

Ramesh Gupta vs Kshama Gupta on 3 January, 2025

Sh. Ramesh Chand Gupta vs. Ms. Kshama Gupta

DLCT010074762024

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

CIVIL SUIT (COMMERCIAL) NO.:- 602/2024

IN THE MATTER OF :-

Sh. Ramesh Chand Gupta
Sole Proprietor of
M/S Shiv Lal Ramesh Chand,
Office at 617, Katra Ishwar Bhawan,
Khari Baoli,
Delhi 110006

....Plaintiff

Versus

Ms. Kshama Gupta
Sole Proprietor of
M/S Naksh Enterprises,
Office at: Plot No. 467,
Ground Floor, UK-2,
Ecotech-3, Grater Noida,
UP 201305

Also at:

Ms. Kshama Gupta,
Sole Proprietor of
M/S Naksh Enterprises,
Proprietorship concern,
B-1A/19, Ist Floor,
Sector 51, Noida,
UP 201301

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Sh. Ramesh Chand Gupta vs. Ms. Kshama Gupta

Also at:

Ms. Kshama Gupta

Sole Proprietor of,
M/S Naksh Enterprises,
Proprietorship concern,
Shop at: 134-135, VPA Complex-2
Noida, UP 201305

....Defendant

Date of institution of the Suit	: 15/05/2024
Date on which Judgment was reserved:	: 16/12/2024
Date of Judgment	: 03/01/2025

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

1.

By way of present judgment, this court shall adjudicate upon this suit filed by the plaintiff against the defendant for recovery of Rs.5,99,300/- along with pendetelite and future interest @ 18% per annum.

PLAINTIFF'S CASE

2. The brief facts of the case as per the case of the plaintiff are as under:

i. The plaintiff is a company engaged in the business of wholesale and retail business of dry fruits, kirana merchant, commission agent under the name and style of 'M/S Shiv Lal Ramesh Chand' and Sh. Ramesh Chand Gupta being the sole proprietor of the plaintiff concern is competent to file, sign, verify, institute the present suit and follow up the legal proceedings on behalf of the plaintiff.

Sh. Ramesh Chand Gupta vs. Ms. Kshama Gupta ii. That in the month of March-April 2018-2019 the officials/agent of the defendant concern had visited the abovesaid office of the plaintiff and had placed order at the office/shop of the plaintiff and the plaintiff had sent all the goods from his office/shop to the defendant's required destination.

iii. That the plaintiff raised bills/GR/invoices upon defendant for the goods purchased by the defendant and that the current and running account was opened between the parties and the defendant used to make all the payments on account basis, not on the bill to bill wise.

iv. That as per the accounts maintained by the plaintiff company till 31/03/2024, the defendant required to pay a sum of Rs.5,99,300/- as principal amount towards the goods purchased by the defendant from plaintiff.

v. That defendant had purchased the goods from the plaintiff on credit basis vide the following bills :

S.No.	Invoice No.	Date	Amount
1.	1491	26.02.2020	Rs.1,53,160/-
2.	1523	03.03.2020	Rs.1,22,528/-
3.	1601	16.03.2020	Rs.76,580/-
4.	1617	18.03.2020	Rs.1,54,000/-
5.	SR/1089/22-23	06.10.2022	Rs.79,380/-
6.	SR/1308/22-23	07.11.2022	Rs.73,780/-
	Total		Rs.6,59,428/-

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vii. That the plaintiff had also initiated pre institution mediation and settlement as provided in Section 12A of the commercial Courts Act against the defendant and the defendant was duly served with notice of mediation but no one appeared on behalf of the defendants for mediation and hence the same was disposed of as non starter and certificate was issued on 31.01.2023.

vii. That the defendant admits its liability and made part payment of Rs.3,160/- on 12.04.2023.

viii. The defendants have wrongfully refused and evaded to pay the abovementioned amount and hence, the plaintiff has prayed for a decree of Rs.5,99,300/- along with pendente lite and future interest @ 18% per annum.

COURT PROCEEDINGS

3. Summons of the suit were issued to the defendant. The defendant appeared through his counsel and filed the written statement.

CASE OF DEFENDANT

4. In the written statement the defendant has admitted the business relations with the plaintiff.

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5. It is averred by the defendant that prior to Covid period he placed an order to supply a big quantity of almond kernel but the plaintiff supplied poor quality of goods/almond kernel to the defendant and when he apprised the plaintiff about the quality of the goods and on request of the

defendant, the plaintiff was ready to exchange the poor quality almond and the same was returned to the plaintiff.

