

M/S Shanti Industries vs M/S Chirag Enterprises on 4 February, 2025

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

CS Comm. No.5134/2021

M/s Shanti Industries
Through its Proprietor,
Rajeev Jain
Situating at:
3293, 2nd Floor, Itisha Market,
Gali Pepal Mahadev, Hauz Qazi, Delhi-110006

.....Plaintiff

Vs.

M/s Chirag Enterprises
Through its Proprietor
Rajan Uppal
Situating at:
335, Purani Kacheri, Moholla
Tanda Chowk, Jalandhar, Punjab

.....Defendant

Date of Institution	:	04.12.2021
Date of Final Arguments	:	04.02.2025
Date of Judgment	:	04.02.2025
Decision	:	Decreed

Judgment

1. This suit is filed by plaintiff for recovery of Rs.11,47,348/- alongwith interest @24% 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 Shanti Industries at Hauz Qazi, Delhi and deals in PVC Hose and Sanitary goods. He has business relations with the defendant who is proprietor of M/s Chirag Enterprises at Jalandhar, Punjab. Defendant used to carry out purchase of goods from the plaintiff on credit basis. As per plaint there was a debit balance of Rs.11,47,348/-, however,

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no date is mentioned when the above sum was due. The plaint is silent qua no. of sales made and payments received. It is stated that last payment of Rs.13,452/- was made by defendant on 04.01.2019.

3. It is pleaded that plaintiff was maintaining a statement of account. He requested defendant to clear the dues but no payment was received. Legal notice was issued on 26.11.2020 which was neither replied nor complied

despite due service. Plaintiff claims his right to seek interest @24% per annum. Plaintiff carried out Pre-Institution Mediation but was issued Non-Starter Report dated 29.01.2021. Perusal of the plaint shows that it is not signed on all pages as mandated under Order 6 Rule 15 A Appendix i para 6. Also the affidavit of statement of truth filed alongwith the plaint is not as per format provided under Order 6 Rule 15A Appendix i of CPC as amended for Commercial Courts. The suit is not filed by Rajiv Jain but is rather filed by him in the name of his proprietorship firm. During the course of trial, plaintiff, on an application, vide order of Ld. Predecessor dated 15.04.2024 was allowed to file additional 136 invoices for the period 22.04.2012 to 29.11.2018 in addition to 19 invoices already filed with the suit. Plaintiff was also allowed to file transport bilties (number not specified) for the period 09.03.2016 to 07.06.2017 as also copy of C-Forms (no. Not specified). Plaintiff was also allowed to file copy of ledger accounts for FY 2012-13 to 2018-2019 as also ITR alongwith audited balance sheets from FY 2013-14 to 2019-20.

4. Even though the debit balance of Rs.11,47,348/- appears to be on 04.01.2019 and this suit was filed on 04.12.2021 after around 2 years 11 months, still no pre-suit interest has been sought for this period. In this backdrop suit in hand was filed with following reliefs:

Prayer:

- i. Grant a money decree of Rs.11,47,348.92/- alongwith interest pendente lit per annum till the realization of the entire outstanding amount in favour of the plaintiff.

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plaintiff and against the defendant and their associates, relations, family members, friends, agents servants or any person connected or associated with them.

- ii. Cost of the suit may also be awarded in favour of the plaintiff and against the Defendant;
- iii. Pass any other decree or orders, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case, in favour of the plaintiff and against the defendant, in the interest of justice.

5. Summons of the suit was served upon the defendant on 21.12.2021 and entered appearance through Sh. S. K. Chaturvedi, Advocate. A WS was filed on 25.05.2022. The WS of the defendant not filed within 30 days as mandated under Order 8 Rule 1 CPC r/w proviso to Order 8 Rule 10 CPC which prohibits extension of period beyond 120 days from the date of service of summons. Record reveals that no WS was filed within extendable 120 days but has rather been filed after expiry of 120 days i.e. on 154th day. However, the above period is between the captioned period of Covid-19 related suspension of limitation of 15.03.2020 to 28.02.2022 as per judgment of Hon'ble Supreme Court in In Re: Cognizance For Extension of Limitation" Suo Motu Writ Petition (C) No.3 of 2020" in cognizance of extension of limitation dated 10.01.2022 from 15.03.2020 to 28.02.2022, the WS can be considered to have been filed within time. 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 as this Court has no territorial jurisdiction to try the same. It is pleaded that defendant is resident of Jalandhar, Punjab and no cause of action arose within territorial

jurisdiction of this Court. Dismissal of the suit is also prayed on the ground that it is based on concocted facts while material facts have been concealed.

