

Jainsons Lights Pvt Ltd vs Bath Affairs on 27 November, 2024

IN THE COURT OF SENIOR CIVIL JUDGE CUM RENT
CONTROLLER (WEST), TIS HAZARI COURTS, DELHI

Presided by : Ms. Richa Sharma

Civil Suit No. 898/19
CNR No. DLWT03-001689-2019

&

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SHARMA

Counter Claim No. 21/19

SHARMA Date: 2024.11.2
16

CNR No. DLWT03-002717-2019

M/s. Jainsons Lights Pvt. Ltd.
Through its Director Sh. Anubhav Jain
S/o. Sh. Rajan Jain
1932-34, 2nd & 3rd Floor, Opposite Fountain,
Chandani Chowk Delhi - 110006.

..... Plaintiff/Non-applicant

Versus

M/s. Bath Affairs
Through its Director Sh. Rahul Gupta
WZ-6/1, Mansarovar Garden,
Main Ring Road, New Delhi - 110015.

.....Defendant /Counter-claimant

Date of Filing of the suit	:	06.06.2019
Date of Filing of the counter-claim	:	06.06.2019
Date of Judgment	:	27.11.2024

JUDGMENT

1. Vide the present consolidated judgment, the suit filed by the plaintiff and the counter-claim filed by the defendant shall be adjudicated upon, as both have interwoven facts and pleadings and the evidence CNR No. DLWT03-001689-2019 & led by both the parties is to be read conjointly in both the cases, as ordered by the Learned Predecessor of this court, vide order dated 04.05.2024.

BRIEF FACTS OF THE MAIN CASE (SUIT NO. 898/19)

2. In brief the facts of the present case as per plaint are, that the plaintiff is a company, registered under The Companies Act, 1956, and is running its business from the address mentioned as 1932-32, 2nd and 3rd floor, Opposite Fountain, Chandani Chowk, Delhi-110006. Plaintiff is dealing in sale, supply and distribution of commercial lights, fancy lights, lighting equipments and accessories. Present suit is being filed through Sh. Anubhav Jain, who is one of the directors of

plaintiff company and is duly authorized to sign and verify the plaint, swear affidavit(s) and to prosecute the suit for and on behalf of plaintiff, by virtue of board resolution annexed to the plaint.

3. It has been averred, that the defendant approached the plaintiff through its Director Sh. Rahul Gupta and represented itself to be dealing in sale & supply of bath fittings and accessories. It has been averred, that defendant sought quotation for light and lighting equipments to be installed in its showroom and after negotiations, placed an order for purchase of lights and lighting equipments with the plaintiff. In order to gain trust of plaintiff, defendant even CNR No. DLWT03-001689-2019 & transferred Rs. 1,00,000/- (Rupees one lakh only) into the account of plaintiff and assured to make the balance payment shortly.

4. It has been averred, that believing the assurance and representation of defendant, plaintiff supplied ordered material to the defendant against invoice no. 1631 dated 23.12.2017, 1676 dated 30.12.2017, 1769 dated 11.01.2018, 1861 dated 20.01.2018, 1915 dated 30.01.2018 and 1930 dated 01.02.2018 for a total sum of 3,13,737/- (Rupees three lakh thirteen thousand seven hundred and thirty seven only). After adjusting the advance payment made by the defendant there was, and still is Rs. 2,13,737/- (Rupees two lakh thirteen thousand seven hundred and thirty seven only), due and payable by the defendant.

5. It has been averred, that the representatives of the plaintiff on several occasions demanded payment from the defendant but defendant evaded the payment on one pretext or the other. Plaintiff is maintaining a running account, on a computer device owned and maintained by plaintiff, in respect of supply of material and payment released by the defendant. The invoice number, date and amount of invoice as well as the amount of advance payment released by defendant is clearly reflected in the statement of account so maintained by the plaintiff. It has been averred, that since the lights and lighting equipments supplied by the plaintiff were got installed CNR No. DLWT03-001689-2019 & by the defendant in a completely packed space having no room for cooling or ventilation and thus the drivers of the lights were failing. The defendant reported to the plaintiff about the same and plaintiff got the drivers replaced.

However, the drivers again failed and plaintiff on receipt of intimation offered to repair the same as well as make necessary alterations so that there is no further failure of the drivers owing to their overheating in closed space.

6. It has been averred, that the defendant refused to accept the proposal of plaintiff and even refused to make the payment. Representatives of plaintiff persistently requested the defendant to make the payment but all in vain. It has been averred, that plaintiff was left with no other option but to issue demand cum reminder letter dated 12.02.2019, calling upon the defendant to make the payment. It has been averred, that the demand letter dated 12.02.2019 was dispatched at the correct address of the defendant and defendant instead of making the payment got issued reply cum demand notice dated 15.02.2019, raising frivolous plea, that defendant suffered loss on account of repair of the allegedly defective lights sold by the plaintiff which were fitted at a height of around 60-70ft from ground level.

However, neither the alleged cost of repair nor the name of the person(s) who repaired the lights was disclosed. It has been CNR No. DLWT03-001689-2019 & averred, that the defendant has failed to release payment which is due and payable by it in respect of the lights and lighting equipments supplied by the plaintiff. It has been averred, that despite the plaintiff categorically communicating its intention to repair the lights as well as make arrangement for fixing the problem of failing drivers, defendant allegedly got the same repaired from some unauthorized person and as such the plaintiff is not liable to compensate the defendant for the imaginary loss. That the plaintiff is left with no option except to seek redressal from this Court.

It is stated, that transactions between plaintiff and defendant are commercial as plaintiff as well as defendant are in the business for gain. Plaintiff, therefore, is entitled to interest on the amount due and payable by the defendant and plaintiff claims the same @ 15% p.a. from the date of this suit till realisation.

