

# Alpana Kumari Sadh vs Manoj Gupt on 17 August, 2024

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

CS (COMM) No. 514/2023

Alpana Kumari Sadh  
Proprietor of A G International  
48/4, Arumuga Street, Kas Nagar,  
Karungalpalayam, Erode, Tamil Nadu-638003  
Residence At:  
A-49, Basement, Lajpat Nagar-1  
New Delhi-110024

.....Plaint

Vs.

1.

Manoj Gupta (LR of deceased Shobha Gupta)

2. Shubham Gupta (LR of deceased Shobha Gupta) S/o Sh. Manoj Gupta At:

X-4022, Gali No. 16, Shanti Mohalla, Gandhi Nagar, East Delhi, Delhi-110031 Also  
At:

H.No.-265, Suraj Mal Vihar, Delhi-110092 .....Defendants Date of Institution :  
13.10.2023 Date of final argument : 17.08.2024 Date of judgment : 17.08.2024  
Decision : Decreed Judgment

1. This suit is filed by plaintiff for recovery of Rs.18,50,860/- alongwith interest  
@18% per annum against the heirs of Late Smt. Shobha Gupta, proprietor of M/s  
Shri Balaji Fabrics as unpaid dues of goods sold. Plaintiff's case :

2. Case of the plaintiff as per plaint and the documents filed is that she is proprietor  
of M/s A G International at Erode, Tamil Nadu and is in the business of manufacture  
and sale of cotton, silk, woollen, rayon fabric and has a good reputation. Late Smt.  
Shobha Gupta who was proprietor of M/s Shri Balaji Fabric at Gandhi Nagar,  
Shahdara was one of the customers of the plaintiff and had been purchasing fabric  
from her for the last several years.

Plaintiff had been supplying goods vide GST paid invoices with a credit facility of 90 days. Plaintiff  
was maintaining a ledger of all the sales made and payments received. The payments were adjusted  
against the oldest bill pending.

3. In partial discharge of the debit balance Late Smt. Shobha Gupta drew 11 cheques between dates  
05.05.2019 to 05.08.2019 cumulatively valuing Rs.14,18,385/-. These cheques on presentation with

plaintiff's bank at Gandhi Nagar, Delhi were presented for encashment but dishonoured for insufficiency of funds on 01.08.2019 and 02.08.2019. Surprisingly, the cheque return memos are stated to be dated 08.07.2021 and 20.07.2021 i.e. after more than two years of dishonour of cheques. Legal notice under Section 138 of NI Act was issued on 14.08.2021 but no payment was made and the same was also not replied. Plaintiff filed a Section 138 NI Act Complaint.

4. As per plaint defendant made part payment of Rs.1.55 lakhs in five tranches between 22.11.2019 and 08.03.2021 even though Smt. Shobha Gupta admittedly expired on 10.03.2020. It is pleaded that she left a debit balance of Rs.12,63,385/-. Plaintiff issued legal demand notice dated 24.03.2023 which was received back with the report that she stood expired.

5. It is pleaded case of the plaintiff that three defendants namely Manoj Gupta is her husband while Shubham and Ritika are children of late Smt. Shobha Gupta and that they inherited her assets. It is pleaded that even after her death the defendants are operating business of the deceased by changing the name of the firm. Plaintiff repeatedly requested for clearing the dues but no amount was paid. Plaintiff has applied 18% interest taking the debit balance to Rs.18,50,860/-. It is claimed that defendants made last payment of Rs.25,000/- on 28.08.2021. Plaintiff approached Shahdara DLSA for Pre- Institution Mediation under Section 12A of Commercial Courts Act, 2015 where defendants did not participate and Non-Starter Report dated on 08.06.2023 was issued. Perusal of Non-Starter Report shows that it was carried out only against two out of the three defendants and no compliance of Section 12A of Commercial Courts Act, 2015 has been carried out qua defendant no. 3 Ritika Garg. For this non-compliance in terms of judgment of Hon'ble supreme Court Patil Automation Limited Vs. Rakheja Engineering Private Ltd. (2022) Latest Caselaw 645 SC dated 17.08.2022 the plaint deserves to be rejected qua defendant no. 3. The suit in hand is filed for following reliefs:

