

Vikas Jain vs Arumand Steel Industries Pvt Ltd on 9 January, 2025

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

CS Comm. No.176/2024

Vikas Jain
Proprietor M/s Vikas Steel Enterprises
At: 10578/28, Shankar Gali No.2,
Motia Khan, Paharganj, New Delhi-110055

.....Plaintiff

Vs.

Arumand Steel Industries Private Ltd.
Through its Directors
Ground Floor, Shiv Vihar, West Vikas Nagar,
Godown at Plot No.35, Uttam Nagar,
New Delhi-110059

.....Defendant

Date of Institution	:	30.01.2024
Date of Final Arguments	:	09.01.2025
Date of Judgment	:	09.01.2025
Decision	:	Decreed

Judgment

1. This suit is filed by plaintiff for recovery of Rs.7,64,384/- alongwith interest @18% per annum as unpaid dues of goods sold.

Case of the Plaintiff

2. Case of the plaintiff as per plaint and the documents filed is that he is proprietor of M/s Vikas Steel Enterprise at Motia Khan, Paharganj, Delhi and is in the business of trading of stainless steel sheets and coils. Defendant is said to be a duly incorporated private ltd. Company at Uttam Nagar, Delhi which is also involved in manufacturing and trading of stainless steel sheets and coils. It is case of the plaintiff that defendant had been purchasing goods from the plaintiff since 23.10.2021. Plaintiff used

CS Comm No.176/2024

Vikas Jain Vs. Arumand Steel Industries Private Ltd.

to maintain a running account wherein debit entries were made for sales and credit entries for payments received on account. Goods were sold and supplied by the plaintiff to the satisfaction of the defendant. Although the plaint is silent but as per invoices a 30 days credit period was agreed.

3. During the period 23.10.2021 to 07.07.2022 plaintiff carried out sale and supply of material worth Rs.22,38,490/- through 14 GST paid invoices. Against this defendant is said to have made payments of only

Rs.16,38,266/- up to 08.07.2022 leaving a debit balance of Rs.6,00,224/- . This dues was not cleared despite repeated requests. Plaintiff have applied pre-suit interest @18% per annum taking the total dues to Rs.7,64,384/- . Plaintiff claims to have issued legal notice dated 31.08.2023 which was duly served on the defendant. Vide reply dated 04.10.2023 the defendant company denied its liability. The reply is a cryptic one which does not touch or address all the factual averments contained in the plaintiff's legal notice and baldly denies the liability while asserting that it is the defendant who deserves to be paid Rs.1,82,296/- by the plaintiff.

4. Plaintiff approached Central DLSA for Pre-Institution Mediation under Section 12A of Commercial Courts Act, 2015 where defendant did not appear and Non-Starter Report dated 20.12.2023 was issued. In this backdrop, suit in hand was filed for following reliefs:

Prayer:

- i. Pass a decree for a sum of Rs.7,64,384/- in favour of plaintiff and against defendant;
- ii. Award pendente lite and future interest @18% per annum on the aforesaid Rs.7,64,384/- from the date of filing of the suit till its realization;
- iii. Award cost of the suit in favour of the plaintiff and against the defendant;
- iv. Any other relief which this Hon'ble Court may deem fit and proper in the interest of justice in favour of the plaintiff.

CS Comm No.176/2024

Vikas Jain Vs. Arumand Steel Industries Private Ltd.

5. Summons of the suit was served upon the defendant and defendant entered appearance on 05.04.2024 through Mr. Ved Prakash Mishra, Advocate and filed Written Statement.

Defendant's Case

6. Defendant company's case as per WS is that the suit is without any cause of action since nothing is due and payable. It is pleaded that defendant company has returned goods covered through two invoices dated 04.02.2022 and 06.02.2022 valued Rs.3,51,286/- and Rs.3,30,555/- . It is pleaded that defendant company has issued two debit notes in this regard alongwith two e-way bills for return of the goods cumulatively valuing Rs.6,81,841/- .
7. In its reply on merits it is not denied that plaintiff is proprietor of M/s