7. It has been averred, that the suit is based on supply of material against invoices and the statement of account, maintained by plaintiff on a computer device owned and maintained by plaintiff, in the regular course of business. It is submitted, that once defendant has purchased and received material from the plaintiff, defendant is legally bound to pay for the same. Defendant intentionally failed to release payment, though utilized the material received from plaintiff.

8. It has been averred, that the cause of action for filing present suit CNR No. DLWT03-001689-2019 & firstly arose on various dates when defendant approached plaintiff, released advance payment and plaintiff supplied material on credit basis against invoice. Cause of action further arose when defendant requested for repair of the lights and plaintiff got the same carried out and further, on various dates when representatives of plaintiff requested defendant to release the payment but defendant evaded the payment and finally refused to make the payment citing imaginary defect in the material supplied by plaintiff, though same was occasioned by the situation of the lights in a closed space.

Cause of action further arose when plaintiff issued demand letter dated 12.02.2019, seeking release of the payment but defendant instead of releasing the payment got issued reply cum demand notice dated 15.02.2019, and refused to make the payment.

It is stated, that the plaintiff has its business place at Chandni Chowk, Delhi and defendant approached plaintiff at its business place and sought quotation for purchase of material, after verification of the material and negotiating the price, placed order at the business place of plaintiff and transferred advance payment into the bank account of plaintiff. The lights were dispatched at the business place of defendant, and installed at the business place of defendant which is within the jurisdiction of this Court. The defendant is working for gain within the jurisdiction of this Court.

It is, therefore, submitted that this Court has jurisdiction by way of cause of action and place of business of defendant.

9. It has been averred, that the suit of plaintiff is valued at CNR No. DLWTo3-001689-2019 & Rs.2,13,737/-, which is within the pecuniary jurisdiction of this Court and this Court is thus competent to try and dispose of the suit of the plaintiff. Lastly, it is prayed, that a decree be passed in favour of the plaintiff for recovery of Rs. 2,13,737/- (Rupees two lakh thirteen thousand seven hundred and thirty seven only) along with interest, pendent-lite and future, @ 15% p.a. from the date of this suit till realization, against the defendant, its successor or any person claiming through or under it.

WRITTEN STATEMENT FILED BY THE DEFENDANT IN SUIT

10. It has been contended, that the defendant is partnership firm and Mr. Rahul Gupta is one of the partner. It has been contended, that in the month of October/November 2017, defendant had approached the plaintiff to purchase front display lights which were to be installed / fitted at the shop/showroom of defendant and after mutual agreement and finalization of the payment for same, the defendant paid/ transferred Rs.1 Lac as an advance on 14-12-2017 and it is further agreed between the plaintiff and the defendant, that the balance amount shall be paid by defendant to the plaintiff after completion of installation of same as well as proper function of such lights under observation period.

11. It has been contended, that on receiving advance and after due inspection of place/area where the lights were to be installed and after satisfaction, the plaintiff agreed to install the lights at the shop CNR No. DLWTo3-001689-2019 & of defendant and further the plaintiff assured the defendant that the lights are under 3 years warranty period and same will be replaced in case of any problem / defect arises during warranty period. It has been contended, that after few days of installation, few lights stopped working and immediately thereafter the defendant contacted the plaintiff and made a complaint / request for replacement of same as assured by the plaintiff. Upon such complaint / request, the plaintiff replaced the defective lights.

12. It has been contended, that to the utter shock and surprise of the defendant, after passing of few days, again the lights did not function and the defendant again made a complaint to this effect with the plaintiff. The plaintiff again repaired the same but the lights did not work properly even after repair. It has been contended, that it is crystal clear that the plaintiff has sold out the lights of sub-standard/inferior quality and the same are not up to the mark as ordered by the defendant, for which the defendant has to suffer mental agony and financial loss due to non-operation of the display lights of the shop.

13. It has been contended, that having no other option, the defendant asked the plaintiff to either install proper quality lights or to refund the payment already made by the defendant but the plaintiff requested the defendant to give one more chance to rectify the problem. Upon such request, the defendant waited for the service till six months from the date of installation but all in vain. It has been CNR No. DLWTo3-001689-2019 & contended, that at last in the month of Dec. 2018, defendant again asked plaintiff through whatsapp on the phone no. of the plaintiff for refund of money by taking the lights back after removing same from the premises of defendant as he will get installed the new lights from other vendors.

14. It has been contended, that the plaintiff instead of refunding the amount or rectifying the problem, took a vague defence/excuse that "the products were installed in a complete packed area and there is no room for any cooling or ventilation, thus driver put inside are failing, thus you have planned to take the drivers out and put it outside from where it will be serviceable easily too in future ". It has been contended, that the plaintiff had agreed to sell the lights after due inspection of the site / area at which the lights were ought to be installed. It is the duty of the plaintiff to look into whether the place where the lights were installed is a packed one or open area and plaintiff is an expert in his field of work and the defendant is a layman and has no knowledge about the installation procedure and as per the advise/instruction as well as under supervision of the plaintiff, the defendant agreed to get it installed and paid advance accordingly.

15. It has been contended, that because of faults in the lights the plaintiff has repaired the same again and again and for repair work, the defendant had to bear all the expenses such as the expenses for arrangement for Iron pads to reach the height of the light because CNR No. DLWT03-001689-2019 & lights were fitted at a height of around 60-70 feet from land level, cost of labour for same, etc and these expenses made the product very costly to the defendant. It has been contended, that instead of refunding the advance money and removing the defective products as well, the plaintiff with a malafide intention and ulterior motives had issued a final notice dated 11.02.2019, to the defendant by demanding the balance amount and the same is totally illegal and arbitrary and not sustainable in the eyes of law because the plaintiff has miserably failed to sell good quality product as per mutual agreement and further failed to provide proper services thereafter. After receiving the notice, the defendant replied to same vide reply dated 15-02-19. In spite of same, the plaintiff filed the present suit on the basis of false and fabricated facts in order to grab the hard earned money of defendant.