Prayer :

1. Pass a decree for recovery of Rs.18,50,860/- alongwith pendente lite and future interest @18% per annum till the entire amount is received by the plaintiff in favour of plaintiff and against the defendant.
2. Cost of the suit may also be awarded in favour of the plaintiff and against the defendant.
3. Pass any other or further relief/reliefs which this Hon'ble Court may kindly be deemed fit and proper in the facts and circumstances of the case in favour of plaintiff and against the defendant.
6. Summons of the suit was served upon the defendants who entered appearance through their Counsel Sh. Rajiv Sharma, Advocate. However, since the plaintiff had not impleaded all the three LRs and had dropped deceased Shobha Gupta's daughter Ritika Jain from the array of defendants, plaintiff's application for her impleadment was allowed on 30.03.2024. She was served by substituted mode by way of publication on 25.05.2024 but she did not file her WS and as such her right to file WS was closed on 03.07.2024. Case of Defendant no. 1 and 2

7. Separate joint written statement was filed by defendant no. 1 and 2, father and son duo. In their WS defendant no. 1 and defendant no. 2 have prayed for dismissal of the suit on the ground that plaintiff has suppressed material facts and has approached the Court with unclean hands and malafide intention. It is pleaded that defendants have no concern with the alleged business transaction referred to in the plaint. All the documents filed are said to be false and fabricated. It is pleaded that defendant no. 1 is carrying out business of cloth material and fabric as proprietor of M/s Shubham Fab at Gandhi Nagar, Shahdara. He accepts that during her lifetime wife of defendant no. 1 late Smt. Shobha Gupta was also carrying on business under a separate proprietorship concern. It is stated that defendant no. 2 is assisting defendant no. 1 being his son.

8. It is pleaded that plaintiff has filed a Section 138 NI Act Complaint against Late Smt. Shobha Gupta but the same was never pursued and was dismissed for lack of prosecution and this indicates that plaintiff might have settled the dues of late Smt. Shobha Gupta during her lifetime. Admittedly, no document in support of this plea had been filed by the defendant. It is pleaded that since deceased Late Smt. Shobha Gupta's business was separate and she used to carry out business transactions fairly and she did not leave any financial liability.

9. In their preliminary submission defendant no. 1 and 2 have accepted that plaintiff is carrying out business of sale of fabric and she had been approaching defendant no. 1 through her representatives and her husband Mr. Ashok Sadh in 2020. It is pleaded that plaintiff was desirous of starting fresh business relations with them after death of Late Smt. Shobha Gupta and even during those interactions the plaintiff never mentioned about any business dealings between her and Late Smt. Shobha Gupta. Defendant no. 1 admits purchase of fabric from plaintiff against some advance payment in plaintiff's bank account with an assurance to pay the balance on delivery of goods. Defendant no. 1 placed order of purchase of rayon, bobby fabric of around Rs.2 lakhs in last week of August 2020 for the first time and paid advance Rs.25,000/- on 29.08.2020. Remaining was to be paid in October 2020. He made payment of Rs.80,000/- to plaintiff between 26.10.2020 and 08.03.2021. However, no material was supplied by the plaintiff to Defendant no. 1 even up to 08.03.2021 and she continued to cite covid related impact on the supply. Defendant claims to have paid another Rs.25,000/- on 29.08.2021 taking the total advance payment to Rs.1,30,000/- but still fabric was not supplied by the plaintiff.

10. It is pleaded that for this defendant no. 1 has already filed a separate suit against the plaintiff before Ld. Civil Judge Shahdara as CS No. 836 of 2023 which is still subjudice where plaintiff is participating. It is pleaded that the suit in hand is a counterblast to that suit. It is pleaded that plaintiff tried to spread a wrong message in the business community that M/s Shri Balaji Fabric was proprietorship concern of Defendant no. 1 only. It is pleaded that the claimed business transaction between plaintiff and Late Smt. Shobha Gupta are of 2019 and as such barred by limitation.

