

Galaxy Office Chair vs Design And Organise on 23 December, 2024

In the Court of Shri Ashutosh Kumar, District Judge (Commercial Court)-01, Tis Hazari Courts, West District, Delhi

CS (Comm.) No. 451/2019
CNR No.DLWT01-007708/2019

Galaxy Office Chair
Through Its Prop. Jai Singh
H. No. 64, Ist Floor, Block-10
Kirti Nagar Industrial Area,
Delhi-110015

VERSUS

Design & Organise,
Through its Prop. Kunal Kshatriya
Unit -426, Spaze Itech Park,
Sohna Road, Gurugram,
Haryana

Date of Institution : 20-09-2019
Date of hearing of arguments : 21-12-2024
Date of decision : 23-12-2024

Counsel for the plaintiff : Ms Radha Singh Dhauni
Counsel for the Defendant : Sh Tribhuwen Kaushik

JUDGMENT

1. The case of the plaintiff is that it is a proprietor ship concern engaged in the business of manufacturing, supply of office chairs and defendant is engaged in the business of interior designing. It CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.1 of 14 is claimed that for the work of interior designing, the defendant approached the plaintiff at his office at Kirti Nagar, for supply of chairs of various sizes and designs on the terms and conditions as mutually agreed between the parties. Pursuant to the various orders placed by the defendant, the plaintiff supplied the chairs of various sizes and shapes to the defendant vide 23 bills for total amount of Rs. 17,36,323/- and all the bills were received by the defendant without raising any dispute qua satisfaction of the material received. It is claimed that a sum of Rs. 7,23,000/- was paid by the defendant and a sum of Rs. 10,13,323/- is outstanding against the defendant.

2. It is further the case of the plaintiff that despite repeated written reminders and inspites of its repeated assurances, the defendant failed to pay the balance outstanding amount and plaintiff got a legal notice of demand served upon the defendant on 29.01.2019 through courier and registered post.

3. Thus the plaintiff has claimed suit amount of Rs. 10,13,323/- alongwith interest @ 18% per annum.

4. Per contra, claim of the defendant in written statement is that the plaintiff and defendant were involved in the business with each other till 30-06-2017 but defendant had never met the plaintiff as they were not directly involved and all the transactions took place via a agent, namely Pawan Singh, who used to supply the chairs to the plaintiff. The defendant has claimed that the plaintiff had sent CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.2 of 14 the total material for an amount of Rs. 9,86,495/- and the defendant had already made payment of Rs. 8,18,100/- and only an amount of Rs. 1,68,395/- is due towards the defendant.

5. From the pleadings of the parties, the following issues were framed vide order dated 15-11-2022:

1. Whether the plaintiff is entitled to recovery of Rs. 10,13,323/- alongwith interest from the defendant as alleged? OPP

2. Whether plaintiff has suppressed material facts from the court? OPD

3. Whether suit is liable to be rejected for under order VII Rule 11 CPC? OPD

4. Relief.

6. In support of its case, plaintiff has examined two witnesses, namely, PW-1 Jai Singh Bisht, proprietor of the plaintiff and PW- 2 Nitesh Kumar Singh, Inspector, Central Goods & Services Tax Department, whereas defendant had examined its proprietor Kunal Kshatriya as DW-1.

7. I have heard the final arguments addressed by ld. Counsels for the parties, perused the written submissions filed on behalf of the plaintiff and have also perused the judicial file.

8. Perusal of record reveals that the pre-litigation mediation held in the matter, was a non-starter as the defendants did not appear before DLSA, West District and finally the non-starter report dated 31-05-2019 Ex. PW-1/28 was issued.

9. On the limitation aspect, Ld Counsel for the plaintiff has claimed CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.3 of 14 that the invoices Ex. PW-1/1 to Ex. PW-1/23, are for the period w.e.f. 11-05-2017 to 05-03-2018 and the last invoice is dated 05-03-2018. Last payment of Rs. 1,50,000/- is admittedly made by the defendant on 01.03.2018, which is duly reflected in ledger account Mark A (Colly). The suit is stated to be filed on 20.09.2019 and therefore the limitation period has to be counted from 01.03.2018. The period from 15.03.2020 till 28.02.2022 has also to be excluded for counting limitation period due to Covid 19 pandemic in terms of order dated 10.01.2022 of Hon'ble Supreme Court in Miscellaneous Application no. 21 of 2022 in Miscellaneous Application no. 665 of 2021 in SUO MOTU Writ Petition © No. 3 of 2020 with Miscellaneous Application No. 29 of 2022 in Miscellaneous Application no. 665 of 2021 in SUO MOTU Writ Petition (C) No. 3 of 2020. I find force in the said submissions of the Ld Counsel for the

plaintiff and accordingly hold that the present suit is filed within limitation.