7. It is, however, accepted that defendant had business relations with the plaintiff. Plaintiff used to make telephone calls to the defendant for purchase orders which was followed by delivery of the goods to defendant

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at Jalandhar. Defendant used to make payments of the invoice amounts from Jalandhar. Largely all payments were made invoice wise barring few adhoc payments as reflected in the defendant's statement of account. It is pleaded that no amount is due and payable as claimed by the plaintiff. Rather it is pleaded that it is the plaintiff who owes money to the defendant for non-supply of goods despite receipt of payments. The suit is filed on the basis of forged and fabricated statement of account. The statement of account is limited to a period of only 01.04.2017 to 31.03.2018 while concealing the transactions which were carried out between the parties after the above period.

8. Defendant denies that as on 01.04.2017 there was an opening debit balance of Rs.11,75,509/- as according to the defendant only a sum of Rs.22,782/- was due and payable by the defendant and that too stood paid on 13.04.2017 through bank. It is pleaded that claim of Rs.11,75,509/- is not supported by any bill or invoice. While relying on his own statement of account defendant claims that an advance payment of Rs.40,378/- was made by him to the plaintiff qua which no goods has been supplied.
9. Dismissal of the suit is also prayed on the ground that it is barred by limitation.
10. In his reply to the plaintiff's suit on merits it is not denied that plaintiff deals in PVC Hose and Sanitary goods. It is denied that defendant owes Rs.11,47,348/- to the plaintiff. It is claimed that all the sum due and payable already stands paid by cash and cheques but several entries have not been shown by the plaintiff in the statement of account deliberately. It is pleaded that on 13.04.2017 all the payments were cleared by the defendant and rather a sum of Rs.40,378/- was paid in advance. Even though defendant admits receipt of plaintiff's legal notice dated 26.11.2020 but it is conceded that no reply was sent. Defendant denies

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plaintiff's right to seek interest @24% per annum. Defendant submits that he did not receive any notice for Pre-Institution Mediation. With these pleas dismissal of the suit is sought.

11. In his affidavit of admission denial to plaintiff's documents he has admitted 19 invoices filed by the plaintiff but has denied ledger filed by the plaintiff as also legal notice. It is interesting to notice that despite admitting receipt of plaintiff's legal notice dated 26.11.2020 in the body of the WS duly supported with affidavit of statement of truth, in his affidavit of admission-denial to plaintiff's documents the defendant went on to deny the existence, issuance and receipt of this legal notice. Likewise, defendant has denied the original postal receipt and tracking report which shows that he was duly served. Evidently, defendant per se

seems to have committed the offence of perjury by swearing contradictory affidavits of the same fact. As such separate notice has been issued to the defendant under Section 379 BNSS (Section 340 Cr.PC).

12. As such plain reading of the above shows that swearing false affidavits that nothing has been concealed per se amounts to commission of offence of perjury. The law in 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 and the conviction reasonably probable or likely. No doubt giving of false evidence and filing affidavits is an evil which must be effectively curbed with a strong hand but prosecution for perjury too readily and too frequently without due care and and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice against the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of delinquency and falsehood on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge..."

(Emphasis supplied)

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13. 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 oath with the intent to deceive or mislead the court. It is a serious criminal offence which strikes at the very heart of the judicial process by undermining the integrity of the evidence presented in Court. The act of contempt can be purged or remedied, by punishing the offending party, but in contrast, perjury cannot. Simply recanting or correcting a false statement cannot undo the act. Affidavits in a court of law have sanctity and cannot be taken casually. Thus, a false statement to the Court has to necessarily invite adverse action."