11. In their reply on merits defendant no. 1 and defendant no. 2 have not denied that plaintiff is proprietor of M/s AG International and is manufacturer and seller of different types of fabrics. It is also not denied that they are heirs of Late Smt. Shobha Gupta who used to run a proprietorship firm M/s Shri Balaji Fabrics. It is also not denied that Late Smt. Shobha Gupta had been making purchases from the plaintiff. Defendants have not specifically denied that deceased had issued 11

cheques worth Rs.14,18,385/- to the plaintiff. All that is pleaded is that she had a separate business and that she did not leave any financial liability. It is not denied that these 11 cheques were dishonoured for insufficiency of funds.

12.It is denied that payment of Rs.1.55 lakhs was made by defendant towards partial discharge of debit balance of late Smt. Shobha Gupta. It is denied that deceased left a debit balance of Rs.12,63,385/- covered under 6 invoices. The details of the invoices have been denied evasively. Receipt of legal demand notice is denied. With these pleas dismissal of the suit is prayed.

13. In their affidavit of admission-denial of plaintiff's documents defendants have denied the ledger, invoices, legal notice of the plaintiff but have not denied the 11 cheques and dishonoured memo apart from certified copy of Section 138 NI Act Complaint.

#### Replication

14.Separate replication was filed wherein plaintiff reiterated her pleaded case and denied the averments of the defendants. It is pleaded that defendants have inherited the assets of Late Smt. Shobha Gupta and are as such obligated in law to honor her financial liabilities. It is denied that defendant no. 1 is carrying on business in the name and style of M/s Shubham Fab. It is denied that defendants paid Rs.1.30 lakhs as advance for purchase of fabric.

15.In her affidavit of admission and denial to the defendant's documents she has accepted the certified copy of civil suit filed by defendant against her before the Court of Ld. Civil Judge, Shahdara. She accepted bank statement of defendant no. 1 showing remittance of Rs.1.30 lakhs to plaintiff they however denied ledger qua advance payment or defendant's legal notice.

16. Out of the pleadings following issues were identified by this Court on 08.01.2024:

#### Issues:

1. Whether the suit is barred by limitation? OP Parties
2. Whether plaintiff is entitled to recovery of Rs.18,50,860/- alongwith interest @18% per annum? OPP
3. Relief

17. Evidence in this case was ordered to be recorded before Ld. LC Mr. Sanskar, Advocate as per protocol created by this Court under Order 18 Rule 4 CPC read with Order 15A Rule 6(l) and (o) CPC as applicable to Commercial suits.

#### Plaintiff's Evidence :-

18. To prove her case plaintiff stepped into the witness box as PW1 Alpana Kumari Sadh. Vide her affidavit Ex.PW1/A she deposed on the lines of the plaint and exhibited the following documents :-

i. True copy of the GST details of the plaintiff is Ex.PW1/1; ii. True copy of the GST details of the firm of the deceased is Ex.PW1/2; iii. True Copy of ledger account of the deceased and her firm maintained by the plaintiff is Ex.PW1/3;

iv. Certified copy of the cheques are Ex.PW1/4 to Ex.PW1/14; v. Certified copy of the returning memo is Ex.PW1/15 and Ex.PW1/16; vi. Certified copy of the legal notice dated 14.08.2019 alongwith postal receipt is Ex.PW1/17 (colly.) vii. Certified copy of the complaint under Section 138 NI Act filed by the plaintiff against the defendant is Ex.PW1/18;

viii. Certified copy of the invoices alongwith e-way bills are Ex.PW1/19 to Ex.PW1/24 (colly.) ix. True copy of the legal notice dated 24.03.2023 alongwith returned envelop are Ex.PW1/25 (colly.)

19. She was cross-examined at length wherein she stated that she ordinarily resides at Erode, Tamil Nadu and had been visiting Gandhi Nagar to see her business and that market is walking distance from there. She met defendant no. 1 Manoj Kumar but ordinarily her son used to deal with them. She stated that defendant no. 1 used to make cash payments for his deceased wife late Smt. Shobha Gupta. These cash payments are duly reflected in the ledger. She stated that no statement of account prior to 01.04.2019 had been filed. She accepted that she never met Late Smt. Shobha Gupta or defendant.

