATE LIMITED 1/10 Ghaziabad, UP. In the course of his business, he entered into an agreement with defendant (a duly incorporated pvt. Ltd company) for providing logistic and transportation services. Plaintiff started providing services since 2016 onwards, as and when orders were placed by the defendant. Although, plaint is silent but record reveals that plaintiff used to issue GST paid invoices for the services rendered. Plaintiff used to maintain ledger of invoices issued and part payments received

randomly. According to the plaint, there was a debit balance of Rs. 35,24,233/- as on March 2022. When the dues were not cleared, plaintiff was constrained to issue legal notice. Defendant is said to have paid Rs. 5 lacs but balance remained unpaid and upon application of interest, debit balance swelled to Rs. 33,29,233/-.

3. Thereafter, plaintiff issued another legal notice dated 28.03.2023 which was duly served upon the defendant. It was neither replied nor complied. Plaintiff approached Shahdara, DLSA for 'Pre Institution Mediation' under Section 12- A, Commercial Court Act, 2015 but defendant did not participate in the same and Non-Starter Report was issued on 16.08.2023. Consequently, the suit in hand was filed with following prayers.

Prayers:-

(a) Pass a decree in favour of plaintiff and against the defendant for sum of Rs. 35,24,233/- alongwith interest @ 18% per annum till realization.

(b) Court fees, cost of suit and advocate fees and other costs, charges and expenses incurred by the plaintiff may also kindly be allowed.

(c) Pass and order towards the cost of proceedings in favour of the plaintiff and against the defendants.

4. Summons of the suit served upon the defendant, who entered appearance through Sh. Vineet Jain, Advocate. Detailed WS was filed.

Defendant's case :-

5. Case of the defendant as per written statement is that the suit deserves to be CS No. 641/23 RAM PRATAP GOYAL Vs APOLLO METALEX PRIVATE LIMITED 2/10 dismissed on the ground that plaint has not been signed by the plaintiff and has been signed by an unauthorised person. It is maintained that defendant does not owe any money to the plaintiff. Dismissal of the suit is also prayed on the ground that out of Rs. 35,24,233/-, plaintiff is claiming Rs. 22,16,456/- as interest without showing proper calculation. The suit is stated to be based on false and fabricated facts.

6. On merits, it is not denied that plaintiff is carrying on business as proprietor of M/s Parivahan Road Carriers and is in the business of logistic and transportation service. It is accepted that both parties have business relations and defendant had been availing logistic services of the plaintiff. It is denied that any agreement was entered between them specifically for this purpose. It is not denied that defendant started availing plaintiff's services since 2016 onwards. Defendant has not specifically denied the plaintiff's plea that there was a debit balance of Rs. 35,24,233/- as in March 2022. It is claimed that no legal notice was received as pleaded. Defendant claims that it was regularly making payment to the plaintiff and last payment of Rs. 91,467/- was made on 25.10.2021. Defendant denied making payment of Rs. 5 lacs as claimed in the plaint after service of first legal notice. Defendant denied receipt of second legal notice dated 28.03.2023. With these pleas,

dismissal of the suit is prayed.

7. Vide his affidavit of admission denial, defendant company has denied plaintiff's statement of account, legal notice and four bills bearing Nos. 5891, 1160, 1506 and 1549.

Replication :-

8. No replication was filed by the plaintiff.

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9. Upon completion of pleadings, following issues were identified by this Court on 04.04.2024 :-

Issues :-

(i) Whether plaintiff is entitled to recovery of Rs. 35,24,233/- along-

with interest @ 18% per annum?OPP

(ii) Relief

10. Evidence in this matter was recorded before Local Commissioner Ms. Neelam Malik, Advocate, Karkardooma as per under mentioned protocol designed by this Court under Order 18 Rule 4 CPC and Order 15A Rule 6(l) CPC applicable to the Commercial Suit.

11. During course of evidence, plaintiff moved an application for placing on record additional documents on 04.06.2024 whereby fresh SPA executed by plaintiff in favour of Ravi Shankar Bansal was placed on record alongwith affidavit under Order 11 Rule 6 CPC.

Plaintiff's evidence :-

12. To prove its case, plaintiff examined himself as PW-1 Rampratap Goyal. Vide his affidavit of evidence Ex. PW1/A, he deposed on the lines of the plaint and exhibited the following documents :-

(i) Authority Letter cum Certificate of Reregistration of plaintiff Ex. PW1/1.