16. It has been contended, that because of such inferior quality of product as well as services provided by the plaintiff, the defendant had to suffer mental agony apart from financial loss. However, plaintiff has caused wrongful gain to it and wrongful loss to the defendant by not refunding the advance amount of Rs.1 lac along with interest as well as other compensation for damages caused by the plaintiff to defendant.

17. It has been contended, that the suit is further not maintainable in the eyes of law since the plaintiff has not come with clean hands; the present suit is false, baseless, misconceived and gross abuse of the CNR No. DLWT03-001689-2019 & liberal provisions of law.

18. It has been contended, that defendant being one of the partner had placed order for purchase of the lights and accordingly he paid Rs.1 lac to the plaintiff for purchasing of lights which were to be fitted on the showroom as the plaintiff had given the quotation of good quality products. It was further agreed between both the plaintiff and defendant that after receiving 1 lac the plaintiff shall install the lights and after due observation of the conditions as well as smooth functioning of lights for few months, the balance amount shall be released to the plaintiff by the defendant. However, the defendant has never committed/ assured the plaintiff to make the balance payment shortly.

It has been contended, that the plaintiff supplied the ordered material against the invoices as mentioned in the corresponding paras, to be of inferior quality or not up to the mark as shown in the quotation of the plaintiff as well as order placed by the defendant. The plaintiff has wrongly demanded the balance payment of Rs.2,13,737/- after adjustment of the payment of Rs.1 lac made by the defendant because the lights installed by the plaintiff are of no use and still lying as unused/nonfunctional.

19. It has been contended, that whatever the outstanding payment reflected in the statement of account maintained by the plaintiff is totally arbitrary and same is not maintainable in the eyes of law because the plaintiff has not fulfilled his commitment as well as not CNR No. DLWTo3-001689-2019 & rendered his services upto the mark. It has been contended, that the plaintiff had agreed to sell the lights after due inspection of the site / area at which the lights were ought to be installed. It is the duty of the plaintiff to look into whether the place where the lights were installed is a packed one or open area and plaintiff is an expert in his field of work and the defendant is a layman and has no knowledge about the installation procedure and as per the advise/instruction as well as under the supervision of the plaintiff, the defendant agreed to get it installed accordingly.

20. It has been contended, that after failure to rectify the problem by the plaintiffs on many attempts, at last the defendant refused to accept the proposal for repairing the lights again because the defendant had to bear all expenses towards arrangement for front pads to reach the height of the light because lights were fitted at a height of around 60-70 feet from land level, cost of labour for same, etc and this costs to the defendant more than of the cost of the products/lights. It is further submitted, that the plaintiff had issued an arbitrary demand cum reminder letter dated 12-02-19 for which the defendant had replied to same in detail and further claimed the advance payment of Rs. 1 lac paid by the defendant along with interest but instead of refunding the amount the plaintiff filed a false suit against the defendant.

It has been contended, that the plaintiff miserably failed to repair the lights or to fix the problem of the lights as he has supplied the inferior quality of products. If the drivers were failing CNR No. DLWTo3-001689-2019 & due to the reason as mentioned by the plaintiff then the plaintiff would have refused to supply or install the lights immediately after inspection of the showroom prior to the placing of order but the plaintiff did not advise the defendant at the very instance rather in order to cause a wrongful loss to the defendant and to wrongful gain for himself the plaintiff accepted the order with a malafide intention well knowing the fact that the problem would have arise in future after installation of the lights because as per version of the whatsapp text/massage the plaintiff himself claims to be a well experienced in this field for last many years.

21. It has been contended, that the defendant is entitled to get the advance payment of Rs.1 lac along with interest thereupon @18% p.a. from the date of its payment till its realization as well as compensation / damages. It has been contended, that no cause of action, whatsoever, ever arose in favour of the plaintiff to file the present suit against the defendant and the plaintiff be put to strict proof of the allegations, as contained in the para under reply. The plaintiff has no cause of action in their favour to file and maintain the present suit against the defendant and the alleged cause of

action, if any, is false and frivolous and hence the suit of the plaintiff is liable to be dismissed without any cause of action. However, it is submitted, that the cause of action arose in favour of the defendant and against the plaintiff for claiming his payment of Rs.1 lac along with interest thereupon.

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22. Replication to the written statement of the defendant has been filed by the plaintiff, in which it has reiterated the facts mentioned in the plaint and denied the averments made by the defendant in the written statement.

BRIEF FACTS OF THE COUNTER-CLAIM FILED BY THE COUNTER-CLAIMANT / DEFENDANT

23. The contents of the counter-claim are more or less same as that of the written statement filed by the defendant / counter-claimant in the main suit and therefore, the same are not reproduced again for the sake brevity. By filing the counter-claim, the defendant / counter-claimant has sought recovery of Rs. One Lakh along with interest @ 18% p.a. as well as pendent lite interest @ 18% p.a. from the date of payment i.e. 14-12-2017 till its realization. WRITTEN STATEMENT FILED BY THE PLAINTIFF / NON-CLAIMANT

24. The plaintiff / non-claimant has taken the same pleas as have been taken by it in the main suit and thus for the sake brevity, same are not reproduced again.

25. It has been contended, that the counter claim filed by the defendant/counter-claimant is not maintainable in law as the defendant has not approached this Court with clean hands and concealed material facts. It is further stated, that the counter claim is not maintainable in law and same is barred by the provisions of section 69(2) of the Indian Partnership Act. It has been further CNR No. DLWT03-001689-2019 & stated, that the defendant/counter-claimant has not properly valued the counter claim for the purposes of court fee as per the provisions of Court Fee Act.

ISSUES IN THE SUIT NO. 898/19:

26. From the pleadings, following issues were framed on 15.03.2022 in the Suit No. 724/20 :-

1. Whether the plaintiff is entitled to the decree for recovery of Rs.2,13,737/- along with interest @ 15% per annum from the date of filing of the suit till realization of the said amount?
2. Relief, if any.