Vikas Steel and that he had business relations with the defendant since 23.10.2021. It is admitted that defendant company used to carry out purchase from the plaintiff on credit basis but it is denied that they never made complaint about the goods supplied. It is not denied that the value of the goods sold by the plaintiff to the defendant between dates 23.10.2021 to 07.07.2022 through 14 invoices was Rs.22,38,490/- . It is also not denied that defendant paid Rs.16,38,266/- . It is however denied that defendant company owe Rs.6,00,224/- to the plaintiff since defendant returned goods worth Rs.6,81,841/- to the plaintiff and hence plaintiff owes Rs.81,617/- to the defendant. It is surprising that even though the defendant company replied to the plaintiff's legal notice dated 31.08.2023 on 04.10.2023 but in the WS it is pleaded that defendant never received any legal notice. For this false pleading in the WS defendant company and

its AR deserve to be issued notice under Section 379 BNSS(Section 340 Cr.PC) for swearing false affidavit.

CS Comm No.176/2024

page 3

Vikas Jain Vs. Arumand Steel Industries Private Ltd.

8. Objection qua territorial jurisdiction of this Court has also been taken with

a plea that the registered address of the defendant company is located in West Delhi. Defendant has not denied receipt of Pre-Institution Mediation notices sent by Central DLSA for 22.11.2023 and 20.12.2023. With these pleas dismissal of the suit is prayed.

9. The affidavit of statement of truth filed in support of the WS have blank spaces. In its affidavit of admission/denial defendant has admitted all the invoices and e-way bills submitted by the plaintiff but has denied the ledger. No reason is cited for violation of Order 11 Rule 4 (3) CPC. Defendant has also denied the GST payment slips being 3 rd party documents. Defendant has denied the legal notice, courier/speed post slips and tracking reports but has admitted the reply to plaintiff's legal notice sent by the defendant company.

Replication

10. Separate replication was filed by plaintiff against the WS wherein he reiterated his pleaded case and denied the contentions of the defendant. He denied the defendant company's plea that goods worth Rs.6,81,841/- under two invoices dated 04.02.2022 and 06.02.2022 were returned by the defendant or debit notes and e-way bills were generated and shared. Plaintiff has referred to this document as forged and fabricated. Affidavit of admission/denial of plaintiff to the defendant's documents is not as per Order 11 Rule 4(3) CPC.

Issues:

11. Out of the pleadings, following issues were identified by Ld. Predecessor on 25.07.2024:

Issues:

- i. Whether this Court does not have territorial jurisdiction to try the OPD
- ii. Whether the plaintiff is entitled to a decree for recovery of an amount Rs.7,64,384/-? OPP

CS Comm No.176/2024

Vikas Jain Vs. Arumand Steel Industries Private Ltd.

- iii. Whether the plaintiff is entitled to pendente-lite and future interest at what rate and for which period? OPP

iv. Relief

12. To prove his case plaintiff stepped into the witness box as PW1 Vikas Jain. Vide affidavit Ex.PW1/A he deposed on the lines of plaint and exhibited following documents:

- i. Photocopy of Aadhar Card is Ex.PW1/1;
- ii. Copy of MSME Certificate is Ex.PW1/2;
- iii. Printout of GST Certificate of M/s. Vikas Steel Enterprise along with Section 65B of 'The Indian Evidence Act, 1872' are Ex.PW1/3 & Ex.PW1/4