(ii) Account Statement maintained by plaintiff Ex. PW1/2 (colly).

(iii) Invoices raised by the plaintiff Ex. PW1/3 (colly).

(iv) Legal notice dated 28.03.2023 Ex. PW1/4.

(v) Sending proof of legal notice Ex. PW1/5.

He was cross examined at length by Ld. Counsel for defendant, wherein, he accepted that plaint in question is not signed by him but only by his AR. He accepted that amount of Rs. 5 lacs shown to have been received from the defendant company was actually a security amount deposited by the plaintiff initially when the business was started between them and the same was reverted back. It is stated that for this reason payment is not shown in the CS No. 641/23 RAM PRATAP GOYAL Vs APOLLO METALEX PRIVATE LIMITED 4/10 ledger account, maintained by the plaintiff. It is accepted that factum of Rs. 5 lacs being security is not mentioned in the plaint. He stated that total billing done by him to the defendant to the tune of Rs. 2,58,27,545/- (Rs. 2.58 crore) and he has received an amount of Rs. 2,43,84,040/-. He accepted that as per this, the difference between the two is 14,43,505/-. All the payments made by defendant through bank transfer, he has four bank accounts. He accepted that ledger Ex. PW1/2 and 247 invoices Ex. PW1/3(colly) are digitally generated.

He accepted that his ledger does not show any debit or credit entry at the end of this document. He denied that the ledger is fabricated document. He also accepted that none of invoices contained any of the stamp or signature of the defendant show as to acknowledged that the plaintiff provided any services.

13. He denied the suggestion that there was no agreement qua payment of interest that to @ 18% interest. He accepted that as a matter of practice, payments were generally being made within one month of issuance. He accepted that ledger does not disclose the specific dates from which the interest has been charged. He stated that he has no personal knowledge of specific transaction entered into the ledger and added that it can only be stated by the accountant. He denied that Ravi Shankar Bansal is not his SPA.

14. On the contrary, defendant examined DW-1 Rajeev Kothari. Vide evidence affidavit Ex. DW1/1, he deposed on the lines of WS and exhibited following documents;

(i) Copy of Board Resolution Ex. DW1/A (colly).

(ii) Copy of Ledger Account maintained by the defendant Ex. DW1/B (colly).

In his Cross examination done by Ld. Counsel for plaintiff, he accepted that defendant company admitted 391 invoices out of the 395 invoices filed with the suit. The four denied invoices have cumulative value of Rs. 87,008/-. He accepted all the payments made by the defendant shown in the ledger filed by defendant as Ex. DW1/B duly matched by ledger filed by plaintiff Ex. CS No. 641/23 RAM PRATAP GOYAL Vs APOLLO METALEX PRIVATE LIMITED 5/10 PW1/2. He accepted that no debit note has been filed with the WS. He accepted that defendant is a duly registered with GST and e-way Bills are issued by using the same. He could not say anything about invoices 1506 and 1549, if they were received by the defendant. He stated that his company's account audited every year.

Arguments :-

15. I have heard final arguments advanced by Sh. Vikas Garg, Ld. Counsel for plaintiff and Sh. Vineet Jain, Ld. Counsel for defendant. I have also gone through the case file.

Issue wise finding :-

Issue No. 1 : Whether plaintiff is entitled to recovery of Rs. 35,24,233/- along-

with interest @ 18% per annum ? OPP

16. At the onset, it would be appropriate to cull-out the facts admitted by both the sides. It is admitted case of both the parties that they had business relations since 2016 where under defendant has been availing transportation and logistic services of the plaintiff. It is also admitted case of both sides that plaintiff had been issuing GST paid invoice to the defendant for the services rendered and that defendant used to pay on account. Also admittedly, both the sides were maintained respective ledgers according to which out of 395 invoices, 391 invoices duly match. It is admitted case of parties that all the payments made by the defendant to the plaintiff were so made by bank transfer only and stands duly reflected in the ledger. Admittedly, additional payment of Rs. 5 lacs claimed to have been received by the plaintiff was security amount taken by the defendant from him.