ISSUES IN THE COUNTER-CLAIM NO. 21/19

27. From the pleadings, following issues were framed on 09.04.2024 in the Counter Claim No. 21/19 :-

1. Whether the counter-claimant is entitled to a decree for a sum of Rupees One Lakh against the non-claimant, as prayed? OPC

2. Whether the Counter - Claimant is entitled to damages of Rupees One Lakh, as prayed for ? OPD

3. Relief

28. Before delving in the merits of the case, it is apposite to note that vide order dated 04.05.2024 passed by Learned Predecessor of this court, it was ordered that "the evidence led in both the cases (main CNR No. DLWT03-001689-2019 & suit and counter claim between the same parties) shall be read in both the cases and it is ordered that commons evidence be recorded in both the cases. Therefore, the testimony of DW1 in counter claim shall be read in present case". Accordingly, the testimony of the witnesses is being read conjointly for the purpose of appreciating the evidence led in the suit as well as the counter-claim and vide the present consolidated judgment ie both the suit as well as the counter- claim shall be disposed of on merits.

29. In order to prove its case, the plaintiff/non-claimant examined Sh.

Anubhav Jain as PW-1, who filed his evidence by way of affidavit ie Ex.PW-1/A. He relied upon following documents:-

Ex.PW1/1 Board Resolution dated 24.05.2019 Ex.PW1/2 Certificate of Incorporation (OSR) Ex.PW1/3 Computer generated copies of the invoices (Colly) Ex.PW1/4 Computer generated copy of the statement of account Ex.PW1/5 Payment reminder letter dated 12.02.2019 Ex.PW1/6 Reply dated 15.02.2019 Ex.PW1/7 Printout of the Whatsapp communication between the representatives of the plaintiff and defendant Ex.PW1/8 Certificate under Section 65-B of Evidence Act CNR No. DLWT03-001689-2019 &

30. PW1 was cross-examined at length by the Counsel for the defendant. Thereafter, the plaintiff evidence was closed on 02.11.2022.

31. In order to prove its case, the defendant/counter-claimant examined Sh. Pramod Kumar Singh as PW-1 in the counter claim bearing no. 21/19, who filed his evidence by way of affidavit ie Ex.PW-1/A. He relied upon the following documents:-

Ex.PW1/1 Copy of partnership deed Ex.PW1/2 SPA Ex.PW1/3 Copy of aadhar card (OSR) Ex.PW1/4 Visiting Card Mark A Copy of photographs (colly) Ex.PW1/6 Legal notice dated 11.02.2019 Ex.PW1/7 Postal receipts Mark B Photocopy of copy of partnership deed of the year

32. Sh. Pramod Kumar Singh PW1 (witness of defendant/counter claimant in the present case) was cross-examined at length by the Counsel for the plaintiff. Thereafter, the defendant evidence was

closed on 04.09.2024.

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33. Inadvertently, both i.e. the plaintiff's witness as well as the defendant's witness have been given same number i.e PW1, however in order to avoid confusion, the witness of the defendant / counter-claimant namely Sh. Pramod Kumar Singh be read henceforth as PW1-A instead of PW1, for the sake of convenience.

34. Pursuant to the evidence being led by both the parties, matter were listed for final arguments. I have heard the final arguments at length and have gone through the record meticulously.

My findings are as under:-

ISSUE WISE FINDINGS Issue no. 1 of the Suit No. 898/19

1. Whether the plaintiff is entitled to the decree for recovery of Rs.2,13,737/- along with interest @ 15% per annum from the date of filing of the suit till realization of the said amount? Issue no. 1 of the Suit No. 898/19

1. Whether the counter-claimant is entitled to a decree for a sum of Rupees One Lakh against the non-claimant, as prayed? OPC

35. The burden to prove the first issue framed in the main suit was on the plaintiff and of the first issue of the counter claim was on the counter claimant.

CNR No. DLWTo3-001689-2019 & Before proceedings, with the appreciation of evidence advanced, this Court deems it fit to discuss in brief the law laid down with respect to the onus of proof in civil litigation.

36. The burden of proof in civil trial is the obligation on the plaintiff ie the plaintiff would adduce evidence that proves his claims against the defendant and is based on preponderance of the probabilities. Under Indian law, until and unless an exception is created by law, the burden of proof lies on the person making any claim or asserting any fact. A person who asserts a particular fact is required to affirmatively establish it. Relevant provisions of the Evidence Act, 1872 dealing with burden of proof are produced as under:-

Burden of proof:-

101. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. 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.

103. Burden of proof as to particular fact.-

CNR No. DLWTo3-001689-2019 & 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.

106. 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.

37. Therefore, on the basis of the law laid down as above, court proceeds with the appreciation of evidence as adduced in the present suit as well as the counter claim.

38. The plaintiff examined Sh. Anubhav Jain as PW1. Further, PW-1 in his examination-in-chief duly placed on record certificate of incorporation of plaintiff's company and the same is exhibited as Ex.PW1/2. Perusal of the document Ex.PW1/2, clearly shows, that in the year 2013-14, Jainsons Light Pvt. Ltd. was incorporated under the Companies Act 1956 and that plaintiff's company is private limited. Thereafter, PW1 placed on record the board resolution and same is exhibited as Ex.PW1/1. Perusal of the document Ex.PW1/1 clearly reveals, that Mr. Anubhav Jain being the director of the plaintiff company was duly authorized by the Company to represent it before this court.

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39. Vide the plaint, it is averred by the plaintiff, that it was engaged in business transactions with the defendants and in light of the said transactions, plaintiff duly supplied goods comprising of lights and lighting equipments. It is further averred by the plaintiff, that it had raised various bills and invoices for all the goods which were supplied to the defendant by the plaintiff and defendant had also made payment of Rs. One Lakh into the account of the plaintiff, thereby assuring to make subsequent payment in due course. But an amount of Rs. 2,13,737/-, is still due by the defendant to the plaintiff and despite several endeavors made by the plaintiff to recover the said amount from defendant, latter miserably faulted to pay the same and therefore the present suit had been instituted by the plaintiff to recover the said amount.