- iv. Printout of the defendant's company Master Data is Ex.PW1/5;
- v. Printout of GST Certificate / Details of Arumand Steel Industries Pvt. Ex.PW1/6;
- vi. Invoice No. VSE-21/22-476 dated 23.10.2021 for Rs. 1,90,947.60/- is Ex.PW1/7;
- vii. E-way Bill dated 23.10.2021 is Ex.PW1/8;
- viii. Invoice No. VSE-21/22-605 dated 09.12.2021 for Rs. 2,98,912/- is Ex.PW1/9;
- ix. E-way Bill dated 09.12.2021 is Ex.PW1/10;
- x. Invoice No. VSE-21/22-668 dated 29.12.2021 for Rs. 64,251/- is Ex.PW1/11;
- xi. Invoice No. VSE-21/22-705 dated 10.01.2022 for Rs. 1,12,147/- is Ex.PW1/12;
- xii. E-way Bill dated 10.01.2022 is Ex.PW1/13;
- xiii. Invoice No. VSE-21/22-753 dated 28.01.2022 for Rs. 50,976/- is Ex.PW1/14;
- xiv. Invoice No. VSE-21/22-771 dated 04.02.2022 for Rs. 3,51,286/- is Ex.PW1/15;
- xv. E-way Bill dated 04.02.2022 is Ex.PW1/16;
- xvi. Invoice No. VSE-21/22-774 dated 05.02.2022 for Rs. 3,30,555/- is Ex.PW1/17;
- xvii. E-way Bill dated 05.02.2022 is Ex.PW1/18;
- xviii. Invoice No. VSE-21/22-844 dated 03.03.2022 for Rs. 49,702/- is Ex.PW1/19;
- xix. Invoice No. VSE-21/22-863 dated 09.03.2022 for Rs. 52,156/- is Ex.PW1/20;
- xx. Invoice No. VSE-21/22-892 dated 23.03.2022 for Rs. 2,91,755/- is Ex.PW1/21;
- xxi. E-way Bill dated 23.03.2022 is Ex.PW1/22;
- xxii. Invoice No. VSE-22/23-001 dated 04.04.2022 for Rs. 2,87,212/- is Ex.PW1/23;
- xxiii. E-way Bill dated 04.04.2022 is Ex.PW1/24;
- xxiv. Invoice No. VSE-22/23-097 dated 30.04.2022 for Rs. 40,308/- is Ex.PW1/25;
- xxv. Invoice No. VSE-22/23-282 dated 01.07.2022 for Rs. 48,968/- is Ex.PW1/26;
- xxvi. Invoice No. VSE-22/23-293 dated 07.07.2022 for Rs. 69,313/- is Ex.PW1/27;
- xxvii. Ledger Account is Ex.PW1/28;
- xxviii. Printout of GST Return is Ex.PW1/29 (Colly.);
- xxix. Legal Notice dated 31.08.2023 is Ex.PW1/30;
- xxx. Postal Receipts are Ex.PW1/31 to Ex.PW1/33;
- xxxi. Courier Receipt is Ex.PW1/34;
- xxxii. Tracking Report and Shipment summary of courier are Ex.PW1/35 to Ex.PW1/37;
- xxxiii. Certificate under Section 65B of 'The Indian Evidence Act, 1872' is Ex.PW1/38;
- xxxiv. Reply to Legal Notice is Ex.PW1/40;
- xxxv. Non-Starter Report is Ex.PW1/41.

13. During the cross-examination done by Ld. Counsel for the defendant he stated that he is educated upto 12th. Apart from him he has three workers. Orders were placed by the defendant telephonically. Both the plaintiff and

CS Comm No.176/2024

Vikas Jain Vs. Arumand Steel Industries Private Ltd.

defendant used to visit each other for the business. All the invoices are signed by the plaintiff even though admittedly the printout of these invoices were taken from a license software. He accepted that no bank statements have been filed. During the cross-examination, he filed an audited balance sheet Ex.PW1/D1. The goods were supplied by transportation source from 3rd parties. The bills were delivered to the defendant company either through the driver of transportation or collected by Sh. Arvind, Director of the defendant company. He stated that he has never received debit notes regarding bills Ex.PW1/15 and Ex.PW1/17. It is interesting to observe that Ld. Counsel for the defendant does not confront the plaintiff with e-way bills and debit notes qua alleged return of goods worth Rs.6,81,841/-.

Defendant's Evidence

14. On the other hand, the defendant examined DW-1 Arvind Kumar, Director of the defendant company. Perusal of the affidavit Ex.DW1/A shows that there is no reference of any resolution passed by the Board of Directors of the defendant company in favour of DW-1 Arvind Kumar to either sign the pleadings and defend the company in the suit or to appear in this case as a witness on behalf of the company. A plain authority letter has been filed Ex.DW1/1 which does not carry any reference of passing of any resolution of Board of Directors of the defendant company in favour of this witness. He has exhibited following documents:
- i. Authority Letter dated 03.03.2024 is Ex.DW1/1;
 - ii. Debit note dated 16.02.2022 is Ex.DW1/2 and Ex.DW1/3;
 - iii. E-way Bill dated 16.02.2022 is Ex.DW1/4 and Ex.DW1/5;
 - iv. Ledger from 01.04.2021 to 01.03.2023 is Ex.DW1/6;
 - v. Certificate under Section 65B of 'The Indian Evidence Act, 1872' is Ex.DW1/7.
15. In his cross-examination done by Ld. Counsel for the plaintiff he stated that he is educated upto 5th. His company has only two directors the second being his wife Ms. Chanda Devi. He stated that his company never