Sometimes payments were collected by her employee from the market. The cheques in question were handed over by deceased to plaintiff's husband. She accepted that defendant no. 1 Manoj Gupta has also given order to her husband for supply of rayon, bobby fabrics but the fabric was not sent. She denied that the NI Act case was not pursued because late Smt. Shobha Gupta had cleared her liabilities. She denied that there is no liability for which the suit in hand has been filed.

20. On the contrary defendant no. 1 examined himself as DW1 Manoj Kumar Gupta. Vide affidavit Ex.DW1/A he deposed on the lines of WS and exhibited following documents:

i. The copy of order dated 31.10.2022 passed by Ld. MM, South East Delhi is Mark A; ii. The legal notice dated 01.06.2023 is Ex.DW1/2; iii. The certified copy of suit no. 836/2023 filed by defendant against the plaintiff is Ex.DW1/3.

21. He stated that deceased late Smt. Shobha Gupta was his wife and she died on 10-11.03.2020. He also placed on record her death certificate Ex.DW1/4. He has two children Ritika Garg and Shubham Garg aged 32 and 30 years respectively. His daughter is married and resides somewhere in Noida. He accepted that his wife used to run a proprietorship firm M/s Balaji Fabrics but he could

not disclose when she started the same. He added that it was closed in 2020. The GST account was also closed. He never helped his wife in her business and never took her help in his business. He accepted that he has a separate firm M/s Shubham Fabric. He accepted that his firm and his late wife's firm have the same address. He got married to his wife on 16.05.1991 but stated that he does not remember if his wife left gold and silver ornaments from the marriage. He denied having knowledge of his wife having savings account or a PAN card. He also denied having knowledge that she had LIC policy, FDRs, shares medical insurance, debit/credit cards etc. She did not have any vehicle in her name.

22. He stated that she was a graduate from Rajasthan but there was no property in her name. He accepted that she had a bank account at Gandhi Nagar. He stated that he does not have any property in his own name. Property No.X/4022, Gali no. 16, Shanti Mohalla, Gandhi Nagar was purchased by his father 50 years ago. There is no other property besides this and he is presently residing in the same property. He has other documents like PAN, Adhar Voter ID etc. He denied that property no. A265 Surajmal Vihar belongs to him.

23. He stated that his wife died of cancer. He stated that he placed order of purchase of 5000 metre of Rayon fabric with the plaintiff in 2020 but he does not have any purchase order to show the same. He accepted that plaintiff's husband Ashok Sadh visited his shop once. He claimed that his firm M/s Shubham Fab is in business since 2008. He denied the suggestion that it was established after his wife's death. He can read and write English. He placed on record additional documents, electricity bill Ex.DW1/5, PAN Card Ex.DW1/6, Election I-Card Ex.DW1/7. He expressed unawareness if plaintiff filed Section 138 NI Act complaint against his wife. He denied that the payment of Rs.1.30 lakh was made to plaintiff against his wife's dues. He accepted that his wife was running business at their family property and that she had business relations with the plaintiff. He denied knowledge that as per ledger maintained by plaintiff his wife had debit balance of Rs.12,63,385/-. Despite admitting the 11 cheques in the affidavit of admission denial DW1 denied the same in the cross-examination which is an objectionable conduct. He denied knowledge of payment of Rs.50,000/- on 22.11.2019.

24. Witness was confronted with purported letters written by his deceased wife to plaintiff Ex.DW1/P1 but he denied having any knowledge of the same. He accepted receipt of legal notice from the plaintiff dated 24.03.2023 and admitted that it was not replied. He added that as per notice his wife is doing business of poly bag which was incorrect. He admitted receipt of pre-institution mediation notice but admittedly did not join the proceedings. He claims that he is a heart patient and his heart is working only 27% and he tends to forget things.

25. Affidavit of defendant no. 2 was also filed but he did not step into the witness box.

26. I have heard arguments of Sh. Trilok Singh and Ms. Maanya Saxena, Ld. Counsels for plaintiff and Sh. Rajeev Kumar, Ld. counsel for defendant no. 1 and 2 and have perused the case file carefully.