40. In order to prove that the business transactions existed between the plaintiff and the defendant, plaintiff has duly placed on record of this court invoices running into six pages and exhibited as Ex.PW1/3 (colly). Perusal of the said invoices clearly show, that the same were raised by the plaintiff in favour of Bath Affairs situated at WZ-6/1 Mansarovar Garden, New Delhi being the defendant. Thus, comprehensively and cumulatively, by virtue of the Ex.PW1/3 (colly), it can be safely culled out, that there existed business relationship / transactions between the plaintiff and the defendant. Thus, on the basis of the documents placed on record plaintiff has CNR No. DLWTo3-001689-2019 & duly established that there were business relationship that existed between the plaintiff and defendant.

41. In view of the above and as a result of existence of relationship between plaintiff and defendant, what is now left to be assessed by this court is, if an amount is due by the defendant to the plaintiff. In order to substantiate this averment, plaintiff has placed on record the statements of account / ledger running from period 01.04.2017 to 31.03.2019, which is exhibited as Ex.PW1/4. Perusal of the said statement of account clearly reflects, that the closing balance as on 01.02.2018, shows that an amount of Rs.2,13,737/- is due by the defendant to the plaintiff. The present being the computer generated copy of the Statement of account and in order to prove the same, the plaintiff has appended the certificate under Section 65-B of the Indian Evidence Act, 1872. Perusal of the document Ex.PW1/8, reveals, that the information contained in the bills / invoices relied upon by the plaintiff was regularly fed into the computer by the plaintiff firm in the ordinary course of its business and through out the material part of the period of transaction, the computer was operating properly. It is further contended by the said certificate that the bills / invoices and statement of account is correct and true reproduction of the same.

42. In order to further prove that the payment was due by the defendant CNR No. DLWTo3-001689-2019 & to the plaintiff, the plaintiff had also issued a reminder letter dated 12.02.2019 ie Ex.PW1/5 to the defendant, whereby it has been categorically stated, that the outstanding amount of Rs. 2,13,737/- had not been received by the plaintiff for more than over a period of 350 days and further, time was given to the defendant to contact the plaintiff within one week for the purpose of resolving the issue, but despite that no payment was made by the defendant to the plaintiff. Apart from the above, the plaintiff has also placed on record the whatsapp chat that transpired between the plaintiff company and the defendant and the same is exhibited as Ex.PW1/7 (colly), whereby vide the communication through whatsapp dated 02.02.2018, it categorically stands established, that the plaintiff is asking the defendant to make the requisite payment.

43. It is further pertinent to mention, that PW1 was subjected to litmus test of cross-examination whereby no material discrepancy could be seen in the cross-examination of PW-1 and further, the stand of PW-1 through out the cross-examination was concurring with the averments of the plaint. It is further apropos to mention, that PW1 has categorically stated in his cross-examination, that they were not to provide any service of the installation of the lights as the same was to be done by the defendant on its own. PW1 further averred that the plaintiff could only give technical advise for the purpose of installation in the event of same being sought for if at all any CNR No. DLWTo3-001689-2019 & problem arises. The relevant excerpts of his cross-examination to this effect are as under :-

"We have not provided any service for installation of light as the same was to be done by the defendant at their own. We can only give technical advise for installation of light, in case any problem arises or our advise is sought."

44. It is further vital to note, that as per the narrative of PW1, the plaintiff had no role in the installation of the lights as per the general commercial practice. Plaintiff / PW1 further admitted, that when the defendant had contacted them qua the replacement of lights, they had replaced certain defective lights and drivers, that were provided to them by the defendant but despite that the defendant did not make the balance payment. The relevant excerpts of his cross-examination to this effect are as under :-

"We replaced certain defective lights and drivers on the complaint of the defendant which were provided to us by the defendant. Vol. When we asked for balance payment, defendant refused the same on the excuse that some lights have stopped working but defendant failed to provide the alleged defective lights for replacement."

45. It is further pivotal to note, that PW1 categorically stated in his cross-examination, that whenever the plaintiff asked for payment, CNR No. DLWTO3-001689-2019 & the defendant stated, that there is defect in the lights, but whenever the plaintiff used to ask the defendant to bring the defective lights, if any, for the purpose of replacement, the defendant neither brought the alleged lights nor did it release the payment. It is further contended in the cross-examination, that they have even offered to replace lights by sending their person at the site but defendant refused to cooperate despite the same not falling within the domain of the plaintiff's job profile to visit the site and to get involved in installation.

46. It is further not out of place to mention, that the plaintiff/ PW1 had categorically stated, that they had not visited the site prior to the purchase or installation of the lights as the same was not part of their role as a supplier.

47. Thus, it is noteworthy to mention, that plaintiff by virtue of invoices, ledger entries as well as the statement of account placed on record of this court, has been able to prove its case on the scale of preponderance of probabilities that there was existence of business transactions between the plaintiff and the defendant and that the plaintiff was entitled to receive the outstanding amount from the defendant as the same is duly reflected from the account statement, which is duly supported with a certificate under Section 65 B of the Indian Evidence Act and exhibited as Ex.PW1/8. Thus, by CNR No. DLWTO3-001689-2019 & examining PW-1 and placing on record all the relevant documents consisting of the bills raised by plaintiff against the defendant, ledger entries, plaintiff has duly substantiated its case and discharged the burden placed upon him as per Section 101 of the Indian Evidence Act, 1857. Now, the onus was upon the defendant to establish the averments made by him in his written statement.

48. It is apropos to state, that defendant has nowhere denied the existence of business transactions between it and the plaintiff company, but on the other hand defendant has taken the following defences:-

(A). Firstly, it was a part of the contract that took place between it and the plaintiff company, that the plaintiff had not only to supply the lights and drivers but it also had to install the same at the site of the defendant for which the requisite purchase was made.

