

Vivek Kumar Jain vs Kulbhushan Singh Chadha on 10 January, 2025

Vivek Kumar Jain vs. Kulbhushan Singh Chadha

DLCT010036632023

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

CIVIL SUIT (COMMERCIAL) NO.: - 439/2023

IN THE MATTER OF :-

Vivek Kumar Jain

Proprietor of Gokal Chand Jagan Nath Nahar,

Office/Shop at 28, Chawari Bazar,

Delhi -110006

... Plaintiff

VERSUS

1.

Agtec Industries Pvt Ltd.

Office Address: A-3/4, Site 5, Kasna Industrial Area, Greater Noida, Gautam Budh Nagar, Uttar Pradesh 201308

2. Kulbhushan Singh Chadha (Discharged on 02.04.2024)

3. Om Prakash Sharma Both Directors of Agtec Industries Pvt. Ltd. (Ex parte vide order dated 02.04.2024) Office address: A-3/4, Site - 5, Kasna Industrial Area, Greater Noida, Gautam Budh Nagar, Uttar Pradesh 201308 Also at: New other office at 1C/13, Vivek Kumar Jain vs. Kulbhushan Singh Chadha New Rohtak Road, Karol Bagh New Delhi 110005 .. Defendants SUIT FOR RECOVERY OF RS.19,03,230/-

Date of institution	:	14.03.2023
Date on which Judgment was reserved	:	08.01.2025
Date of Judgment	:	10.01.2025

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

1. By way of present judgment, this court shall adjudicate upon suit filed by the plaintiff against the defendants for re-covery of Rs.19,03,230/- alongwith pendent elite and future interest @ 12% per annum.

PLAINTIFF'S CASE

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

i. The plaintiff is running his firm namely Gokal Chand Jagan Nath Nahar at the abovesaid address who deals with all types of aluminum and wedding cards. ii. That defendant no. 1 and 2 namely, Kulbhushan Singh Chadha and Om Prakash Sharma are the Directors of company.

iii. That as per the demand of the defendants, the plaintiff supplied the HR Coil and aluminum Extrusion items etc. through various bills, invoices and e-way bills on various Vivek Kumar Jain vs. Kulbhushan Singh Chadha dates, month and year starting from 15.06.2018 to 29.10.2021.

iv. That as per ledger statement maintained by the plaintiff, the total sum of Rs.19,03,230/- is due upon the defendants on dated 29.10.2021 and the defendants have lastly paid a sum of Rs.35,000/- to the plaintiff on 29.10.2021. v. That the plaintiff demanded his aforementioned due amount from the defendants on various dates but the defendants failed to pay the same.

vi. That the plaintiff sent legal notice dated 01.10.2022 to the defendants but the defendants failed to give the reply to the said legal notice.

vii. That the plaintiff filed a pre-litigation mediation application before DLSA, Central District, Tis Hazari Courts, Delhi on 17.11.2022 in which notices was served however, the defendant did not appear before DLSA despite service of summons and DLSA issued a certificate of Non Starter Report dated 21.01.2023.

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

CASE OF DEFENDANT

4. The defendant no. 1 in its written statement has averred that the plaintiff has not come to the court with clean hands and filed the suit on false and fabricated facts. It is further Vivek Kumar Jain vs. Kulbhushan Singh Chadha averred that the plaintiff has suppressed the material fact that the company Agtec Industries Pvt. Ltd has written many emails to the plaintiff about the defect in the material supplied and also the Agtec Industries Pvt. Ltd. issued a debit note to the plaintiff which has not been adjusted in the books of accounts by the plaintiff and nothing is due against the defendants.

REPLICATION

5. Plaintiff has filed the replication controverting the allega-

tions of the defendants in the written statement and the contents of the plaint has been reiterated and reaffirmed.

