

M/S Star Educational Books Distributor ... vs Shweta Jain on 6 December, 2024

M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain

DLCT010038572023

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

CIVIL SUIT (COMMERCIAL) NO.:- 472/2023

IN THE MATTER OF :-

M/s Star Educational Books
Distributor Pvt. Ltd.

4736/23, Plot No. 2 & 3

Ansari Road, Daryaganj,

New Delhi-110002

Through its AR Mr. Lokesh Sharma

... Plaintiff

VERSUS

Ms. Shweta Jain

Proprietor of M/s DBH Publishers & Distributors

Tower Height Apartment,

C-1-402, HIG Flat, Sport Complex,

Pitampura, Delhi 110034

... Defendant

SUIT FOR RECOVERY OF RS.6,18,308/-

Date of institution

: 17/03/2023

Date on which Judgment was reserved

: 02/12/2024

Date of Judgment

: 06/12/2024

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

1.

By way of present judgment, this court shall adjudicate upon suit filed by the plaintiff against the defendant for recovery of Rs.6,18,308/- along with pendente-lite and future interest @ 18% per annum.

CASE OF THE PLAINTIFF AS PER PLAINT

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

i. The plaintiff is a Private Limited Company incorporated under the Indian Companies Act, 1956 having registered office at the abovesaid address.

ii. The present suit has been filed, signed, verified and instituted by Sh. Lokesh Sharma, who has been authorized by the plaintiff company vide its Board Resolution dated 06.08.2022.

iii. The defendant is proprietorship firm and Ms. Shweta Jain is the proprietor of the defendant firm, who visited to the office of the plaintiff, selected the books and placed the orders to the plaintiff company at its office.

M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain iv. That the goods/books were supplied to the defendant on credit basis vide various invoices/bills. v. That as per the computerized running ledger/statement of account w.e.f. 01/04/2019 to 28/02/2023 maintained by the plaintiff company in the regular course of business, the last part payment of Rs.21,794/- was made by the defendant on 13.01.2020 and after adjustment of the part payment by the defendant, there is an outstanding balance payment of Rs.6,18,308/- as principal amount. Hence, the plaintiff has filed the present suit against the defendant.

3. Summons of the suit were issued to the defendant. The defendant appeared through his counsel.

CASE OF DEFENDANT

4. The defendant in its written statement has averred that the plaintiff has not approached this court with clean hands and has suppressed material facts from this court that the plaintiff and any other employees of the plaintiff company never met with the proprietor of M/S DBH Publishers and Distributors.

5. That there is no privity of contract between the plaintiff and the defendant and the books of account maintained by the plaintiff are also forged and are never acknowledged.

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6. That the plaintiff had never supplied any goods/books to the defendant and defendant never received any books from the plaintiff on credit basis and the statement of account and invoices are

forged and that is why no document has been placed on record to show the purchase order or delivery of the same.

REPLICATION

7. Plaintiff filed the replication controverting the allegations/ contentions in the Written Statement of the defendant and contents of the plaint have been reiterated and reaffirmed.

8. Initially, the suit was filed against the defendant with the name Ms. Sweeta Jain, proprietor of M/S DBH Publishers but thereafter application of the plaintiff for seeking change of name /spelling of the proprietor of the defendant was allowed by this court vide order dated 25.08.2023 and the name of the defendant was allowed to be amended as Ms. Shweta Jain, Proprietor of the said firm.

ISSUES

9. On the basis of the pleadings following issues were settled on 16.10.2023 :

- i. Whether the plaintiff has not approached this court with clean hands and has suppressed the material facts as alleged by the defendant? OPD
- M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain
- ii. Whether this court has no territorial jurisdiction to try the present suit as alleged by the defendant ? OPD
- iii. Whether the plaintiff is entitled for the recovery of the amount as claimed in the plaint? OPP
- iv. If the issue no. (iii) is decided in affirmative, whether the plaintiff is entitled for the pendente lite and future interest, if so at what rate and for what period? OPP
- v. Relief.