(B). Secondly, it is the defence of the defendant, that the goods supplied by the plaintiff were defective and despite ample requests, the plaintiff paid no heed to replace the same.

(C). Thirdly, it is the defence of the defendant, that the goods were within the warranty period of three years, but the plaintiff paid no heed to replace the same despite ample requests being made.

CNR No. DLWTo3-001689-2019 & (D). Fourthly, it is the defence of the defendant, that the plaintiff had done an inspection of the site prior to the purchase being made by the defendant from the plaintiff but despite that the lights and the drivers failed to function.

(E) Fifthly, it is the defence of the defendant, that there was an mutual agreement between the plaintiff and the defendant and vide the said agreement it was agreed that the balance payment shall be paid after the proper functioning of the lights as per the observation period and after completion of the installation of same.

(F). Sixthly, it is contended by the defendant, that despite repeated requests, the plaintiff did not care to cater to the failure of lights and drivers that were being installed by it.

49. Now, in order to prove the above-said averments / defence(s), the defendant had examined Sh. Pramod Kumar Singh as PW1-A in his defence. It is pertinent to mention here, that no written agreement has been filed by the defendant to prove his stand / defence that the balance payment shall be paid by the defendant after the proper functioning of the lights and after completion of the installation of lights and drivers. It is apposite to note, that even PW1 in his cross- examination had stated, that "there was no mutual agreement in writing". Thus, the onus to prove this fact was upon the defendant CNR No. DLWTo3-001689-2019 & and he miserably failed to do so by not placing on record even a single document to establish, that there was any such alleged agreement between the plaintiff and the defendant.

50. It is the plea of the defendant, that the plaintiff had entered into an agreement whereby he had not only agreed to supply the lights and the drivers but was also responsible for installation of the same at the site of the defendant. Now, admittedly as per the invoices placed on record and exhibited as Ex.PW1/3 (colly), it is nowhere mentioned that the plaintiff is raising the bill for the goods supplied along with the installation of the same. The said bills plain and simple pertains only to the purchase order and the supply of the material in question consisting of the light and drivers and there is no iota of whisper regarding the raising of the bills qua the installation charges as well. Moreover, apart from the above mentioned invoices that perse do not talk of the installation being a part of the services to be provided by the plaintiff, the defendant has not placed on record any other

independent document or for that matter any correspondence either via email or through other mode to establish its defence that the plaintiff was conjointly responsible for not only the supply of the material purchased by the defendant from the plaintiff but along with it, also for the installation of the lights.

Thus, the averment made by the defendant is mere a bald averment not supported by any documentary proof to this effect. The CNR No. DLWT03-001689-2019 & said fact is also acceded to by the PW1-A I.e. Sh. Pramod Kumar Singh in his cross-examination and the relevant excerpts of the cross-examination are as under :

"I am not aware if condition of installation of material was mentioned in the purchase order, however it was agreed that the installation is also to be done by the plaintiff. I have to check from my office, if original quotation placed by the plaintiff is in my office as the matter relates to 6 - 7 years back. There is no mutual agreement in writing. It is correct that there is no specific bill for installation of material. It is correct that structure for installation of lights was got erected by defendant (plaintiff of the suit) from other agency. It is correct that we have not filed the copy of the site plan supplied to the defendant."

51. At this stage court deems it fit to discuss the law entailed U/s 94 and 95 of Bhartiya Sakshya Adhiniyam, 2023.

52. Section 94 of the Bhartiya Sakshya Adhiniyam provides that, " when terms of a contract or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such CNR No. DLWT03-001689-2019 & matter, except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained". Thus, on the basis of the above codified law, it is explicit that no oral evidence can be given of any term of an agreement otherwise than explicitly permitted by law. Therefore, in the light of the written appointment letter and salary structure, defendant was explicitly barred by provision of Section 94 to lead any evidence with respect to the terms otherwise embodied in documented form unless the same is permitted as per proviso to Section 95 of the Bhartiya Sakshya Adhiniyam but even to that extent no evidence has been lead by the defendant to enable him to establish his case to be falling under any of the proviso appended with Section 95 of the Bhartiya Sakshya Adhiniyam.

53. Section 95 of Bhartiya Sakshya Adhiniyam, 2023 provides that, "when the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section (Section

94) no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:"

54. At this stage court deems it fit to place reliance on the Judgement of CNR No. DLWTo3-001689-2019 & " Roop Kumar vs. Mohan Thedani (2003) 6 SCC 595" , the Hon'ble Supreme Court commented on section 91 of the Evidence Act by observing that:-

"13.....This section merely forbids proving the contents of a writing otherwise than by writing itself; it is covered by the ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known sometimes as the best-evidence rule. It is in reality declaring a doctrine of the substantive law, namely, in the case of a written contract, that all proceedings and contemporaneous oral expressions of the thing are merged in the writing or displaced by it. (See Thayer's Preliminary Law on Evidence, Wigmore's Evidence, 0.2406)....." (emphasis supplied)

55. The court further observed that:-

"16..... This rule is based upon an assumed intention on the part of the contracting parties, evidenced by the existence of the written contract, to place themselves above the uncertainties of oral evidence and on a disinclination of the courts to defeat this object. When persons express their agreements in writing, it is for the express purpose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs CNR No. DLWTo3-001689-2019 & when reliance is placed upon oral statements. Written contracts presume deliberation on the part of the contracting parties and it is natural they should be treated with careful consideration by the courts and with a disinclination to disturb the conditions of matters as embodied in them by the act of the parties. (See McKelvey's Evidence, p.294) . As observed in Greenlear's Evidence, p. 563, one of the most common and important of the concrete rules presumed under the general notion that the best evidence must be produced and that one with which the phrase best evidence is now exclusively associated is the rule that when the contents of a writings are to be proved, the writing itself must be produced before the court or its absence accounted for before testimony to its contents is admitted.