14. In the light of the above this Court finds it to be a fit case for issuance of notice under Section 379 BNSS (Section 340 Cr.PC) to defendant as to why proceedings of perjury be not initiated against it for swearing false facts and swearing false affidavits and concealment of material facts from Court. Reader/Ahlmad is directed to prepare a separate file for this purpose.
15. Furthermore, defendant has continued to deny Non-Starter Report and other documents of the plaintiff but they are bald denials and no reason thereof has been cited as mandated under Order 11 Rule 4 (3) CPC.
16. Separate affidavit of admission denial was filed by defendant to the additional documents filed by the plaintiff. This affidavit is not as per Order 11 Rule 4 (3) CPC as it contained only bald denials without any reason.
- Replication
17. Separate replication was filed by the plaintiff to the defendant's WS. This

too has not been signed on all pages as mandated by CPC as amended for Commercial Courts. In his replication plaintiff reiterated his pleaded case and denied the averments of the defendant. It is denied that the opening balance as on 01.04.2017 was only Rs.22,482/- and not Rs.11,75,509/- as shown in the ledger. The averments that suit is barred by limitation or that this Court has no territorial jurisdiction has also been denied. It is denied

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that defendant cleared all the dues on 13.04.2017 and rather paid Rs.40,378/- as advance qua which no goods were supplied. With these pleas decretal of the suit was reiterated.

18.The affidavit of admission denial filed by plaintiff to the defendant's documents is evidently an incomplete document as entire first column and part of the second column is not printed. Furthermore, all the four documents filed by the defendant i.e. ledger of the defendant maintained qua business carried out with the plaintiff for the year 2017 to 2022. Plaintiff denied all the four documents filed by the defendant but no reason thereof has been cited as mandated under Order 11 Rule 4 (3) CPC.

19.Upon completion of pleadings following issues were identified by Ld. Predecessor on 21.05.2024:

Issues:

- i. Whether this Court lacks territorial jurisdiction, as pleaded in Paragraphs 10 to 12 of the Preliminary Objections of the Written Statement? OPP
- ii. Whether the plaintiff is entitled to a decree for recovery of the suit? OPP
- iii. Whether the plaintiff is entitled to interest, if so, at what rate and for what period? OPP
- iv. Relief

20.Evidence in this case was ordered to be recorded before Ld. LC Sh. Kartik Bhalla, 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.

21. To prove his case plaintiff examined himself as PW1 Rajiv Jain. Vide affidavit Ex.PW1/A he deposed on the lines of the plaint and exhibited following documents:

- i. Original Invoices (from Page No. 16 to 34) is Ex.PW1/1 (Colly.)
- ii. Computer Generated Copy of Ledger Accounts is Ex.PW1/2

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- iii. Computer Generated Copy of Proprietorship Documents of the defendant is Ex.PW1/3
- iv. Legal Notice dated 26.11.2020 is Ex.PW1/4
- v. Postal Receipts are Ex.PW1/5
- vi. Computer Generated Copy of Postal Tracking Report is Ex.PW1/6
- vii. Copy of Mediation Proceedings is Ex.PW1/7
- viii. Non-Starter Report is Ex.PW1/8

- ix. Computer Generated GST Certificate of the plaintiff is Ex.PW1/9
- x. Copy of Aadhar Card is Ex.PW1/10
- xi. Copy of Additional Invoices (from Page No. 14 to 131) is Ex.PW1/11
- xii. Copies of Transport Bilties (from Page No. 151 to 248) are Ex.PW1/12
- xiii. Copies of C-Forms (from Page No. 249 to 268) are Ex.PW1/13
- xiv. Copies of Ledger Accounts (from Page No. 269 to 282) are Ex.PW1/14
- xv. Copies of Income Tax Returns along with Auditor Report (from Page No. 320) are Ex.PW1/15
- xvi. Certificate under Section 65B of 'The Indian Evidence Act, 1872' is E
- xvii. Certificate under Order 11 Rule 6(3) of 'The Commercial Courts Act, 2015' is Ex.PW1/18

22. In his cross-examination done at length by Ld. Counsel for defendant Sh. Daljeet Singh. In his cross-examination defendant has objected to mode of proof of plaintiff's ledger Ex.PW1/2, in so far as it is supported with affidavit under Order 11 Rule 6 CPC, the objection is overruled. Another objection taken is qua document Ex.PW1/3 which is online print of defendant's GST registration. Interestingly, this is already admitted by the defendant in the affidavit of admission denial but still an objection has been raised this objection is also overruled not only because the document is already admitted but it is supported with affidavit of plaintiff under Order 11 Rule 6 CPC.
23. Another objection raised is qua Ex.PW1/9 which is GST certificate of plaintiff for the above reason. This objection is overruled. Likewise, objection qua exhibition of Ex.PW1/14 i.e. electronic ledger of the plaintiff. Objection is overruled because it is filed with affidavit of plaintiff under Order 11 Rule 6 CPC.
24. Another objection is qua exhibition of Ex.PW1/11 i.e. additional invoices filed by the plaintiff with permission of the Court on the ground that they are carbon copies/photocopies and are not legible. In this regard upon