EVIDENCE OF THE PLAINTIFF

10. The plaintiff in order to prove its case has led plaintiff evidence and examined Sh. Lokesh Sharma, AR of the plaintiff company as PW-1. PW-1 has filed his evidence by way of affidavit Ex.PW1/A, wherein he reiterated and reaffirmed the contents of the plaint. PW-1 in his testimony has relied upon the following documents:-

- i. The certificate of incorporation of plaintiff company is ExPW1/1 (OSR).
- ii. Extract of minutes of meetings of the Board of Directors dated 06/08/2022 in my favour is ExPW1/2.
- iii. Copy of the said minutes of meeting of the Board of Directors dated 06/08/2022 is ExPW1/3 (OSR).
- iv. Copy of invoice/bills are ExPW1/4 coll.
- v. Copy of statement/ledger account is ExPW1/5.
- vi. Certificate u/s 65 B of Indian Evidence Act is ExPW1/6.

M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain vii. Copy of e-mails regarding orders and payments are ExPW1/7 colly.

viii. Certificate under Order 11 Rule 6 of CPC as amended by Commercial Courts Act is ExPW1/8 (objected to as the same was not filed earlier).

ix. The copy of booklet of 2023 Delhi State Booksellers and Publishers Association is ExPW1/9 (OSR).

11. Sh. Sanjay Kumar Yadav, Assistant Area Manager, Cen- gage Group has been examined as PW2.

EVIDENCE OF THE DEFENDANT

12. On 03.04.2024, it was stated by the Ld. Counsel for the de- fendant that defendant does not want to lead defence evidence and hence DE was closed.

ISSUE WISE FINDINGS Issue no. 1

(i) Whether the plaintiff has not approached this court with clean hands and has suppressed the material facts as alleged by the defendant? OPD

13. It is settled law that a person who approaches Court for granting relief, equitable or otherwise, is under a solemn obliga- tion to candidly & correctly disclose all the material/important facts which have bearing on the adjudication of the issues raised M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain in the case. He owes a duty to the court to bring out all the facts and desist from concealing/suppressing any material fact within his knowledge or which he could have known by exercising due diligence expected of a person of ordinary prudence. The doc- trine is often stated as those seeking Equity must do Equity or Equity must come with Clean Hands.

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

114).

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

16. In the present case the defendant has denied placing any purchase order with the plaintiff against the invoices/bills in question. In my view, these aspects would be decided by the M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain Court while discussing the later issues regarding the entitlement of the plaintiff to recover the amount in question but the defendant has miserably failed to show as to what material facts have been suppressed by the plaintiff, which is of such nature that the plaintiff is not entitled to any relief from the Court.

17. Hence, this issue is decided against the defendant and in favour of the plaintiff.

(ii) Whether this Court has no territorial jurisdiction to try the present suit as alleged by the defendant ? OPD

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

19. It is argued by the Ld. counsel for the defendant that this court does not have territorial jurisdiction to try this case. It is stated that as per the invoices relied upon by the plaintiff, the goods were sent to the defendant at its address of Tower Height Apartment, C-1/402, HIG Flats, Sports Complex, Pitam Pura, New Delhi-110034. It is stated that said address of Pitam Pura, New Delhi does not fall within the jurisdiction of this court. Further the defendant also does not reside or work for gain within the jurisdiction of this court and in view of the same, in terms of Section 20 CPC, this court has no territorial jurisdiction to try this case.

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20. Ld. counsel for the plaintiff has controverted the contentions of the Ld. counsel for the defendant.

21. It is relevant to state that PW1 Sh. Lokesh Sharma has deposed in his cross-examination that some of the books were supplied to the defendant at their earlier address of 4, Daryaganj, Delhi and the defendant Smt. Shweta Jain used to sit at the said address. The said address of 4, Daryaganj, Delhi is within the jurisdiction of this court.

22. The defendant has also not denied that the address of 4, Daryaganj, Delhi did not belong to the defendant at any point of time. PW1 has categorically stated in his cross-examination that 4, Daryaganj, Delhi was the office of the defendant firm i.e. M/S DBH Publishers.

23. Further it is not the case of the defendant that any place of payment was specified in the transactions between the parties. It is trite law that once no place of payment is specified, the debtor has to seek the creditor and since the creditor/plaintiff is located within the jurisdiction of this court, therefore, payment had to be made at the said address of the plaintiff and hence, part cause of action within the meaning of Section 20 (c) CPC arose within the jurisdiction of this Court. Hence, this court has the territorial jurisdiction to try the present suit.

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24. Hence, this issue is decided against the defendant and in favour of the plaintiff.