ISSUES

6. On the basis of the pleadings following issues were settled on 24.04.2024 :

(i) Whether the plaintiff has suppressed and concealed the material facts and has not approached the court with clean hands? OPD

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

(iii). If the issue no. (ii) is decided in affirmative, whether the plaintiff is entitled for the pendentelite and future interest, if so at what rate and for what period? (OPP)

(iv) Relief.

Vivek Kumar Jain vs. Kulbhushan Singh Chadha EVIDENCE OF THE PLAINTIFF

7. In order to prove its case, plaintiff Sh. Vivek Kumar Jain has examined himself as PW1, who filed his evidence by way of affidavit Ex.PW1/A and has relied upon the documents as under:

i. Copies of invoices/bills and the details of e-way bills are ExPW1/1 colly. (OSR) (page no. 17-35) ii. Copy of ledger statement w.e.f. 01.04.2018 to 14.09.2022 which is maintained by the plaintiff is ExPW1/2. (page no. 36-37) iii. Copy of legal notice dated 01/10/2022 along with its postal receipt and its tracking report is ExPW1/3.

Colly. (page no. 39-47) iv. The copy of non starter report dated 21.01.2023 is ExPW1/4.

v. Certificate under Section 65B of Indian Evidence Act. Same is ExPW1/5.

vi. The E-way bills are ExPW1/6 colly.

vii. The GSTR-I Record of the plaintiff is ExPW1/7 colly.

viii. The certificate under Section 65B of Indian Evidence Act is ExPW1/8.

8. This witness was cross-examined by Ld. counsel for the defendants.

Vivek Kumar Jain vs. Kulbhushan Singh Chadha EVIDENCE OF THE DEFENDANT

9. Defendant has examined DW1 Sh. Amit Kumar Sharma who filed his evidence by way of affidavit ExDW1/A and reiterated the contents of written statement and rely upon the Board Resolution dated 15.01.2024 ExDW1/1.

ISSUE WISE FINDINGS Issue no. 1

(i) Whether the plaintiff has suppressed and concealed the material facts and has not approached the court with clean hands? OPD

10. It is settled law that a person who approaches Court for granting relief, equitable or otherwise, is under a solemn obligation to candidly & correctly disclose all the material/ important facts which have bearing on the adjudication of the issues raised in the case. He owes a duty to the court to bring out all the facts and desist from concealing/suppressing any material fact within his knowledge or which he could have known by exercising due diligence expected of a person of ordinary prudence. The doctrine is often stated as those seeking Equity must do Equity or Equity must come with Clean Hands.

11. If a petitioner is found guilty of concealment of material facts or making an attempt to pollute the pure stream of jus-

Vivek Kumar Jain vs. Kulbhushan Singh Chadha, the court not only has the right but a duty to summarily deny relief to such person to prevent an abuse of the process of law and reject the Petition on this ground alone without going to the merits of the case. The Apex Court has repeatedly invoked and applied the rule that a person who does not disclose all material facts has no right to be heard on the merits of his grievance. (Reliance G. Jayshree and others v. Bhagwandas S. Patel and others (2009) 3 SCC 141 and Dalip Singh v. State of U.P. (2010) 2 SCC 114).

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

13. In the present case, defendants have stated that the com-

pany Agtec Industries Pvt. Ltd. has written many letters to the plaintiff stating that the defect in the material supplied and also the company Agtec Industries Pvt. Ltd. issued a debit note to the plaintiff which has not been adjusted in the books of accounts by the plaintiff and nothing is due against the defendant. In my view, this aspect would be decided by the Court while discussing the later issues regarding the entitlement of the plaintiff to recover the amount in question but the defendants have miserably failed to show as to what material facts have been suppressed by the plaintiff, which is of such nature that the plaintiff is not entitled to any relief from Vivek Kumar Jain vs. Kulbhushan Singh Chadha the Court. Hence, this issue is decided against the defendants and in favour of the plaintiff.