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perusal of the coloured copies of the additional invoices as also the originals which are available on record but now returned back to the plaintiff, being carbon copies certain entries are dim but for the assistance of the Court as well as defendant plaintiff has placed true typed copy of those bills on record. Moreover, it is not the pleaded case of the defendant that he did not receive the goods under these total 136 invoices or that no such order was placed or sale was carried out. The only defence of the defendant, as per WS is that he has cleared the dues but the ledger does not reflect the payments made by the defendant through bank and cash transactions. In this backdrop the objection on exhibition of Ex.PW1/11 is overruled.

25. Likewise, objection is made qua Ex.PW1/12 which are bilties. Perusal of the record reveals that most of the bilites are original/carbon copies. As discussed supra, it is not the pleaded case or defence of the defendant that plaintiff did not supply the goods or no delivery took place. Once the sale and delivery of goods is not disputed, onus of plaintiff under Section 31, 33 and 39 Sale of Goods Act, 1930. Accordingly the objection stands overruled.
26. As regards Ex.PW1/15 which is Income Tax Return of the plaintiff, they

have been attested/certified by Chartered Accountant of the plaintiff with signatures and rubber stamp and also bears signatures of the plaintiff with rubber stamp of his firm. In so far as this balance sheet has regularly been filed with the Income Tax Returns with Income Tax Authority, plaintiff can file a downloaded copy and prove the same as per Indian Evidence Act now (Bhartiya Sakshya Adhiniyam, 2023). Since the same is supported with Section 65B Evidence Act certificate as such this objection is also overruled.

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27. In his cross-examination PW1 stated that he has a factory in Azadpur and he carries out manufacturing as well as trading of PVC Sanitary pipes. He accepted that defendant did not issue any written purchase orders. He has 8 employees in his office and factory together. Purchase orders are received telephonically by him on his mobile. He maintains record of invoices of all the sales made. He accepted that defendant has been making payments by way of cheque, RTGS as well as cash. He admitted 9 deposit slips Mark D1/A of ICICI Bank, Bank of Baroda and Axis Bank in his name and name of Sarika Jain (Wife of plaintiff) and one payment in the account of Bhujvir (a tempo driver) but as per him these payments does not pertain to the business carried out between the parties but relate to personal transactions with the defendant. The amount of these deposits has not been mentioned by Ld. Counsel for defendant during the cross-examination. He accepted that he is assessed with Income Tax in his personal name and not in his proprietorship firm's name. He used to send the account statement to the defendant by courier but no proof of the same has been filed on record. He denied that the invoices, bilties and C-Forms are forged and fabricated.
28. Second witness examined by plaintiff is PW2 Shashi Ranjan Kumar, Chartered Accountant. Vide affidavit Ex.PW2/A he deposed on the lines of plaint and exhibited the Income Tax Return Ex.PW1/15.
29. In his cross-examination he stated that he used to visit the office of the plaintiff and personally prepared the audited report. He denied that this document is forged and fabricated.
30. On the contrary, defendant examined himself as DW1 Rajan Uppal. Vide affidavit Ex.DW1/A he deposed on the lines of WS and exhibited following documents:

- i. Audited Statement of account of the plaintiff maintained by the defendant accounts from 01.04.2017 to 31.03.2022 is Ex.DW1/1 (colly.);

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- ii. Audited Financial Statement of the defendant for the year ending 31/03/2022 is Ex.DW1/2 (colly.);
- iii. Photocopy of 9 Bank Deposit Slip showing deposit of amount in ICICI Bank No.07170500712, Bank of Baroda A/c No.4247010000131 and 00930400000163 a name of Rajiv Jain and Sarika Jain, Axis Bank A/c No. 208010100060394 in

Jain and A/c No.91402005771050 in the name of Bhujvir, cash deposited by
Ex.DW1/3 (colly) already Mark D1/A (Colly.)