Issue No. 3 :

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

25. In order to prove his case, the plaintiff has examined Sh. Lokesh Sharma, AR of the plaintiff company as PW1 who has deposed that the defendant is proprietorship firm and Ms. Shweta Jain is the proprietor of the defendant firm, who visited to the office of the plaintiff and placed the orders to the plaintiff company at its office and plaintiff supplied the goods/books to the defendant on credit basis vide various invoices/bills Ex.PW1/4 colly. He further stated that last part payment of Rs.21,794/- was made by the defendant on 13.01.2020 and as per statement of account Ex.PW1/5 an amount of Rs.6,18,308/- is still outstanding against the defendant which the defendant failed to pay.

26. PW1 has been cross examined by Ld. Counsel for the defendant in which he admitted that the plaintiff did not receive any purchase order on any fixed format and that it is correct that it has not been specified on the invoices that the orders with regard to the same were received through mail or telephonically. He further admitted that the prints of invoices were taken out by the concerned employee of the company and the print outs of the M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain mail were taken by Sh. Arun Tiwari from my computer system and the mails were forwarded to him by Sh. Arun Tiwari. He further admitted that the present suit is in respect of the invoices whose orders were placed by the defendant and received by them through the publishers. He further denied the suggestion that the defendant has no connection with the said invoices or that the invoices are forged and fabricated and that the defendant never placed any order in respect of the same.

27. There is nothing in the cross examination of this witness to shake his credit.

28. Sh. Sanjay Kumar Yadav (PW2) Assistant Area Sales Manager Cengage Group has deposed that on the basis of request received from the official of the defendant namely Ms. Shweta Jain to get the order processed, he as official of Cengage Group wrote mail to the plaintiff M/S Star Educational Books Distributor Pvt. Ltd. who was their distributor to supply the books to the defendant and the mail is exhibited as ExPW2/1.

29. He further deposed that on the basis of the e.mail received from the plaintiff for confirmation of the order in respect of the books mentioned therein, he requested the operation department of Cengage Group to process that order vide his mail ExPW2/2 and this request was processed by Ms. Priya Jain of the Operational Department of Cengage Group.

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30. It may note here that the defendant in his written statement has taken the contradictory defences. On one hand it is pleaded that the defendant had cleared off all the previous due payments to the plaintiff against whatever supplies were made by the plaintiff and there was no outstanding amount due against the answering defendant and at the same time it is also alleged that there is no privity of contract between the plaintiff and the answering defendant.

31. If the defendant had cleared off all the outstanding payments, how it can be said that there is no privity of contract between both the parties. The defendant further takes the plea that the invoices relied upon by the plaintiff and the statement of account filed by the plaintiff are forged and fabricated and the answering defendant never visited the plaintiff to order the goods in question and that is why plaintiff has not placed on record any purchase order or delivery receipts.

32. Here it is relevant to state that all the invoices relied upon by the plaintiff i.e. ExPW1/4 colly, bear the signatures of a person as a token of receipt of books, which is of the official of the defendant according to the case of the plaintiff. There is nothing on record to rebut the same.

33. Infact one of the invoices bears the acknowledgment stamp of 'International Book Centre, New Delhi' which admittedly is M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain the firm of husband of the defendant. No evidence has been led by the defendant to show that this stamp of the entity of the husband of the defendant is forged and fabricated.

34. Further since the defendant has taken the plea that it had cleared all the outstanding amount, it should have filed its ledger in support of its defence but the defendant has not filed its ledger. It has nowhere been specified by the defendant that payment of what invoices and till which period was cleared off by the defendant. No details in this regard have been filed on behalf of the defendant.

35. The ledger account filed by the plaintiff is for the period 01.04.2019 to 16.03.2020 and during this period, the defendant had paid an amount of Rs.11,85,414/- in part payment leaving balance of Rs. 6,18,308/-. If the defendant had cleared off its earlier dues as averred in the written statement then it is not clear for what purpose and for what goods the defendant made payment of such a large amount of Rs.11,85,414/- during the relevant period.

36. Since the defendant has taken a plea that she has already made payment of all the books received by her, by virtue of Section 106 of Bhartiya Sakshya Adhiniyam, 2023 the entire onus to prove the said averments lies on the defendant.

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37. Section 106 of Bhartiya Sakshya Adhiniyam, 2023 provides that 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.