CS Comm No.176/2024

Vikas Jain Vs. Arumand Steel Industries Private Ltd.

convenes any meeting of Board of Directors and they work only through authority letters which too does not bear any date, time or month of issuance. Despite admitting the reply sent to plaintiff's legal notice, this witness again stated that they have not received any notice. This is second false statement made on oath on the same fact. He claimed that his ledger Ex.DW1/6 carries entry qua two debit notes Ex.DW1/2 and Ex.DW1/3 at point A. He could not show any proof of receipt of debit notes by the plaintiff either by way of endorsement or by way of e-way bills. It is stated that the goods supplied were defective and the plaintiff was informed about the same telephonically who, in turn, assured that goods would be replaced. He did not place on record any document showing actually delivery of plain returned articles.

16. Defendant examined second witness as DW2 Vicky Kumar Das Kumar, Ex-Accountant of the defendant company.
17. I have heard arguments of Sh. Ashok Kumar Gupta, Ld. Counsel for plaintiff and Sh. Alok Pandey, Ld. Counsel for defendant company. I have perused the case file carefully.
18. Now I shall dispose of individual issues framed in this case.
- Issue No.1:
- i. Whether this Court does not have territorial jurisdiction to try the suit? OPD

19. Ld. Counsel for plaintiff opened his arguments on this aspect by submitting that the goods were supplied as per oral contract concluded at plaintiff's office at Motia Khan. It is submitted that all the supplies were made from Motia Khan. On the contrary, it is argued by Ld. Counsel for the defendant that the defendant is located in West Delhi and as such Central District of Delhi has no jurisdiction. It is argued that goods were supplied by plaintiff from his godown in West Delhi. This latter plea is factually beyond pleadings as neither the same is pleaded in WS nor is

CS Comm No.176/2024

Vikas Jain Vs. Arumand Steel Industries Private Ltd.

available on record in any form. All the invoices show that goods were sold and supplied from Motia Khan to Uttam Nagar and this fact is also available in several e-way bills filed by the plaintiff which have not been disputed by the defendant viz. Ex.PW1/16, Ex.PW1/18, Ex.PW1/22, Ex.PW1/24.

20.As far as territorial jurisdiction is concerned, the governing law is Section 20 CPC. For ready reference the same is reproduced hereunder:

Section 20 CPC: Other suits to be instituted where defendants reside or cause of action arises

Subject to the limitations aforesaid, every suit shall be instituted in Court the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

1[* * *]

2[Explanation].-A corporation shall be deemed to carry on business at its sole principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

(Emphasis Su

21.The law on Section 20 CPC has been crystallised by Hon'ble SC in case titled ABC Laminart Private Ltd. and Anr. Vs. A P Agencies, Salem, 1989 Latest Caselaw 85 SC Hon'ble Supreme Court has ruled that in a contractual matter the jurisdiction of Court arises from four aspects:

- (1) Where defendant resides or voluntary works for gain.
- (2) Where the Contract is entered;
- (3) Where the Contract is to be performed;
- (4) Where moneys have to be paid under the contract.

CS Comm No.176/2024

Vikas Jain Vs. Arumand Steel Industries Private Ltd.

22. Applying the above on the facts of this case it is evident that defendant used to place order telephonically and personal visits and as such it can be said that oral contract was between the parties at Motia Khan. Contract was executed at Motia Khan since the goods were supplied from there. Both these facts constitute part cause of action and as such this Court has territorial jurisdiction to try this suit. Accordingly, this issue is answered in favour of plaintiff and against the defendant.

Issue no. 2:

ii. Whether the plaintiff is entitled to a decree for recovery of an amount of Rs.7,64,384/-? OPP

23. As far as suit claim is concerned, it is admitted case of both the sides that they had business relations since 23.10.2021. It is also admitted the defendant company used to carry out purchases from the plaintiff and goods worth Rs.22,38,490/- were sold and supplied by plaintiff to the defendant between 23.10.2021 to 07.07.2022. It is also not denied that as against the above the defendant made payment of only Rs.16,38,266/- leaving a debit balance of 6,00,224/-.
24. This suit has been filed by the plaintiff for recovery of this debit balance alongwith 18% interest as per terms contained on the foot of the invoices after expiry of 30 days credit period. It is case of the defendant company that it does not owe any money to the plaintiff in so far as goods worth Rs.6,81,841/- covered under two invoices dated 04.02.2022 and 06.02.2022 Ex.PW1/15 and Ex.PW1/17 respectively. As per settled legal proposition, as provided under Section 106 of Bhartiya Sakshya Adhiniyam, 2023 (Section 103 of Indian Evidence Act) the onus of proving the fact of return of goods and issuance of debit notes Ex.DW1/2 and Ex.DW1/3 solely lies on the defendant. For ready reference the same is reproduced hereunder:

CS Comm No.176/2024

Vikas Jain Vs. Arumand Steel Industries Private Ltd.