31. In his cross-examination objection has been taken by plaintiff to the exhibition of three ledgers Ex.DW1/1 to Ex.DW1/3. Perusal of these documents shows that they are printouts of digital record but still neither any affidavit under Order 11 Rule 6 CPC nor Section 65B Evidence Act certificate is appended. A submission is made by Ld. Counsel for defendant that signature and rubber stamp of defendant is available which makes this printout of digital record as original record. This submission is legally untenable since mere appending signature and rubber stamp on a printout of digital document does not dispense filing of affidavit under Order 11 Rule 6 CPC or certificate under Section 65B of Indian Evidence Act. Rather appending signatures and rubber stamps on a printout of digitally maintained document amounts to tempering of a document. Objection is accordingly allowed. The three documents Ex.DW1/1 to Ex.DW1/3 are hereby deexhibited.
32. In his cross-examination defendant has stated that he had business relations with plaintiff since 2011-12 and has been carrying out purchase of pipes. He stated that he does not maintain any ledger account of business carried out by him with the plaintiff. He accepted the suggestion that all the payments made by him were made to the plaintiff either by cheque or depositing in the personal account. He could not disclose the dates on which the payments were made. He admitted the suggestion that plaintiff owes amount below Rs.50,000/-. He stated that plaintiff used to raise invoices for every sale made. He claimed that he has filed bank receipts qua payments made to plaintiff. He used to make payments to the

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plaintiff in his personal account as well as his proprietorship firm's account. He stated that his CA maintains his statement of account. He claimed that he has filed his Income Tax and GST returns but no such document is filed. He submitted that he used to make part payment against the invoices raised by the plaintiff.

33. I have heard arguments of Sh. V K Puri and Sh. Nitin Sharma, Ld.

Counsels for plaintiff assisted by plaintiff Rajeev Jain in person and Sh. Daljeet Singh, Ld. Counsel for defendant and have perused the case file carefully.

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

Issue No.1:

- i. Whether this Court lacks territorial jurisdiction, as pleaded in Paragraph 10 of the Preliminary Objections of the Written Statement? OPD

35. Although onus of proving this issue is placed on the defendant but primarily it is duty of the plaintiff to establish on record that the suit has been filed in the Court of appropriate territorial jurisdiction. In order to show that this court has territorial jurisdiction, plaintiff has dedicated paragraph 10 in the plaint which reads as under:

"10. That the cause of action arose at Delhi at 3293, 2 nd Floor, Itisha Mark
Pepal Mahadev, Hauz Qazi, Delhi-110006 where the order was placed and the

goods were supplied from and this place falls within the jurisdiction of this Court, hence this Hon'ble Court has the jurisdiction to try and entertain the present suit."

36. In reply to above para the WS reads as under:

"10. That the contents of para 10 need no reply being matter of record."

37. Plain reading of the above assertion in the plaint and reply in the WS ex-facie shows that defendant is not disputing the fact that he used to place orders with the plaintiff within jurisdiction of Central Delhi and that the goods were also supplied from Central District, Delhi. This amounts to clear admission of jurisdiction before this Court as per law of pleadings

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under Order 8 Rule 3A CPC r/w new proviso added in Order 8 Rule 5 CPC.

38. As per Order 8 Rule 5 CPC when read in the context of the suit in hand categorically shows that the evasive denial by the defendant shall lead to an inference that the defendant has admitted the contents of the plaintiff's plaint. For ready reference Order 8 Rule 5 CPC and Order 8 Rule 3A CPC are reproduced hereunder:

Order 8 Rule 5 CPC: Specific Denial

1. "Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be deemed to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

Provided further that every allegation of fact in the plaint, if not denied in the pleading of the defendant, shall be taken to be admitted except as against a person under disability."

Order 8 Rule 3A CPC: Denial by the defendant in suits before Commercial Division of the High Court or the Commercial Court--

- i. Denial shall be in the manner provided in sub-rules (2), (3), (4) and (5) of this Rule.
- ii. The defendant in his written statement shall state which of the allegations in the particulars of plaint he denies, which allegations he is unable to admit, which he requires the plaintiff to prove, and which allegations he admits.
- iii. Where the defendant denies an allegation of fact in a plaint, he must state the reasons for doing so and if he intends to put forward a different version from that given by the plaintiff, he must state his own version.
- iv. If the defendant disputes the jurisdiction of the Court he must state the reasons for doing so, and if he is able, give his own statement as to which Court ought to have jurisdiction.
- v. If the defendant disputes the plaintiff's valuation of the suit, he must state the reasons for doing so, and if he is able, give his own statement of the valuation of the suit."