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

14. In order to prove its case, the plaintiff Sh Vivek Kumar Jain has examined himself as PW1 and he has categorically deposed that as per the demand of the defendants the plaintiff supplied the HR coil and Aluminum Extrusion items etc. through various bills, invoices and e-way bills on various dates, months and year starting from 15.06.2018 to 29.10.2021. Same are ExPW1/1 colly. He has further de- posed that as per the ledger/statement of account ExPW1/2 an amount of Rs.19,03,230/- is due and outstanding against the defendants.

15. It is relevant here to state that the plaintiff has filed e-way bills in respect of relevant invoices which are part of Ex.PW1/1 (colly.) in support of its contentions that the goods in question were supplied to the defendants.

16. In this regard, it would be relevant to reproduce Rule 138 of SCGST Rules, 2017 as under:-

Rule 138: SCGST Rules, 2017 reads as under:-

1. 138, Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-(1) Every registered per-

Vivek Kumar Jain vs. Kulbhushan Singh Chadha son who cause movement of goods of consignment value exceeding fifty thousand rupees:-

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person, shall, before commencement of such movement, furnish in-

formation relating to the said goods as specified in Part-A of Form GST EWB-01, electronically, on the common portal and a unique number will be generated on the said portal;

Provided that the transporter, on an authorization received from the registered person, may furnish information in Part A of Form GST EWB-01, electronically, on the common portal along with such other information as may be required on the common portal and a unique number will be generated on the said portal:

Provided further that where the goods to be transported are supplied through an e-commerce operator or a courier agency, on an authorization received from the consignor, the information in Part-A of Form GST EWB-01 may be furnished by such e-commerce operator or courier agency and a unique number will be generated on the said portal:

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union Territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment:

Provided also that where handicraft goods are transported from one state or Union Territory to another State or Union Territory by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

(11) The details of the e-way bill generated under this rule shall be made available to the-

(a) Supplier, if registered, where the information in Part A of FORM GST EWB-01 has been furnished by the recipient of the transporter; or

(b) recipient, if registered, where the information in Part of FORM GST EWB-01 has been furnished by the supplier or the transporter, on the common portal, and the supplier or the recipient, as the case may be, shall communicate his accep-

Vivek Kumar Jain vs. Kulbhushan Singh Chadha tance or rejection of the consignment covered by the e-way bill.

(12) Where the person to whom the information specified in sub-rule(11) has been made available does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

2. Hence, sub-rule (11) of the above rule provides that the details of the e-way bill shall be made available to the recipient who shall communicate his acceptance or rejection of the consignment covered by the e-way bill. Further sub-rule (12) provides that in such cases, if the recipient does not communicate his acceptance or rejection within 72 hours of the details being made available to him on the common portal, or the time of delivery of goods whichever is earlier, it shall be deemed that he has accepted the said details.

17. In the present case, no evidence has been adduced by the defendant to show that inspite of generation of the said e-way bills by the plaintiff in respect of the goods in question showing the defendant as recipient of those goods, the defendant company ever communicated its acceptance or rejection within stipulated period or at any point of time and as such presumption is liable to be drawn in favour of the plaintiff and against the defendant that entire goods sent under all the said e-way bills which are part of Ex.PW1/1 (colly.) were re-

Vivek Kumar Jain vs. Kulbhushan Singh Chadha received by the defendant company. The defendant has failed to lead any evidence to the contrary.

18. In fact, the factum of supply of goods in question under the said invoices is not disputed by the defendant company.

19. As stated above, it is the case of the defendant that the plaintiff had supplied defective & poor quality of goods and the same were not as per the standard of the orders placed by the defendant.

20. Since the supply of goods in question to the defendant is admitted and the defendant have taken the plea of supply of poor quality of goods, by virtue of 106 of Bhartiya Sakshya Adhiniyam, 2023, the entire onus to prove the said averments lies on the defendant.