Section 106 of Bhartiya Sakshya Adhiniyam, 2023 : Burden of Proof as to particular fact

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that that fact shall lie on any particular person.

Illustration:

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

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

25. In case titled Rajendra Singh Vs. State of UP and another, 2007 Latest Caselaw 602 SC Hon'ble Supreme Court held as under:

8. "Section 103 of the Evidence Act says 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 proved by any law that the proof of that fact lies on any particular person. The second illustration to Section 103 reads as under:

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

26. In case titled Government of NCT of Delhi and Ors. Vs. S.D. Sharma, 2015 Latest Caselaw 1910 Del Hon'ble Delhi High Court held as under:

9. "As per the case of the prosecution, the Respondent continued to remain

absent from duty wilfully and unauthorisedly w.e.f 23.12.93 to 01.02.2000 Under Section 101 read with Section 103, Indian Evidence Act, 1872, the burden of proof to prove the absence of the respondent lies on the petitioner. It is a settled legal position that preponderance of the evidence, also known as balance of probabilities is the standard of proof required in most civil cases, unlike criminal cases where the prosecution is required to prove the case beyond reasonable doubt. The standard is met if the proposition is more likely to be true than untrue. Effectively, when there is a chance greater than 50 percent for the proposition to be true. (Ref. Lord Denning, in Miller v. Minister of Pensions 1947 2 All ER 372.) Admittedly, there was not a single prosecution witness brought by the petitioners to prove the document relied upon by them. Thus the petitioners have clearly failed to discharge their burden of proof."

27.While opening his submissions on the aspect of discharging the onus of proving the plea of return of goods worth Rs.6.81 lacs Ld. Counsel for defendant submits that all he has placed on record is two e-way bills Ex.DW1/4 and Ex.DW1/5 apart from two debit notes dated 16.02.2022 Ex.DW1/2 and Ex.DW1/3. Perusal of these two documents shows that CS Comm No.176/2024 page 10 Vikas Jain Vs. Arumand Steel Industries Private Ltd.

they are only photocopies. Nothing is pleaded or placed on record to show that these two debit notes were sent by the defendant company to the plaintiff. Neither any email or whatsapp chat nor any registered post or courier has been filed in support of this plea. In the absence thereof mere placing two photocopy documents claiming return of goods does not absolve the defendant company from proving onus under Section 106 of Bhartiya Sakshya Adhiniyam, 2023 (Section 103 of Indian Evidence Act). The two digital documents Ex.DW1/4 and Ex.DW1/5 show that they are not supported with affidavit under Order 11 Rule 6 CPC as mandated for Commercial Courts.

28.The law in this regard is well settled. In commercial courts, a new provision has been inducted in the form of Order 11 Rule 6 CPC for proving the electronic record which is reproduced hereunder for ready reference:

Order 11 Rule 6 CPC: Electronic records.-

(1) In case of disclosures and inspection of Electronic Records (as defined in the Information Technology Act, 2000), furnishing of printouts shall be sufficient compliance of the above provisions.

(2) At the discretion of the parties or where required (when parties wish to rely on audio or video content), copies of electronic records may be furnished in electronic form either in addition to or in lieu of printouts.

(3) Where Electronic Records form part of documents disclosed, the declaration on oath to be filed by a party shall specify-

(a) the parties to such Electronic Record;

- (b) the manner in which such electronic record was produced and by whom;
 - (c) the dates and time of preparation or storage or issuance or receipt of each such electronic record;
 - (d) the source of such electronic record and date and time when the electronic record was printed;
 - (e) in case of email ids, details of ownership, custody and access to such email ids;
- CS Comm No.176/2024 page 11 Vikas Jain Vs. Arumand Steel Industries Private Ltd.
- (f) in case of documents stored on a computer or computer resource (including on external servers or cloud), details of ownership, custody and access to such data on the computer or computer resource;
 - (g) deponents knowledge of contents and correctness of contents;
 - (h) whether the computer or computer resource used for preparing or receiving or storing such document or data was functioning properly or in case of malfunction that such malfunction did not affect the contents of the document stored;
 - (i) that the printout or copy furnished was taken from the original computer or computer resource.