39. In case titled Sh. Rajeev Tandon and Anr. Vs. Smt Rashmi Tandon, 2019 Latest Caselaw 1306 Del dated 28.02.2019 Hon'ble Delhi High Court held that:

" The substance of the actual defence of the defendant from a perusal of the written statement is that the property in question has been purchased from the joint fund obtained from the joint family business belonging to the father of the plaintiff."

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It is also stated that the suit property was brought from the funds generated by the disposal of the joint family property in which the defendant had an equal share and entitlement. This is the sum and substance of the defence raised by the defendant in her written statement. It is manifest that the defence is vague, and lacks material particulars. Under Order 8 Rule 3 CPC, a defendant is obliged to deal specifically with each allegation of fact of which he does not admit the truth. Similarly, under Order 8 Rule 4 CPC, if a defendant denies an allegation of fact, he must not do so evasively but answer the point of substance. In the present case, the denials are evasive and cannot be said to be a specific response."

40. In case titled Thangam and Anr. Vs. Navamani Ammal, 2024 Latest Caselaw 132 SC dated 04.03.2024 Hon'ble Supreme Court held that:

"Order 8 Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order 8 Rule 5 CPC provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted, are not required to be proved."

41. The law in this regard is well settled. 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 within the local limits of whose jurisdiction-

(a) the defendant, or each 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 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 business, or personally works for gain, provided that in such case either the leave of the 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 sole principal office in [India] or, in respect of any cause of action arising at any place in India where it has also a subordinate office, at such place.

(Emphasis Supplied)

42. The law on Section 20 CPC has been crystallised by Hon'ble SC on sale

of Goods Act is ABC Laminart Private Ltd. and Anr. Vs. A P Agencies,

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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.

43.Ld counsel for defendant submits that the suit should have been filed at Jalandhar i.e. the place where defendant resides. It is also submitted that all the orders were taken from defendant by a representative of plaintiff who used to visit at the defendant's place in Jalandhar. It is also submitted that the bank account of the plaintiff where defendant used to make payments is also not located in Central Delhi. All these submissions of Ld. Counsel for defendant remains a bald oral submission since in reply to para 10 of the plaint, in the WS defendant has already conceded that the contract was entered at plaintiff's Hauz Qazi office and goods were also supplied from Central Delhi. In the light of this clear admission that this Central Delhi has jurisdiction, this issue is answered in favour of plaintiff and against the defendant.

Issue No. 2:

ii. Whether the plaintiff is entitled to a decree for recovery of the suit amount?OPP

44.As far as entitlement of the plaintiff to seek recovery of the suit amount is concerned, it would be appropriate to cull out the facts admitted by both the sides. It is admitted case of both plaintiff and defendant that they are no strangers and have business relations since 2011-12 whereunder defendant had been carrying out purchase of PVC pipes from the plaintiff. It is also admitted that for every order placed by the defendant with the

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plaintiff, plaintiff used to carry out sale through GST/VAT paid invoices. It is also admitted that defendant did not make payments invoice wise but was rather making lumpsum payments on account. It is also admitted that the invoices filed by the plaintiff alongwith the suit initially are correct.

45.It is not denied by the defendant that the goods under the invoices filed and exhibited by the plaintiff were not received by the defendant. The only defence of the defendant is that he made payments to the plaintiff which were not reflected in the ledger of the plaintiff Ex.PW1/2 (colly.).

46.While opening his submissions on the issue in hand Ld. Counsel for plaintiff submits that once the business relations is admitted and it is not denied that defendant used to place orders to the plaintiff and plaintiff in turn used to sell and supply PVC pipes and other material to the defendant through GST paid invoices, the plea that the ledger of the plaintiff is incorrect is something which the defendant needs to substantiate and prove as per Section 105 of Bhartiya Sakshya Adhiniyam, 2023

(Section 102 of Indian Evidence Act). It is submitted that plaintiff has placed on record his ledger from FY 2012-13 onwards which includes 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 collectively Ex.PW1/2. It is submitted that the copies of these ledgers were periodically sent to the defendant however no separate proof thereof has been filed. It is further submitted that plaintiff has placed on record copies of his ITRs Ex.PW1/15 of all years from 2012-13 to 2018-2019 where defendant's firm M/s Chirag Enterprises has been shown as a sundry debtor. Perusal of one such ITR filed with the suit at page 318 shows that M/s Chirag Enterprises is a sundry debtor for Rs.11,47,348/- as on 31.03.2019.