27. Now I shall dispose of individual issues framed in this case. Issue No. 1:

1. Whether suit is barred by limitation? OP Parties

28. An objection is taken by defendant in the WS that the suit is barred by limitation. It is pointed out by Ld. Counsel for defendant that all the invoices filed and relied by the plaintiff between dates 28.02.2019 to 23.05.2019. It is submitted that the suit in hand was filed on 13.10.2023 i.e. after more than four and a half years of the first invoice and more than 4 years of the last invoice. It is further argued that even if limitation is considered from the 11 cheques in question which are of date 05.05.2019 to 05.08.2019 Ex.PW1/4 to Ex.PW1/14 the suit is filed after four years of the last cheque and hence it is barred by limitation.

29. It is submitted that plaintiff is also relying on ledger Ex.PW1/3 and last credit entry shown is of 28.08.2021 when payment of Rs.25,000/- is received by way of bank transfer. It is submitted that this payment cannot be relied by the plaintiff as a part payment in so far as it was paid by defendant no. 1 towards his proprietorship firm M/s Shubham Fab for purchase of Rayon fabric and not towards partial discharge of financial liability of his deceased wife Smt. Shobha Gupta.

30. On the contrary it is submitted by Ld. Counsel for plaintiff that the suit is well within limitation in so far as Ld. Counsel for defendant has not considered the phrase of limitation provided by Hon'ble 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. Hon'ble Supreme Court held that "5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022. III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and

termination of proceedings."

(Emphasis Supplied)

31. In case titled Arif Azim Co. Ltd. Vs. Aptech Ltd., 2024 Latest Caselaw 128 SC Hon'ble Supreme Court ruled that, "82. Thus, in ordinary circumstances, the limitation period available to the petitioner for raising a claim would have come to an end after an expiry of three years, that is, on 27.03.2021. However, in March 2020, the entire world was taken under the grip of the deadly Covid-19 pandemic bringing everyday life and commercial activity to a complete halt across the globe. Taking cognisance of this unfortunate turn of events, this Court vide order dated 23.03.2020 passed in Suo Motu Civil Writ Petition No. 03/2020 directed the period commencing from 15.03.2020 to be excluded for the purposes of computation of limitation. The said extension of limitation was extended from time to time by this Court in view of the continuing pandemic. As a result, the period from 15.03.2020 to 28.02.2022 was finally determined to be excluded for the computation of limitation. It was provided that the balance period of limitation as available on 15.03.2020 would become available from 01.03.2022. Operative part of the order dated 10.01.2022 is extracted hereinbelow:.....

84. The effect of the above-referred order of this Court in the facts of the present case is that the balance limitation left on 15.03.2020 would become available w.e.f. 01.03.2022. The balance period of limitation remaining on 15.03.2020 can be calculated by computing the number of days between 15.03.2020 and 27.03.2021, which is the day when the limitation period would have come to an end under ordinary circumstances. The balance period thus comes to 1 year 13 days. This period of 1 year 13 days becomes available to the petitioner from 01.03.2022, thereby meaning that the limitation period available to the petitioner for invoking arbitration proceedings would have come to an end on 13.03.2023."

32. This judgment has been followed by Hon'ble High Court in a recent judgment passed on 01.05.2024 in case titled Chroma-Ator Energy Systems Pvt. Ltd. Vs. Indraprastha Gas Ltd., 2024 Latest Caselaw 869 Del wherein in an arbitration matter notice under Section 21 of Arbitration Act was issued on 04.11.2022 while petition under Section 11 (6) of the Act was filed on 01.03.2024. While referring to the above judgment of Arif Azim Vs. Aptech Ltd. Hon'ble High Court ruled, "11. Applying the interpretation set out above, since limitation in this case expired on 7th November 2021, firstly, the period of limitation between 15 th March 2020 and 7th November, 2021 would stand excluded. The recommencement of the limitation period would be from 1st March, 2022.

12. Thus, the invocation of arbitration on 4 th November 2022, would not be barred by limitation, rendering the present arbitration petition under Section 11(6) of the Act to be within limitation period under Article 137 of the Limitation Act, 1963."

33. Upon calculating the period of limitation on the basis of invoices as also invoices and the cheques it is evident that suit is well within limitation once the period between 15.03.2020 to 28.02.2022 is adjusted in the relevant dates. As such I see no merits in the plea of Ld. Counsel for defendant that the suit is barred by limitation. Accordingly issue no. 1 is answered in favour of plaintiff and against



the defendants.