(4) The parties relying on printouts or copy in electronic form, of any electronic records, shall not be required to give inspection of electronic records, provided a declaration is made by such party that each such copy, which has been produced, has been made from the original electronic record.

(5) The Court may give directions for admissibility of Electronic Records at any stage of the proceedings.

(6) Any party may seek directions from the Court and the Court may of its motion issue directions for submission of further proof of any electronic record including meta data or logs before admission of such electronic record.

29. Admittedly, defendant did not file any affidavit under Order 11 Rule 6 CPC. Upon promulgation of Information Technology Act in the year 2000 Section 65B was introduced for admissibility of electronic records so as to grant admissibility to electronic record. Submission of an affidavit under Section 65B of Indian Evidence Act as per format provided under Section 65B (4) is a prerequisite. For ready reference the same is reproduced hereunder:

Section 65 B : Admissibility of Electronic Records (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-

section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it CS Comm No.176/2024 page 12 Vikas Jain Vs. Arumand Steel Industries Private Ltd.

shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

30.The law in this regard is well settled. In case titled Anvar P.V. Vs. P.K. Basheer, 2014 Latest Caselaw 592 SC wherein Hon'ble Supreme Court held as under:

"22.....An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

(Emphasis Supplied)

31.In case titled Eli Lilly and Company and Anr. Vs. Maiden Pharmaceuticals Limited, 2016 Latest Caselaw 6858 Del wherein Hon'ble Delhi High Court held as under:

"17.....At the time when documents including electronic record are filed, that do not constitute evidence and become evidence only when they are tendered into evidence and thus as per the aforesaid paragraphs also, the affidavit under Section 65B has to be filed at the time of tendering the electronic record into evidence....."

18. Through the ratio of Anvar P.V. supra, to me, appears to require the certificate/affidavit under Section 65B of the Evidence Act to accompany the electronic record."

32. Even bare perusal of Section 65B Indian Evidence Act certificate Ex.DW1/7 shows that it is wholly insufficient and does not carry necessary requirements of Section 65B (4) and (5) of Evidence Act.

33. Even otherwise it is a settled legal proposition that issuance of e-way bills is not sine qua non to delivery of goods. Allahabad High Court Full Court Bench in case titled M/s Anil Rice Mill Vs. State of UP and Ors., 2024 Latest Caselaw 26753 ALL held as under:

7..... if the petitioner wants to avail the ITC, he is duty bound to prove beyond any reasonable doubt and establish that actual transaction took place and merely furnishing the details of tax invoices, e-way bills, GR is not sufficient. The petitioner was required to give details i.e. vehicle number which were used for transportation of goods, payment of freight charged, acknowledgement of taking delivery of goods and payment etc. He further submits that the petitioner was required to prove and establish beyond doubt the actual physical movement of goods and genuineness of transportation by furnishing details as CS Comm No.176/2024 page 13 Vikas Jain Vs. Arumand Steel Industries Private Ltd.

has already been stated above and in the event of such details are not furnished, the benefit of input tax credit cannot be accorded. He prays for dismissal of this writ petition.

12. In the case in hand, the petitioner has only brought on record the tax invoices, e-way bills, and payment through banking channel, but no such details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof has been provided. Thus in the absence of these documents, the actual physical movement of goods and genuineness of transportation as well as transaction cannot be established and in such circumstances, further no proof of filing of GSTR 2 A has been brought on record, the proceeding has rightly been initiated against the petitioner.

13. The Apex Court in the case of State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited (Civil Appeal No. 230 of 2023, decided on 13.03.2023), while considering the pari material of section 70 of the Karnataka Value Added Tax Act, 2003, where the burden was upon the dealer to prove beyond doubt its claim of exemption and deduction of ITC.