38. In the present case, as stated above, defendant has not led any evidence in court in this regard. She has not stated how the payments of the invoices in question was made to the plaintiff and on

which dates and through what mode of payment. If payment was made through banking channel, she has not filed any document in that regard. The defendant has not filed her ledger to corroborate her defence that the entire payment has been made by her.

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

40. The defendant has not led any evidence in this case. As the defendant has refrained from entering into the witness box, not submitting herself for the cross examination by the learned counsel for the plaintiff, adverse inference is liable to be drawn against the defendant. Her pleading remains pleading only and not translated into proof. Any suggestions made to PW1 in the M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain cross examination does not take case of the defendant anywhere unless the defendant is able to discharge its burden to prove certain facts alleged against the plaintiff as required under Section 104 of Bhartiya Sakshya Adhiniyam, 2023 by leading evidence. Any pleading without evidence is not the evidence and proof at all. Therefore, in the absence of the evidence of the defendant, it is needless to say that the defendant has failed to prove its defence. Reliance is placed on Vidyadhar vs. Manik Rao and anr. reported in AIR 1999 SC 1441.

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

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

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

44. It is argued by ld. Counsel for the defendant that PW1 is not a competent witness as the plaintiff is relying on only the extract of the resolution dated 06.08.2022 but the minutes book containing any resolution of the Board of Directors of the plaintiff company dated 06.08.2022 has not been filed. Further, the plaintiff has not filed any CCTV footage in support of its pleading that the defendant visited the office of the plaintiff. Further, PW1 in his cross examination has stated that the

defendant used to place the order through e.mail, telephonically and also through her employee who used to come with a parchi (Slip) but no such slip has been filed by the plaintiff in the present suit and further plaintiff has not filed e.mail dated 26.12.2019 and 13.02.2020 as mentioned on the bill dated 20.02.2020 and 16.03.2020 respectively and hence, in totality plaintiff has not been able to prove its case.

45. In my view, these arguments of Ld. Counsel for the defendant have no merit. In civil cases, the burden is on the plaintiff to prove its case on preponderance of probability and not to prove M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain the case beyond reasonable doubt. The case of the plaintiff is supported by oral as well as documentary evidence whereas defendant has not led any evidence. As stated above, the testimony of the witness of the plaintiff has been found to be trustworthy and reliable. The issues raised by ld. Counsel for the defendant are not sufficient to disbelieve the case of the plaintiff and hence these arguments have no merit.

46. The oral testimony of the witness of the plaintiff is corroborated by the invoices and the other documents filed on record including the invoices and ledger etc. There is nothing on record for me to disbelieve the case of the plaintiff. The defendant has not led any evidence and has miserably failed to prove its defence.

47. After considering all the facts and circumstances, I hold that the plaintiff has been able to prove its case by preponderance of probability that the goods/books in question were sold by the plaintiff to defendant and the defendant is liable to pay the principal amount of Rs.6,18,308/- .

48. Accordingly, this issue is decided in favour of the plaintiff and against the defendant.

Issue No. 4 :

(iv) If the issue no. (iii) is decided in affirmative, whether M/S Star Educational Books Distributor Pvt. Ltd. vs. Ms. Shweta Jain the plaintiff is entitled for the pendente lite and future interest, if so at what rate and for what period? (OPP)

49. As far as grant of pendente lite and future interest is concerned, in my view, since defendant has deprived the plaintiff for use of the amount of sold goods/books and considering the prevalent rate of interest, I grant interest @ 8% per annum on the decretal amount from the date of filing of suit i.e. 17.03.2023 till the date of decree and thereafter till the realization.

Issue No. 5 :-

(v) Relief

50. In view of the aforesaid discussions, the suit is decreed in favour of the plaintiff and against the defendant for sum of Rs.6,18,308/- with interest @ 8% per annum on the said amount from the date of filing of suit i.e. 17.03.2023 till the date of decree and thereafter till its realization. The plaintiff is also held entitled to costs of the suit.

51. Decree sheet be prepared accordingly.

52. File be consigned to Record Room. Digitally signed DEEPAK by DEEPAK GARG GARG Date: 2024.12.06 15:37:33 +0530 Announced in the open Court (Deepak Garg) on 06th Day of December, 2024 Distt. Judge, (Comm. Court)-09, Central District, THC : Delhi