17. Further, it is admitted that disputed four invoices cumulatively valuing only Rs. 87,008/- as against the principal debit balance of Rs. 12,96,777/-. When Ld. counsel for plaintiff is invited to address the Court qua the authenticity of CS No. 641/23 RAM PRATAP GOYAL Vs APOLLO METALEX PRIVATE LIMITED 6/10 the above four denied invoices namely Nos 5891, 1160, 1506 and 1549 valuing Rs. 87,008/-, Ld. Counsel for plaintiff concedes that in neither of the 4 bills, there is any signature or rubber stamp of the defendant company and as such he is not pressing the suit qua four invoices valued Rs. 87,008/-. Consequently, the principal amount agitated in this suit is reduced to Rs. 12,09,769/- (Rs. 12,96,777 - Rs. 87,008 = Rs. 12,09,769)

18. As far as rate of interest is concerned, Ld. counsel for plaintiff submits that invoice Ex. PW1/3 in the bottom provides for levying of 18% interest on outstanding Bills. Admittedly, neither any written agreement is filed nor the invoice carrying any endorsement as to what shall be the credit period. PW-1 stated that there was a practice of granting one month credit period. It is claimed that the ledger Ex. PW1/2 contain quarterly debit entries of the interest in the same. Upon being asked, it is accepted by Ld. counsel for plaintiff that no invoice wise breakup of these quarterly interest calculation have been filed on record. Ld. counsel for defendant in his submission have denied that there was understanding of interest @ 18% p.a. between the parties.

19. However, as regards the Principal, ones it is accepted and it is found that the ledger of the plaintiff Ex. PW1/2 completely tallies with the ledger (invoice details) of the defendant Ex. DW1/3 except four invoices, discussed supra, no explanation has been put forth by the defendant company as to how it has pleaded in the WS that there is no dues payable by it to the plaintiff. Ones, DW-1 has accepted that all the payments made by defendant company to the plaintiff stands duly reflected in

plaintiff's ledger, there is no reason as to why plaintiff do not deserve decretal of the unpaid invoices.

20. I do not find any strength in the plea of Ld. counsel for defendant that in so far as his ledger Ex. DW1/2 does not show any debit balance, plaintiff is not entitled to any money. Admittedly, once the defendant has accepted 391 CS No. 641/23 RAM PRATAP GOYAL Vs APOLLO METALEX PRIVATE LIMITED 7/10 invoices, the onus of proving the payment of 391 invoices is on the defendant. The suit in hand is limited to only 47 invoices.

21. For ready reference, Section 105 & Section 106 of Bhartiya Sakshya Adhiniyam, 2023 are reproduce hereunder □Section 105 Bhartiya Sakshya Adhiniyam : On whom the Burden of Proof lies

- which provides that:

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Illustration:

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father.

If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B. Section 106 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.

22. In the absence of any evidence, simply harping on the outcome of the ledger of the defendant cannot become substitute of positive evidence of making payment. Moreso when, both the parties are on the same page, that every payment made by the defendant is duly reflected in plaintiff's ledger.

CS No. 641/23 RAM PRATAP GOYAL Vs APOLLO METALEX PRIVATE LIMITED 8/10 Evidently, defendant made several high value deduction in the ledger in the name of debit note and un-reconciled amount without filing any document or proving them or leading any evidence in this regard it is wholly insufficient to discharge the onus for justifying such deductions.

23. Coming to the rate of interest, 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. The interest is payable in terms of Sec.34 CPC which provides that:

(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 six per cent 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:

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 six per cent, per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

24. As per RBI notification dated 30.08.2022 issued vide Press Release no.2022- 2023/794 an advisory issued by RBI to Schedule Commercial Banks of adopting, deposit rates @ 9.05% per annum. In the light of the above, plaintiff is entitled to get 9% interest.

RELIEF:-

25. In the light of the above discussions and findings, the present suit is decreed with cost for a sum of Rs. 12,09,769/- (as per last payment made) along-with CS No. 641/23 RAM PRATAP GOYAL Vs APOLLO METALEX PRIVATE LIMITED 9/10 interest @ 9% per annum, with effect from 01.11.2021 onwards, pendente-lite & till realization. Plaintiff's counsel fee is assessed to Rs. 35,000/-.

26. Decree sheet shall be prepared accordingly.

27. File be consigned to Record Room after due compliance.

Announced in the open Court
on day of 08.07.2024

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

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