Issue No. 2:

2. Whether plaintiff is entitled to recovery of Rs.18,50,860/- alongwith interest @18% per annum? OPP

34. In order to discharge the onus of proving this issue plaintiff has placed and proved on record 6 invoices Ex.PW1/19 to 24 alongwith the relevant e-way bills. Perusal of these invoices shows that they have been issued to M/s Shri Balaji Fabrics, an admitted proprietorship firm of Late Smt. Shobha Gupta wife and mother of defendant no. 1 and 2 respectively. The material has been sent by plaintiff from Erode, Tamil Nadu to Gandhi Nagar, Shahdara by way of transportation through e-way bills. Although in order to discharge onus under Section 31, 33 and 39 of Sale of Goods Act, 1930 Plaintiff is also supposed to place on record transportation bill i.e. Form 8 of Carriage by Road Rules, 2011. Admittedly, no bill has been filed. However Ld. Counsel for plaintiff submits that plaintiff is relying on 11 dishonoured cheques cumulatively valuing Rs.14,18,385/- as against principal debit balance of Rs.12,63,385/-. Ld. Counsel for plaintiff has submitted that her client is entitled to presumption under Section 118 and 139 of NI Act. For ready reference the same are reproduced hereunder:

Section 118 NI Act: Presumptions as to negotiable instruments of consideration  
Until the contrary is proved, the following presumptions shall be made:-

(a) of consideration-that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date- that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance- that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer.- that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of endorsements - that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps-that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course - that the holder of a negotiable instrument is a holder in due course; provided that, where the instrument has been contained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Section 139 NI Act: Presumption in favour of holder It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.

35. It is further argued on behalf of plaintiff that it is not the case of the defendants that plaintiff did not supply the goods or that the goods supplied were defective. It is submitted that defendants did not reply to plaintiff's legal notice Ex.PW1/25 and as such it is deemed that the contents of the legal notice stood duly accepted.

36. As per case titled R Vadivelu Vs. M/s Sakthi Asphalts and Pelts, (2003) 1 JCC (NI) 105 (Mad): (2003) 11 CCR 236 (Mad) of Hon'ble High Court of Madras, case titled Yogendra Bhagatram Sachdev Vs. State of Maharashtra, (2003) 111 CCR 216 (BOM) of Hon'ble High Court of Maharashtra and in case titled Gorantla Venkateswara Rao Vs. Kolla Veera Raghava Rao, (2006) 1 JCC (NI) 73 AP : (2006) 11 CCR 416 AP, the fact that defendant did not reply Section 138 (b) of NI Act notice also calls for drawing adverse inference against him.

37. It is submitted that in the entire WS there is no denial that the goods covered in the 6 invoices in question have been duly delivered to the defendant.

38. On the contrary it is argued by Ld. Counsel for defendant that the deceased Shobha Gupta had no financial liability which was payable to the plaintiff. It is pleaded case of the defendant that it is only during her lifetime she cleared all the dues of the plaintiff. However it is conceded that no proof in support of the plea is either pleaded or placed on record.

39. An attempt is made by Ld. Counsel for defendants to draw attention to the portion of cross-examination of PW1 wherein she states that she had received certain cash payments from defendant no. 1 qua the liability of his late wife but in the entire ledger Ex.PW1/3 there is no reference of any cash entry. This plea is inconsequential and is of no avail to the defendant. It is not the pleaded case of the defendant that he had made any payments to the plaintiff qua his late wife's liability after her death.

40. 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 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)

41. 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."

42. 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."

43. Another plea raised is that the fact that Section 138 NI Act complaint filed by the plaintiff against his late wife was dismissed in 2022 for non-prosecution. I do not find any strength in this plea in so far as mere dismissal of NI Act complaint for non-appearance of the plaintiff does not necessarily mean that complainant has received the cheque amount.

44. Another submission made by Ld. Counsel for defendant is that the ledger maintained by the plaintiff is unbelievably because payment of Rs.1.30 lakhs made by defendant no. 1 for his firm M/s Shubham Fab as advance was shown as correct entries in his late wife's account.