10. As regard the territorial jurisdiction, it was argued by Ld. Counsel for the plaintiff that the office of the plaintiff is situated at Kirti Nagar, Delhi, where the defendant had approached it, for supply of material and from where the chairs were supplied and contract concluded, which is situated within territorial jurisdiction of this Court. The fact in this regard is categorically pleaded in para no. 2 of the plaint and the same being not rebutted or challenged by the defendant, is deemed to be correct. Hence in view of the CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.4 of 14 judgment of Hon'ble High Court of Delhi in the case of Dentsply India Pvt. Ltd. Vs Excel International & Ors., CS (OS) No. 410/1999, dated 10.07.2012, I hold that the present suit falls within the territorial jurisdiction of this court.

11. My issue-wise findings are as under:

"1. Whether the plaintiff is entitled to recovery of Rs. 10,13,323/- alongwith interest from the defendant as alleged? OPP"

12. The onus to prove this issue was on the plaintiff.

13. The relevant part of the testimony of PW1 from para no. 4 to para 13 is reproduced below:

"4. That the deponent submits that plaintiff firm supplied the chairs to the defendant against various bills for Rs. 17,36,323/- (Seventeen Lakh Thirty Six thousand three hundred twenty three only) on various dates. The invoices for the chairs supplied to the defendant by the plaintiff firm are exhibited as EXHIBIT PW 1/1 to EXHIBIT PW 1/23.

BILL NO. AMOUNT (Rs) EXHIBIT CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.5 of 14

5. That deponent states that the chairs were duly received against the bills and the defendant did not raise any dispute as to the satisfaction of the material received at the material time or at any time thereafter.

6. That the bills issued by the plaintiff firm were GST Bills therefore, the GST charged on the bills issued to the defendant firm were duly deposited by the plaintiff firm with the department.

7. That the deponent further states that a sum of Rs. 7,23,000/- was paid by the defendant to the plaintiff on even dates and thus a sum of Rs. 10,13,323/- (Rs. Ten Lakh Thirteen Thousand Three Hundred Twenty Three Only) is outstanding against the defendant. Duly attested bank statement of the plaintiff is Exhibited as EXHIBIT PW 1/24 colly.

8. That the deponent further submits that all the invoices issued to the defendant firm and the payment received from them were duly entered in the ledger account maintained by the plaintiff firm which are exhibited as EXHIBIT PW 1/25. (COLLY)

9. That the deponent thereafter made a number of requests and written reminders to the defendant for making payment of the balance outstanding dues but despite receipt of the said CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.6 of 14 reminders and despite repeated assurances the defendant has failed and neglected to make payment of the balance outstanding principal amount amounting to Rs. 10,13,323/-

(Rs. Ten Lakh Thirteen Thousand Three Hundred Twenty Three Only).

10. That the deponent states that since the defendant miserably failed to make the payment of the outstanding amount , the plaintiff firm therefore got a legal notice served upon the defendant through his lawyer on 29.01.2019 through courier and through regd. post. Legal notice and the postal receipts are EXHIBIT PW 1/26 and EXHIBIT PW 1/27 RESP.

11. That despite receipt of the said legal notice, the defendant neither chose to reply the said notice nor did he made any efforts to make the payment to the plaintiff.

12. That due to this malafide and callous behavior of the defendant , the deponent therefore approached West district legal services authority for pre institution mediation on 24.05.2019. That on first notice on 10.05.2019, none appeared on behalf of the defendant but on second notice on 31.05.2019, the defendant made in appearance through his counsel and did not show his inclination for pre litigation mediation. Hence, this suit. The Non starter report in Form-3 issued by West District Legal Service Authority is EXHIBIT PW 1/28.

13. That there is still an amount of Rs. 10,13,323/- (Rs. Ten Lakh Thirteen Thousand Three Hundred Twenty Three Only), which is due against the defendant as Principal and as per the agreed terms mentioned in the Bill itself, the defendant is also liable to pay an interest @ 18% P.A. after the due date."