6. It is further stated that after some time the plaintiff again supplied the almond kernels of poor quality and the same were returned by the supplier/shopkeeper where the defendant firm supplied the goods and meanwhile lockdown was imposed by the government and the goods which were returned by the shopkeepers to the defendant were lying in the godown of the defendant and after so many requests from the defendant side, the plaintiff did not come to take back the bad quality of goods from the defendant godown resulting in financial losses to the defendant.

7. It is further contended that in the end, only an amount of Rs.3,03,121/- was outstanding against the defendant and the defendant paid an amount of Rs. 3 lakhs in cash to the plaintiff on 31.03.2023 and further paid an amount of Rs. 3,160/- on 12.04.2023 clearing the entire outstanding amount and hence, no more amount is due towards the defendant.

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8. On the basis of the pleadings following issues were set-

tled on 07/08/2024 :

- i. Whether the plaintiff is entitled for the recovery of the amount as claimed in the plaint? (OPP)
- ii. If the issue no. (i) 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)
- iii. Relief.

PLAINTIFF'S EVIDENCE

9. Plaintiff has examined Sh. Ramesh Chand Gupta, Sole proprietor of M/S Shiv Lal Ramesh Chand as PW1 who filed his evidence by way of affidavit ExPW1/A and relied upon documents as under:

- i. The copy of the GST certificate of the plaintiff firm is Ex.PW1/1 (colly.).
- ii. The copy of the invoice/Bill/GR along with E-way Bill are Ex.PW1/2 (colly.)
- iii. The copy of the statement of account/Ledger Account is Ex.PW1/3.
- iv. The copy of the legal notice dated 07.07.22 is Ex.PW1/4.
- v. The original postal receipts are Ex.PW1/5 (colly.)
- vi. The non-starter report dated 31.01.23 is Ex.PW1/6.
- vii. The certificate U/s 65-B of Indian Evidence Act is Ex.PW1/7.

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10. The witness was cross examined by ld. Counsel for the defendants.

DEFENDANT'S EVIDENCE

11. In spite of opportunities, the defendant did not lead its evidence. The court was constrained to close the plaintiff's evidence on 03.12.2024.

12. I have heard Ld. Counsel for the plaintiff and perused the entire record. None appeared for the defendants to advance the arguments.

ISSUEWISE FINDINGS Issue no. 1 i. Whether the plaintiff is entitled for the recovery of the amount as claimed in the plaint? (OPP)

13. In order to prove its case, Sh. Ramesh Chand Gupta, Sole Proprietor of the plaintiff firm has examined himself as PW1 who has deposed that plaintiff is engaged in the business, manufacturing and trading of nuts and dry fruits and in the course of business, plaintiff supplied goods to the defendant to the tune of Rs. 6,58,728/- vide invoices ExPW1/2 colly and the copy of the ledger has been exhibited as ExPW1/3 and an amount of Rs.5,99,300/- is outstanding against the defendant.

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14. The factum of supply of goods under the said invoices is not disputed by the defendant.

15. As stated above, it is the case of the defendant that the plaintiff had supplied poor quality of goods which in spite of request of the defendant were not taken back by the plaintiff from its godown which resulted in financial losses to the defendant. However, it is denied by the plaintiff.

16. Further, as per the case of the defendant only an amount of Rs.3,03,121/- was outstanding against the defendant and the defendant paid an amount of Rs. 3 lakhs in cash to the plaintiff on 31.03.2023 and further paid an amount of Rs. 3,160/- on 12.04.2023 clearing the entire outstanding amount and hence, no more amount is due towards the defendant. The factum of payment of cash amount of Rs. 3 lakhs has been denied on behalf of the plaintiff.

17. Since the supply of goods in question to the defendant is admitted and the defendant have taken the plea of supply of poor quality of goods and further cash payment of Rs. 3 lakhs to the plaintiff on 31.03.2023, by virtue of 106 of Bhartiya Sakshya Adhiniyam, 2023, the entire onus to prove the said averments lies on the defendant.

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18. 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.

19. As far as the plea of supply of poor quality of goods is concerned, the defendant has not led any evidence in court. The goods were supplied to the defendant through various invoices but the

defendant has miserably failed to show that the goods of which particular invoice was defective, what was the defect, to what extent and when and how the defendant brought it to the notice of the plaintiff that the poor quality of goods were supplied. It is not the case of the defendant that the goods under all the invoices were of poor quality. If the goods were returned as has been pleaded by the defendant nothing has been filed as to how much of the goods, on which date, quantity of goods etc. were returned.

20. Further, I may note that the defendant has not led any evidence in court as to whom the cash payment of Rs. 3 lakhs was made to the plaintiff. Further, it is not specified as to in whose presence and at which place the said payment was made. The defendant has failed to prove the same and has taken bald plea.