17. It is likewise a general and most inflexible rule that whenever written instruments are appointed, either by the requirement of law, or by contract of parties, to be the repositories and memorials of truth, any other evidence is excluded from being used either as a substitute for such instrument, or to contradict or alter them. This is a matter both of principle and policy. It is of principle because such instrument are in their own nature and origin, entitled to a much higher degree of credit than parol evidence. it is of policy because it would be attended with great mischief if those instruments, upon which men's rights CNR No. DLWTo3-001689-2019 & depended, were liable to be impeached by loose collateral evidence".

56. Thus, from the above extract of the evidence of PW1 / counter-

claimant and laws discussed above, it can be safely deduced that admittedly, there is no agreement existing on record to establish that the plaintiff agreed to the installation of the lights at the premises of the counter-claimant. Further, the counter-claimant /PW1A has neither placed on record any quotation that was raised by the plaintiff and accepted by the counter claimant nor has he adduced any other evidence to establish that there was existence of any kind of correspondence between the parties regarding the installation of the lights as well. It is admitted case of the counter-claimant, that structure of lights was got erected from other agency but neither that agency has been made a party nor has it been examined as an independent witness by the counter-claimant. Further, no evidence has been furnished on record to show that, the other agency that had erected the structure for installation of lights was working for or at the behest of the plaintiff i.e. Jainsons Light Pvt. Ltd.

57. It is a settled proposition of law, that once an admission stands made qua the material purchased and the invoices raised qua the same, the onus shifts to the other party to prove the flaws / defects, if any. In the case in hand in the counter-claim, PW1A categorically admitted that it had purchased material worth Rs. 3,13,737/- from Jainson CNR No. DLWT03-001689-2019 & Light Pvt. Ltd. and further admitted that the last material was received by them on 01.02.2018. The relevant excerpts of the cross- examination of PW1A to this effect is as under :-

"It is correct that defendant had purchased material worth Rs.3,13,737 as per statement Ex.PW1/4 in main suit no. 898/19. We have received material of invoices dated 11.01.2018, 30.01.2018 and 01.02.2018 (part of Ex.PW1/3 (colly)..... It is correct that we have received material lastly on 01.02.2018."

58. Thus, vide the above admission, it categorically stands deduced that the goods worth Rs. 3,13,737/-, were duly supplied to Bath Affairs by Jainsons Light Pvt. Ltd. and thus, now the onus shifts upon the counter-claimant to prove the defects in the material supplied by the plaintiff. With regard to the defence of defects in the goods, it is pellucid to note, that PW1-A admitted in his cross-examination that they have not placed on record any complaint in respect of the alleged defective material supplied and further they have not placed on record the copy of any of the correspondence that was raised by them with the Jain Sons regarding the defects in the goods supplied by the latter. The relevant excerpts of the cross-examination are as under :-

"It is correct that we have not placed on record any complaint in respect of the material supplied from 01.02.2018 to CNR No. DLWT03-001689-2019 & 12.01.2019. It is correct that I have not placed on record any copy of whatsapp conversation as stated above.... I do not remember the exact date when the complaint was made to the plaintiff. It is correct that no written complaint was made to the plaintiff from 01.02.2018 to 15.02.2019. vol. Telephonic complaints were made, however, I cannot tell the exact date or month when the complaints were made. Plaintiff has replaced some defective lights after three months of installation, however we have not placed on record any document or email pointing out the defective material or replacement."

59. Thus, from the above extracts of the cross-examination of PW1, it can be safely culled out, that admittedly there was no evidence placed on record qua the raising of the defects by the counter-claimant with the Jainsons Light Pvt Ltd. in order to raise the concern regarding the defects in lights and drivers. On the contrary, it is admitted by the counter-claimant vide their evidence adduced through PW1A, that the respondent Jainsons Light Pvt. Ltd. had replaced the lights qua which the plea of defect was made.

60. It is further material to note, that PW1A categorically admitted that the invoices i.e. Ex.PW1/3 are exclusively in respect of the material sold and not qua the installation charges. He further admitted, that the plaintiff had filed a suit for recovery for a sum of Rs. 2,13,737 CNR No. DLWTo3-001689-2019 & along with interest and the same is qua the material supplied only. He further admitted, that the counter-claimant has no work order issued by the plaintiff for the installation of the display lights and that no payment or part payment was made ever made by the defendant in respect of the installation. He further admitted as under :-

"It is mentioned in the statement of account that the defendant has been given the work order with that of the installation charges and made payment against material as well as installation charges, however it is correct that I have not filed any such document on record."

61. PW1A further admitted that the defendant i.e. the counter-claimant has not made the payment against the invoices Ex.PW1/3 even after the expiry of one year. He further admitted, that from February 2018 to February 2019, counter-claimant has not sent any written communication pointing out any defect in the material supplied by the plaintiff and further the defendant has not filed any quotation in this matter. He further admitted, that the when the payment was demanded on 01.03.2018, plaintiff was directed to talk to Mr. D. K. Gupta regarding the payment.

62. It is vital to observe, that PW1A clearly stated in his cross-

examination, that the counter-claimant never sent back any material CNR No. DLWTo3-001689-2019 & which was defective nor did they ever write any letter to the plaintiff pointing out any defect in any material purchased by them exhibited as Ex.PW1/3. The relevant excerpts of his cross-examination qua this is as under :-

"It is correct that we have never sent back any material which was defective. It is correct that we have never written any letter to the plaintiff pointing out any defect in any of the material purchased by us exhibited as Ex.PW1/3."