14. Out of the 23 invoices vide which PW-1 has deposed that the total goods worth Rs. 17,36,323/- were supplied by the plaintiff to the defendant, the defendant has merely admitted 07 invoices nos. 3, 4, 5, 7, 8, 9 & 11 (Ex.PW-1/1, Ex. PW-1/2, Ex. PW-1/3, Ex.

CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.7 of 14 PW-1/5 to Ex. PW-1/8), totaling to an amount of Rs. 9,86,495/- . The defendant has claimed that an amount of Rs. 8,18,100/- was paid to the plaintiff and also gave a suggestion to PW-1 in his cross-examination dated 06-01-2023 that only an amount of Rs.1,68,395/- was the total outstanding amount due against the defendant. Thus, 16 bills i.e. bill nos. 6, 10, 21, 25, 27, 28, 29, 31, 34, 35, 36, 41, 42, 43, 46 & 47 (Ex. PW-1/4, Ex. PW-1/9 to Ex. PW-1/23) are disputed by the defendant. Ld. counsel for the plaintiff has submitted that the defendant has merely admitted goods vide 07 VAT paid bills,

whereas has denied the 16 GST paid bills vide which goods were delivered to him. Ld. counsel for the defendant has submitted that the defendant was on composite scheme of GST. He has further submitted that defendant had not taken any input credit tax qua those disputed tax invoices and that since the defendant was in a composite scheme, therefore no separate GST input credit qua the same could have been proved by PW2.

15. The relevant part of testimony of PW-2 is reproduced as under:-

"PW-2 Nitesh Kumar Singh, Inspector, Central Goods and Services Tax Department, Sector-32. Gurugram, Haryana, aged about-28 years.

On SA.

I am the summoned witness. I have brought the summoned record i.e. GSTR-2A, GSTR-3B and tax liability & input tax credit of M/s Design and Organise (defendant) for the financial year 2017-2018. The same are Ex. PW2/1 (running into 06 pages), Ex. PW2/2 (running into 03 pages) and Ex. PW2/3 (01 page) respectively. My CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.8 of 14 certificate qua the said computerized documents under Section 63 of the Bharatiya Sakhyam Adhiniyam, 2023 and affidavit under Order XI rule 6(3) CPC as applicable to Commercial Courts Act, 2015, are Ex. PW2/4 and Ex. PW2/5 respectively.

On being asked by Ld. Counsel for the plaintiff, the witness has stated that M/s Design and Organise (defendant) is not under the composite scheme of GST.

Ld. Counsel for the plaintiff has shown the 14 invoices Ex. PW1/10 to Ex. PW1/23 to the witness and asked him to tell from the record as to whether M/s Design and Organise (defendant) had claimed input credit tax of GST qua the same, to which the witness has replied that as per the aforesaid records brought and exhibited by him, it is clear that M/s Design and Organise (defendant) had claimed input credit tax of GST qua the same."

16. From the aforesaid testimony of PW2, it is clear that the defendant was not in the composite scheme of GST. The PW2 has proved aforesaid relevant GST record qua the disputed 14 invoices. On being specifically asked about the 14 disputed invoices Ex. PW1/10 to Ex. PW1/23, PW2 had stated that M/s Design and Organize (defendant) had claimed input tax credit qua the same.

17. Ld. counsel for the plaintiff, by relying upon para no. 14 of the judgment of the Hon'ble Supreme Court of India in the case titled as The State of Karnataka Vs M/s. Ecom Gill Coffee Trading Private Limited (Civil Appeal No. 230/2023) decided on 13-03-2023, has submitted that once PW2 has proved that the GST input tax credit qua the disputed 14 invoices were claimed by the defendant, it was for the defendant to prove the CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.9 of 14 genuineness of the transactions. Para no. 14 of the aforesaid judgment is reproduced as under:

"14. Now so far as the reliance upon the decision of the Delhi High Court in the case of On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi (Writ Petition (Civil) No. 6093/2017, decided on 26.10.2017), relying upon by the learned counsel appearing on behalf of the purchasing dealers is concerned, at the outset, it is required to be noted that before the Delhi High Court, Section 9(2)(g) of the Delhi Value Added Tax Act was under consideration, which reads as under:

"9(2)(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period."