47. It is argued that once all the sales have been admitted by the defendant the onus of proving that the ledger and ITR including balance sheets of the

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plaintiff are incorrect lies solely on the defendant. For ready reference the law is reproduced hereunder:

Section 105 of Bhartiya Sakshya Adhiniyam, 2023 (Section 102 of Indian Evidence Act) : On whom burden of proof lies

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 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.

48. While opening his submissions Ld. Counsel for defendant submits that it

is admitted by the plaintiff that in the course of business he has been receiving payments from the defendant not only by way of cheque and bank transfer but also by way of cash deposits in bank and cash payments. Attention of this Court is drawn to 9 bank deposit slips cumulatively valuing Rs.3.50 lakhs Mark D1/A(Ex.DW1/3 colly.). It is submitted that plaintiff has not disputed these bank deposit slips but admittedly payments made through these 9 invoices do not find any mention in the ledger Ex.PW1/2. Interestingly, none of these 9 deposit slips find any reference in the WS and hence are beyond pleadings.

49. It is a settled legal proposition that no party can travel beyond their

pleaded case. The law in this regard is well-settled. No evidence can be led on a plea not raised in the pleadings and no amount of evidence can cure defect in the pleadings. No amount of evidence or arguments can be

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looked into or considered in absence of pleadings and issues. Relevant judgments are listed as under:

- i. M. Siddiq (Ram Janmabhumi Temple) Vs. Suresh Das, 2019 Latest Caselaw 1091 SC
- ii. Ravinder Singh vs. Janmeja Singh, 2000 Latest Caselaw 479 SC
- iii. Union of India vs. R. Bhusal, (2006) 6 SCC 360
- iv. Anathula Sudhakar Vs. P. Buchi Reddy, 2008 (2) AWC 1768(SC)

50. In case titled Kashi Nath vs. Jag Nath, (2003) 8 SCC 740, Hon'ble Supreme Court ruled that:

"Such evidence which is at variance with the pleadings of the party, cannot be relied upon and moreover, an adverse inference is to be drawn when the pleadings and evidence are self-contradictory."

51. In case titled M.M.B. Catholicos vs. T. Paulo Avira, AIR 1959 SC 31 (Five-Judge Bench) Hon'ble Supreme Court ruled that-

"Plaintiff cannot be allowed to set up a new case in his evidence. He cannot be allowed to go outside his pleadings and lead evidence on a fact not pleaded."

52. Furthermore, alongwith the WS copy of only one deposit Slip of Rs.35,000/- was filed but even this finds no mention in the WS.

53. In his replication plaintiff has taken a stand that this Rs.35,000/- was a personal transaction between plaintiff and defendant which had nothing to do with the business in question. No cogent reason is stated by the defendant as to why the remaining 8 similar deposit slips are mentioned in the WS. It is a settled legal proposition that in a Commercial Court, as per Order 11 Rule 1 (9) r/w Appendix i of Order 6 Rule 15A of CPC, defendant is supposed to make a declaration. For ready reference the same are reproduced hereunder:

4. I say that there is no false statement or the concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.

5. I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me

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have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control and custody.
(Emphasis Supplied)

54. It is evident that once the defendant has deposed on oath that he has no other document than the one already filed on record, he should have come up with an application under Order 11 Rule 1 (6) CPC. Admittedly, no such application was filed and the documents were brought on record in a

clandestine manner by simply confronting them in the plaintiff's cross-examination. Not only in the replication but also in the cross-examination plaintiff has maintained that all the payments made by the defendant in cash are duly reflected in the ledger. It is also mentioned that defendant has never carried out any cash deposit in the bank account of M/s Shanti Industries. It is explained both in the replication as well as cross-examination that these payments have been made by making deposits in the personal bank account of plaintiff as well as another bank account held by him with his wife Smt. Sarika Jain and this pertained to transactions which are not part of the business between the parties. During the course of final arguments, it is explained on behalf of the plaintiff that the representatives of the defendant who is a resident of Jalandhar Punjab used to seek cash payments from the plaintiff in the name of carrying out purchases in Delhi Market and payments qua those cash transactions were made by depositing them in the plaintiff's bank accounts. As regards payments of Rs.70,000/- made to bank account of one Bhujvir plaintiff maintains that he is not an employee of plaintiff and has no concern with any payments made by defendant to him.