45. This fact of placing of order have been accepted by PW1 in her cross-

examination but she denied that Rs.1.30 lakhs was paid by defendant no. 1 as advance and not towards partial discharge of debit balance of his defendant wife. Upon being asked Ld. Counsel for defendants fairly conceded that he has no document to show that these payments of Rs.1.30 lakhs made to the plaintiff on different dates was only as advance as sought to be made in the Court. Neither any email nor any chat exchange has been filed in support of this plea. It is a settled legal proposition that as per Section 106 of Bhartiya Sakshya Adhiniyam, 2023 (Section 103 of Indian Evidence Act) the onus of proving a specific fact lies solely on the defendant. For ready reference the same is reproduced hereunder:

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

Illustration:

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

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

46. In the absence of any iota of evidence a mere denied suggestion does not discharge this onus of defendant.

47. Another plea raised is that deceased Shobha Gupta did not leave any assets at the time of her death from which the plaintiff's demand of the suit amount can be met. It is admitted case of the defendants that Smt. Shobha Gupta was a successful businessman and had been running her own proprietorship firm M/s Shri Balaji Fabrics and had been purchasing material worth millions even from a seller as plaintiff who is a resident of Erode, Tamil Nadu. Record reveals that she had a thriving business in the heart of garments market at Gandhi Nagar. A bald plea and denial that deceased did not leave any asset is wholly insufficient to discharge the onus under Section 109 of Bhartiya Sakshya Adhiniyam, 2023 (Section 106 of the Evidence Act). For ready reference the same is reproduced hereunder:

Section 109 of Bhartiya Sakshya Adhiniyam, 2023 : Burden of proving fact especially within knowledge When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations:

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

48. Such was the zest in denial that the defendant no.1 while standing in the witness box even denied his wife having a PAN no. and an Aadhar card. Defendant could have bonafidely produced balance sheets, bank statements, GST records, stock registers etc., to substantiate the contention that she died a pauper. The WS is totally silent that she was in debt when she demised. The submission that she died of cancer does not ipso facto mean that she had no money which can be said to have been inherited by the defendants.

49. Plaintiff has categorically taken a stand that the thriving business of late Smt. Shobha Gupta in the name and style of M/s Shri Balaji Fabrics was taken over and carried forward by defendants by starting a new firm M/s Shubham Fab. Despite contending that M/s Shubham Fab pre-existed M/s Shri Balaji Fabrics no evidence was led by the defendant in support of this plea. In view of the above discussion I have no hesitation in concluding that plaintiff has discharged the onus of proving the above issues. Issue no. 2 is also answered in favour of plaintiff and against the defendants.

## Interest

50. As far as rate of interest is concerned invoice carry an endorsement of 24% interest. Plaintiff has calculated pre-suit interest @18% per annum. Although as per Section 34 of CPC in general civil suits the rate of interest applicable is 6%. But as per proviso to the same statute the commercial disputes shall attract interest as per RBI Directive for commercial transactions which is 9%.

51. In the suit in hand plaintiff is entitled to interest @18% per annum as per dishonoured cheques which she has placed on record. The interest payable on a dishonoured Negotiable Instrument as per Section 80 Negotiable Instruments Act, 1881 which reads as under:

Section 80 NI Act: Interest when no rate specified "When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of 18% per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs."

Explanation: When the party charged is the endorser of an instrument dishonoured by non- payment, he is liable to pay interest from the time that he receives notice of the dishonour.

52. However, no decree is being passed against defendant no. 3 Smt. Ritika Garg as suit against her stands rejected for non-compliance of Section 12A of Commercial Courts Act, 2015.

Relief:-

53. Accordingly, the suit of the plaintiff is decreed with cost for Rs.18,50,960/-

against defendant no. 1 and 2 jointly and severally as heirs of Late Smt. Shobha Gupta alongwith 18% interest pendente lite and till realization. Lawyer's fees is assessed as Rs.25,000/-.

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

(SURINDER S. RATHI) District Judge, Commercial Court -03 Shahdara District, KKD  
Delhi/17.08.2024