In the said judgement Hon'ble the Apex Court has held that primarily burden of proof for claiming the input tax credit is upon the dealer to furnish the details of selling dealer, vehicle number, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. to prove and establish the actual physical movement of the goods. Further by submitting tax invoice, e-way bill, GR or payment details is not sufficient."

(Emphasis Supplied)

34. In the absence of any cogent evidence qua return of goods the defendant has miserably failed to discharge the onus of proving the return of goods. Even otherwise, the plea of the defendant that the

goods supplied were defective is also an afterthought since neither any document nor WS show that the orders placed by the defendant to the plaintiff was supposed to be of a particular quality of description. Law in this regard is governed by Section 16 of Sale of Goods Act, 1930. For ready reference the same is reproduced hereunder:

Section 16 of Sale of Goods Act: Implied conditions as to quality of fitness "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:-

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be reasonably fit for such purpose:

CS Comm No.176/2024 page 14 Vikas Jain Vs. Arumand Steel Industries Private Ltd.

Provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(2) Where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality:

Provided that, if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless consistent therewith.

(Emphasis Supplied)

35. In the light of above discussion and the fact that defendant admitted sale and delivery of goods by the plaintiff and has failed to prove the return of the goods worth Rs.6.81 lacs, this issue is answered in favour of the plaintiff and against the defendant.

36. Court is surprised to observe that even though the defendant company replied to the plaintiff's legal notice dated 31.08.2023 on 04.10.2023 but in the WS it is pleaded that defendant never received any legal notice. For this false pleading in the WS defendant company and its AR deserve to

be issued notice under Section 379 BNSS(Section 340 Cr.PC) for swearing false affidavit. Section 379 BNSS (Section 340 Cr.PC) be issued against the AR and defendant company for swearing false affidavit . Let a separate file be created for this purpose.

37.The law with regard to perjury is well settled. In case titled Chajoo Ram vs Radhey Shyam & Anr., 1971 Latest Caselaw 89 SC dated 23 March, 1971 Hon'ble Supreme Court held that:

"7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered CS Comm No.176/2024 page 15 Vikas Jain Vs. Arumand Steel Industries Private Ltd.

when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge..."

(Emphasis supplied)

38.In case titled M/s Gokaldas Paper Products Vs. M/s Lilliput Kidswear Ltd. and Anr., 2023 SCC OnLineDel 2191 dated 05.04.2023 wherein Hon'ble Delhi High Court held that:

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

Issue No. 3:

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

39.The interest is payable as per Section 34 CPC. For ready reference, Section 34 CPC is reproduced hereunder:

Section 34 CPC: Interest

(i)"Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding 6% per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment, or to such earlier date as the court thinks fit.

(ii).Provided that where the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed 6% per annum but shall not exceed the contractual rate or interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions.

Explanation (i) In this sub-section, "nationalized bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970.

CS Comm No.176/2024 page 16 Vikas Jain Vs. Arumand Steel Industries Private Ltd.

Explanation (ii) For the purposes of this section, a transaction is a commercial transaction, if it is connected with the industry, trade or business of the party incurring the liability.

Where such a decree is silent with respect to the payment of further interest (on such principal sum) from the date of the decree to the date of the payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefore shall not lie.

(Emphasis Supplied)

40.Section 34 CPC provides that plaintiff will be entitled the interest at the rate at which Court finds reasonable. For a general suit, the rate of interest prescribed is 6% and for commercial suit, the Parliament promulgates that rate of interest may increase from 6% to a rate which is found reasonable. Plaintiff is accordingly entitled to only the rate at which RBI has issued Circular for Commercial suits.

41.As far as the interest is concerned, rate applicable to Commercial transaction shall be payable. As per RBI notification dated 30.08.2022 issued vide Press Release no.2022-2023/794 whereby advisory issued by RBI to Schedule Commercial banks of accepting deposit rates @ 9.05% per annum.

Relief

42. In view of the above, suit of the plaintiff is decreed with cost for Rs.6,00,224/- with 9% interest w.e.f. 01.09.2022 (as per last sale carried out) onwards pendente lite and till realisation. Fees of plaintiff's Lawyer is assessed as Rs. 25,000/-.

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

2025.01.22 16:37:00 +0530 (SURINDER S. RATHI) District Judge, Commercial Court -11 Central District, THC Delhi/09.01.2025 CS Comm No.176/2024 page 17
Vikas Jain Vs. Arumand Steel Industries Private Ltd.