63. At this stage, before proceeding further, it would be appropriate to look into the Section 37 of The Sale Of Goods Act, 1930 and the same is reproduced as under

37. Delivery of wrong quantity.--

(1)Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. (2)Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

CNR No. DLWTo3-001689-2019 & (3)Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4)The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

64. Thus, clearly in light of the provision of 37 Sales Tax, it was the duty incumbent upon the counter-claimant to return the goods that were defective or else the same would be deemed to be accepted. Admittedly, as per the narrative of PW1 and the same reproduced as above, no endeavor was made by the counter-claimant to either send back the defective goods or to write any letter / email / any other correspondence to the plaintiff Jainsons Light Pvt. Ltd. regarding the replacement of the defective goods.

65. Thus, the defendant /counter-claimant's plea that the plaintiff had supplied the defective goods and despite repeated requests made by the defendant / counterclaimant, the plaintiff did not care to cater to grievance of the defendant is completely vague and oral bald claim devoid of merits as nothing has come on record in the evidence led CNR No. DLWTo3-001689-2019 & by the defendant to prove and substantiate the same on record.

Another vague defence taken by the defendant / counter- claimant is with regard to the site inspection done by the plaintiff prior to the supply / installation of lights, but there is no letter placed on record raising any request by the defendant / counter-claimant to the plaintiff with regard to the inspection of the site. There are neither any photographs placed to on record nor any other substantial evidence to support this contention. The relevant excerpts of PW1's cross-examination are as under :-

"It is correct that we have not filed copy of site plan supplied to the defendant. It is correct that we have not written letter to the defendant for inspection of site before placing purchase order on the plaintiff.

66. Thus, to sum it all up, it can be said that though ample defences have been taken by the defendant in its written statement but not even a single evidence has been led by the defendant to prove the averments of its written statement.

67. It is further noteworthy to mention, that the it is only pursuant to the legal notice being sent by the plaintiff to the defendant Ex.PW1/5, that the defendant / counter-claimant sent reply cum

demand notice Ex.PW1/6, vide which the defendant demanded the refund of the amount of Rs. One Lakh, but prior to that, not even a single CNR No. DLWT03-001689-2019 & document / correspondence has been placed on record by the defendant to show that it had demanded the refund of the amount earlier. Thus, clearly the act of the defendant to claim amount of Rs. One Lakh as the refund appears to be an afterthought.

68. Thus, on the observations and findings made as above and in absence of any evidence being led by the defendant, it can be safely culled out that the averments made by the defendant are completely sham and illusory as no material evidence is led by the defendant to prove his case.

69. Before parting with the consolidated judgment, Court deems it fit to state, that the issues in civil cases are to be decided on the scale of preponderance of probabilities. The doctrine of preponderance of probabilities was discussed in the judgment titled Postgraduate Institute of Medical Education and Research v. Jaspal Singh , (2009) 7 SCC 330 which reads as under:

"17. In Syad Akbar v. State of Karnataka (1980) 1 SCC 30 this court dealt with in details the distinction between negligence in civil law and criminal law. It has been held that there is marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in CNR No. DLWT03-001689-2019 & criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the court, as a reasonable man, beyond all reasonable doubt".

70. In Dr. N.G. Dastane Vs. Mrs. S. Dastane on 19th March, 1975 AIR 1975 SC 1534, (1975), SCC 326, Hon'ble Supreme Court held as under:-

"24. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide CNR No. DLWT03-001689-2019 & range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on

a promissory note : "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue "Per Dixon, J. In Wright v. Wright (1948) 77 C.L.R. 191 at p. 210; or as said by Lord Denning, "the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear" Blyth v. Blyth (1966) 1 A.E.R. 534 at

536. But whether the issue is one of cruelty or of a loan on a promote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged."

71. Therefore, in view of the detailed discussions as above and as a result of the appreciation of evidence, this court is of the considered opinion that plaintiff has duly proved on the scale of preponderance of probabilities that an amount of Rs.2,13,737/-, was due by the defendant to the plaintiff/non-applicant and the defendant / counter- claimant has failed to prove that it is entitled to the return of the advance amount of Rupees One Lakh.

CNR No. DLWTo3-001689-2019 &

72. As a sequel to the above issue, plaintiff has prayed for pendentelite and future interest on the principal amount @ 15 % per annum from the date of the filing of the suit till its realization. But, in the considered opinion of this court, interest sought by the plaintiff is on a higher side and therefore, interest @ 6 % per annum being just, fair and reasonable is awarded. Therefore, plaintiff is awarded the interest @ 6 % per annum from the date of the filing of the suit till its realization.

73. Thus, the Issue No. 1 of the suit no. 898/19 and Issue No. 1 of the counter-claim are decided in favour of the plaintiff and against the defendant/counter-claimant.

Issue No. 2 of the counter-claim no. 21/19

2. Whether the Counter - Claimant is entitled to damages of Rupees One Lakh, as prayed for ? OPD

74. In view of the above detailed discussion on the Issue(s) No. 1 of the main suit as well as the counter claim, the counter-claimant is not entitled to any damages or return of the amount of Rs. One Lakh. Thus, the issue no. 2 of the counter claim is also decided in favour of the plaintiff / non-claimant and against the defendant / counter- claimant.

CNR No. DLWTo3-001689-2019 & Relief

75. Thus, in the teeth of the above analysis, this court is of the considered opinion, that plaintiff has sufficiently discharged the burden placed upon it on the scale of preponderance of probabilities to prove its case. Therefore, the suit of the plaintiff stands decreed for an amount of Rs. 2,13,737/- along with interest @ 6 % per annum from the date of filing of the suit till its realization. The counter-claim filed by the defendant / counter-claimant stands dismissed.

76. No separate order as to cost.

77. Decree sheet be prepared accordingly, after filing of the deficient court fees, if any.

78. File be consigned to record room after due compliance.

Announced in open Court
on 27.11.2024.

(Richa Sharma)
SCJ-cum-RC (West)
Tis Hazari Courts, Delhi

by RICHA
SHARMA
Date:
2024.11.27
16:00:44 +0530

27.11.2024

CNR No. DLWT03-001689-2019
&