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21. Here it is also relevant to state that defendant has filed ledger account for the period 01.04.2017 to 31.03.2025 and the said ledger shows the closing balance of Rs.2,99,961/- as on 12.04.2023 as debit balance payable to the plaintiff. During final arguments it was frankly admitted by Id. Counsel for the defendant that the defendant is ready to pay the said amount of Rs.2,99,961/- to the plaintiff.

22. In view of the above, the said ledger filed by the defendant belies the defence of the defendant that nothing is payable to the plaintiff.

23. It is argued by Id. Counsel for the defendant that in the legal notice ExPW1/4 dated 07.07.2022 plaintiff had demanded an amount of Rs.4,50,000/- as the principal outstanding amount and it is not in consonance with the principal amount claimed in the present suit.

24. In this regard, it is submitted by Id. Counsel for the plaintiff that after the issuance of the said legal notice dated 07.07.2022 there were further sales made by plaintiff to the defendant for the goods worth Rs. 79,380/- and Rs.73,380/- dated 06.10.2022 and 07.10.2022 respectively and the defendant failed to pay the said amounts which have also been claimed in the present suit as well. In my view, there is merit in the contention of Id counsel for the plaintiff. Even the Sh. Ramesh Chand Gupta vs. Ms. Kshama Gupta ledger filed by the defendant contains both the entries dated 06.10.2022 and 07.10.2022 with regard to the said sales and the relevant amounts and hence defendant is admitting the said sales of both the said dates made by plaintiff to the defendant.

25. It is further argued by Id. Counsel for the defendant that no legal notice was issued by the plaintiff to the defendant for claiming the amount in respect of the sales dated 06.10.2022 and 07.10.2022 and hence the plaintiff is not entitled to claim the said amount in the present suit and in my view, the said argument has no merit. It is not mandatory for the plaintiff to issue legal notice to the other party before filing of the suit for recovery of money. Even without issuing legal notice, for demand of money in question, claimant is within its rights to approach legal forum and to file the suit for recovery of money from whom amount is to be recovered.

26. It is further argued by the Ld. Counsel for defendant that as per the case of the plaintiff Sh. Nishant Gupta had been dealing with the plaintiff on behalf of the defendant but the said Sh. Nishant Gupta has not been impleaded as the defendant in the present suit and hence it is a case of non joinder of a necessary party.

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27. In my view, this argument also has no merit. Admittedly, Sh. Nishant Gupta is the husband of defendant herein. The defendant in her written statement has nowhere denied the authority of Mr. Nishant Gupta to deal with the plaintiff. Further, the defendant has nowhere pleaded that her husband Sh. Nishant Gupta had been not dealing with the plaintiff at any point of time in respect of the transaction in question. The defendant has admitted receipt of goods under all the invoices which is clear from the ledger filed by the defendant herself and she has only denied the liability to pay the money stating that she had already paid the money in cash to the plaintiff and this aspect has already been dealt with by this Court in the earlier part of this judgment. Hence, this argument has no merit.

28. 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.

29. 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 Sh. Ramesh Chand Gupta vs. Ms. Kshama Gupta pleading only and not translated into proof. Any suggestions made to PW1 in the 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.

30. 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 court may presume that the evidence which could be and is not produced would if produced be unfavourable to the person who withholds it.

31. 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 Sh. Ramesh Chand Gupta vs. Ms. Kshama Gupta circumstances, if any, which would disentitle the plaintiff to the same.

32. 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.

33. After considering all the facts and circumstances, I hold that the plaintiff has been able to prove its case by preponderance of probability that the goods in question were sold by the plaintiff to defendant and the defendant is liable to pay the principal amount of Rs.5,99,300/-.

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

Issue No. 2 :

(ii) If the issue no. (i) is decided in affirmative, whether the plaintiff is entitled for the pendentelite and future interest, if so at what rate and for what period? (OPP) Sh.
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35. As far as grant of pendentelite and future interest is concerned, in my view, since defendant has deprived the plaintiff for use of the amount of sold goods 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. 15.05.2024 till the date of decree and thereafter till the realization.

Issue No. 3 :-

(iii) Relief

36. In view of the aforesaid discussions, the suit is decreed in favour of the plaintiff and against the defendant for sum of Rs.5,99,300/- with interest @ 8% per annum on the said amount from the date of filing of suit i.e. 15.05.2024 till the date of decree and thereafter till its realization. The plaintiff is also held entitled to costs of the suit.

37. Decree sheet be prepared accordingly.

38. File be consigned to Record Room.

DEEPAK	GARG
GARG	2025.01.03 15:12:16 +0530

Announced in the open Court on (Deepak Garg)

rd
this 3 Day of January 2025 Distt. Judge, (Comm. Court)-09,
Central District, THC : Delhi