55. It is rightly pointed out by Ld. Counsel for plaintiff that defendant has not made any communication viz. Email, whatsapp or any letter signifying that the above Rs.3.50 lakhs was made to partially discharge the debit balance of purchases carried out by defendant from the plaintiff. I find

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strength in the plea that had these payments been for partial discharge of suit claim defendant would have made deposits in plaintiff's firm's bank account and not the plaintiff's personal bank account.

56. In the light of the above conclusion the plea that the ledger Ex.PW1/3 is manipulated has remained unsubstantiated. Even if, for arguments sake, this contention is accepted that Rs.3.50 lakhs paid in partial discharge of debit balance, it does not explain the debit balance of entire suit amount of Rs.11,47,348/-. In this backdrop, the plea that the plaintiff admits that he did not issue receipts for receiving the cash amount from the defendant loses steam since all the cash payments made by the defendant to the plaintiff qua the business in hand stands duly reflected in the ledger.
57. In case titled Anil Rishi Vs. Gurbaksh Singh, 2006 Latest Caselaw 269

SC dated 02.05.2006 Hon'ble Supreme Court held as under:

The suit will fail If both the parties do not adduce any evidence, in view of Section 102 of the Evidence Act. Thus, ordinarily, the burden of proof would on the party who asserts the affirmative of the issue and it rests, after evi gone into, upon the party against whom, at the time the question arises, judgment would be given, if no further evidence were to be adduced by either side.

58. In the absence of any proof of claimed payment of cash to the plaintiff either documentary or oral this Court has no hesitation in concluding that defendant has not been able to discharge the onus placed on him under Section 105 of Bhartiya Sakshya Adhiniyam, 2023. Such is the poor defence and the evidence that defendant has not been able to cite any specific date or amounts claimed to have been made to the plaintiff. Only a bald statement of defence is there is made that all payments stand made

and nothing is due and payable.

59. Another plea raised is that the suit is barred by limitation since it pertains to invoices issued 10 years ago. This plea is per se beyond pleadings. The principal debit balance of Rs.11,47,348/- is covered under 18 invoices issued between 25.04.2017 to 29.11.2018. The limitation for filing the

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oldest sale of 25.04.2017 was to expire on 25.04.2020. The Hon'ble Supreme Court imposed freeze on limitation started on 15.03.2020. The suit in hand was filed on 03.12.2021 during the freeze itself and as such there is no question that the suit is barred by limitation.

60. It is pertinent to mention here that initially plaintiff filed only 19 invoices which were not paid. Remaining 136 invoices were filed only on the objection of the defendant in the WS that the opening ledger of 2017-18 shows a debit balance of Rs.11.75 lakhs. Mere filing of old duly paid invoices does not ipso facto mean that the suit is filed for recovery of these invoices. In any case law in regard is well-settled by virtue of Section 60 of Indian Contract Act. For ready reference the same is reproduced hereunder:

Section 60. Application of payment where debt to be discharged is not indicated-

"Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being in relation to the limitations of suits."

61. It is the sweet will of the seller to adjust the payment received in lumpsum/adhoc manner on account against the oldest paid bill. Once none of the sale and delivery under those sales have been disputed by the defendant, the question of plaintiff's failure to prove his liability to seek the debit balance stands duly addressed. Before concluding on this issue it is pertinent to mention here that the plaintiff has not sought any pre-suit interest which as per the terms of invoices @24% could have been more than Rs.7.50 lakhs during the pre-suit period of 2 years 11 months. Be that as it may, in the light of the above I have no hesitation in concluding that plaintiff has discharged onus of proving this issue. This issue is accordingly answered in favour of plaintiff and against the defendant.

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62. 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.

63. 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 resp

vide Ex. PW1/3. No reply 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)

64.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 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".

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65.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.

Issue No. 3:

iii. Whether the plaintiff is entitled to interest, if so, at what rate and for which period? OPP

66.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 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)

67.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.

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68. 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

69. In view of the above, the suit of the plaintiff is decreed with cost for suit amount i.e. Rs.11,47,348/- with 9% interest pendente lite and till realization. Fees is assessed as Rs.50,000/-.

70. Decree sheet be prepared accordingly. File be consigned to Record Room after due compliance. Digitally signed by SURINDER SURINDER S RATHI S RATHI Date:

2025.02.11 14:15:44 +0530 (SURINDER S. RATHI) District Judge, Commercial Court -11 Central District, THC Delhi/04.02.2025 CS Comm No.5134/2021 page 24
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