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

22. In this regard, it may be noted that the goods were supplied to the defendant through various invoices but the defendant has miserably failed to show that the goods of which particular invoice was defective, what was the defect, to what extent and when and how the defendant brought it to the notice of Vivek Kumar Jain vs. Kulbhushan Singh Chadha the plaintiff that the poor quality of goods were supplied. It is not the case of the defendant that the goods under all the invoices were of poor quality.

23. DW1 Sh. Amit Kumar Sharma has deposed in his cross-examination that after the receipt of the goods from the plaintiff, the defendant company had issued two debit notes which were sent to the plaintiff through mail as well as by post and the said debit notes were of the year 2018-19. However, the defendant is completely silent about the said debit notes in its written statement. Further during the cross-examination of PW1, he was controverted with the said debit note Ex.PW1/D1 by Ld. counsel for the defendant. The said debit note is for a total amount of Rs.2,97,050/-. The defendant has miserably failed to file any other debit note in this case. Even the total amount of this note which is of Rs.2,97,050/- is very small in comparison to the total supply made by the plaintiff to the defendant. Even if it is held that the defendant had quality issues in respect of the supply of the said quantity of goods amounting to Rs.2,97,050/-, the defendant has miserably failed to prove that the remaining goods supplied by the plaintiff were of inferior quality.

24. DW1 Sh. Amit Kumar Sharma has further admitted in his cross-examination that the plaintiff had asked for two samples of the defective goods. He had further admitted a document Ex.DW1/P1 in this regard wherein the plaintiff wrote mail to the defendant asking for two samples of the same lot Vivek Kumar Jain vs. Kulbhushan Singh Chadha that can be tested and report can be matched and only then needful can be done by the plaintiff. However, the defendant has miserably failed to show that they ever sent any such sample to the plaintiff in response to the said mail of the plaintiff. The defendant in its written statement and DW1 in his evidence by way of affidavit is completely silent about the same. Since the defendant failed to do the needful in respect of sending

of the samples to the plaintiff, in the eyes of law it failed to fulfill its obligation and hence cannot evade the liability to pay to the plaintiff in respect to the said goods.

25. It is not out of place here to state that during the cross-examination of PW1 Sh. Vivek Kumar Jain, he was given a suggestion by Ld. Counsel for the defendant that no goods were delivered to the defendant at any point of time and the said suggestion was denied by the witness. As stated above in the written statement, the defendant had admitted the receipt of goods and has only taken the plea of supply of inferior quality of goods and in the circumstance, this suggestion given by Ld. Counsel for the defendant to PW1 is in complete contradiction to the case of the defendant set up in the written statement.

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

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

28. In the present case, the testimony of the witness of the plaintiff is convincing and truthful and has remained unimpeachable. It is corroborated by documentary evidence. As stated above, there is nothing in cross examination of PW1 to shake his credit. There is no ground for me to disbelieve the same. The defendant has taken bald plea in its defence and has miserably failed to prove its case.

29. It is argued by Ld. Counsel for the defendant that the plaintiff has not filed e-way bills in respect of the invoices no. 1019 dated 10.09.2020 and invoice no. 954 dated 28.02.2020 which are part of Ex.PW1/1 (colly.) and hence plaintiff has failed to prove that the goods under said invoices were delivered to the defendant because there is no acknowledgment of the defendant on the said bills as well.

30. In my view, there is no merit in this argument. Firstly, the defendant has not denied the receipt of goods under the said invoices in its written statement. Secondly, there is merit in the contention of the Ld. counsel for the plaintiff as he sub-

Vivek Kumar Jain vs. Kulbhushan Singh Chadha submits that under the GST Rules, generation of e-way bill is not required in inter-state cases when value of the goods is less than Rs.50,000/- and in case of transit within Delhi when the value of the goods is less than Rs.1,00,000/-. In the present case, value of both the said invoices is less than Rs.50,000/- and hence it was not necessary for the plaintiff to generate e-way bills and hence non filing of e-way bills in respect of the said invoices does not affect the case of the plaintiff.

31. It is further argued by Ld. counsel for the defendant that the present suit has been filed by the plaintiff as proprietor of Gokal Chand Jagan Nath Nahar firm but he has not filed any document to show that he is the proprietor of the said firm and hence this case is liable to fail.

32. In my view, there is no merit in this argument as well. It is not necessary for the proprietor to create any document in respect of the constitution of the proprietorship firm when he himself is the proprietor. As per the case of the plaintiff he is the proprietor of the said firm and his testimony is found to be trustworthy as discussed above. Further, it is no more res integra that proprietorship firm is nothing but the proprietor himself in the eyes of law. Hence, the present suit filed by the plaintiff as proprietor of the said firm is valid in the eyes of law.

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33. It is further argued by Ld. counsel for the defendant that certificate U/s 65-B of Indian Evidence Act i.e. Ex.PW1/8 filed by the plaintiff is not as per law.

34. It may be noted here that the said certificate has been filed by the plaintiff in respect of the prints of the e-way bills Ex.PW1/6 (colly.) and the GSTR-I record of the plaintiff which is Ex.PW1/7 (colly.). As stated above, the defendant has not denied the receipt of goods in question in its written statement. Hence, even if the said e-way bills and the GSTR- I record of the plaintiff are excluded from consideration, it cannot be said that the plaintiff has not been able to prove its case. The defendant is only trying to hit the case on technical grounds. Hence, filing of the said certificate can only be said to be an irregularity and not fatal to the case of the plaintiff.

35. As per the case of the plaintiff, the goods in question were supplied by him to the defendant no. 1 company i.e. Agtec Industries Pvt. Ltd. Sh. Om Prakash Sharma, Director of the said company is ex-parte in this case. It is settled law that company has a separate legal personality which means it is recognized as distinct legal entity from its owners, share- holders or members. This principle was famously established in the case of Salomon Vs. Salomon & Co. Ltd. (1897) AC 22 where in the house of Lords upheld the doctrine of separate legal personality of the company . Hence, Sh. Om Prakash Sharma, the Director of this company is not person-

Vivek Kumar Jain vs. Kulbhushan Singh Chadha ally liable for the amount in question and hence the suit of the plaintiff against him is dismissed.

36. After considering all the facts and circumstances, I hold that the plaintiff has been able to prove its case by preponderance of probability that the goods in question were sold by the plaintiff to defendant no.1 company i.e. Agtec Industries Pvt. Ltd. and the defendant no. 1 company is liable to pay the principal amount of Rs.19,03,230/-.

37. Accordingly, this issue is decided in favour of the plaintiff and against the defendant no. 1 company.

Issue No. 3 :

(iii) If the issue no. (ii) is decided in affirmative, whether the plaintiff is entitled for the pendentelite and future interest, if so at what rate and for what period? (OPP)

38. As far as grant of pendentelite and future interest is con-

cerned, in my view, since defendant no. 1 company has de- prived the plaintiff for use of the amount of sold goods and considering the prevalent rate of interest, I grant interest @ 8% per annum on the decreetal amount from the date of filing of suit i.e. 14.03.2023 till the date of decree and thereafter till the realization.

Issue No. 4 :-

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(iv) Relief

39. In view of the aforesaid discussions, the suit is decreed in favour of the plaintiff and against the defendant no. 1 com- pany for sum of Rs.19,03,230/- with interest @ 8% per an- num on the said amount from the date of filing of suit i.e. 14.03.2023 till the date of decree and thereafter till its realization. The plaintiff is also held entitled to costs of the suit.

40. Decree sheet be prepared accordingly.

41. File be consigned to Record Room.

DEEPAK by DEEPAK GARG GARG Date: 2025.01.10 15:47:44 +0530 Announced in the open Court on (Deepak Garg) th this 10 Day of January 2025 Distt. Judge, (Comm. Court)-09, Central District, THC : Delhi