The burden of proof as per Section 70 of the KVAT Act, 2003 was not an issue before the Delhi High Court. How and when the burden of proof can be said to have been discharged to prove the genuineness of the transactions was not the issue before the Delhi High Court. As observed hereinabove, while claiming ITC as per section 70 of the KVAT Act, 2003, the purchasing dealer has to prove the genuineness of the transaction and as per section 70 of the KVAT Act, 2003, the burden is upon the purchasing dealer to prove the same while claiming ITC."

18. Thus from the aforesaid part of the testimony of PW2, it can be inferred that the goods qua aforesaid disputed 14 invoices were supplied by the plaintiff to the defendant and that is why the defendant had claimed input tax credit qua the same. However CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.10 of 14 the plaintiff has not been able to prove goods vide 02 remaining disputed invoices, out of 16, were supplied to the defendant. In addition to the aforesaid, the plaintiff has also proved all the invoices vide Ex. PW1/1 to Ex. PW1/23 raised upon the defendant.

19. Plaintiff has also deposed about its ledger account qua the transactions in question Mark A(Colly).

20. Legal notice of demand sent by the plaintiff to the defendant alongwith postal receipt are Ex. PW-1/26 and Ex. PW1/27 respectively. Although PW-1 has not been able to prove the legal notice of demand since the said legal notice is undated and the DTDC receipt vide which the said legal notice of demand was sent to the defendant, is also undated and there is neither any receiving qua the said legal notice nor any track report of service qua the same proved on record. However, since the defendant in para 7 of its written statement of the plaint, has not specifically denied the said legal notice dated 29-01-2019 and hence the same is deemed to have been admitted by the defendant.

21. In view of the aforesaid discussion, the plaintiff is entitled to recovery of aforesaid 14 disputed invoices amounts i.e. pertaining to Ex. PW1/10 to Ex. PW1/23, the total of which comes to Rs. 6,98,708/- plus the balance amount of Rs. 1,68,395/- qua the goods received by the defendant with respect to aforesaid 07 invoices admitted by the defendant.

CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.11 of 14 Thus plaintiff is entitled to total amount of Rs. 8,67,103/- from the defendant.

22. The plaintiff has also claimed interest @ 18% per annum as per one of the terms and conditions mentioned on the invoices Ex. PW-1/1 to Ex. PW-1/23.

23. However, in the case of Cimmco Limited Versus Pramod Krishna Agrawal (2019 SCC OnLine Del 7289), the Hon'ble High Court of Delhi held as follows;

"3.....Hon'ble Supreme Court has now mandated that lower rates of interest be granted and therefore the pre-suit and also the pendente lite and future interest is liable to be reduced by this Court. Reliance is placed upon the judgments in the cases of Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority, (2005) 6 SCC 678, McDermott International Inc.v Burn Standard Co. Ltd.,(2006) 11 SCC 181,Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.,(2006) 7 SCC 700, Krishna Bhagya Jala Nigam Ltd v. G. Harischandra, (2007) 2 SCC 720 & State of Rajasthan v. Ferro Concrete Construction Pvt. Ltd. (2009) 3 Arb. LR 140 (SC)..."

24. In the given facts and circumstances, and keeping in view the prevalent rate of interest, the plaintiffs are entitled to simple interest @ 9% per annum on the outstanding rentals.

25. Issue no.1 is accordingly decided in favour of the plaintiff and against the defendant.

2. Whether plaintiff has suppressed material facts from the Court? OPD"

26. The onus to this issue was on the defendant.

CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.12 of 14

27. Except from baldly claiming that plaintiff has suppressed the material facts from the Court, the defendant has not produced or proved any material in this regard. Hence, this issue is also decided against the defendant and in favour of the plaintiff.

3. Whether the suit is liable to be rejected under order VII Rule 11 CPC? OPD"

28. The onus to prove this issue was also on the defendant. Defendant has merely claimed in his written statement that the suit is not maintainable u/o VII Rule 11 CPC. However, the defendant has neither specified the particular reason for the same nor led any evidence on the said aspect. Even otherwise nothing has come to the notice of this court from which it can be inferred that the suit of the plaintiff is not maintainable under that provision and therefore the said contention of the defendant does not hold water and accordingly, this issue is also decided against the defendant

Galaxy Office Chair vs Design And Organise on 23 December, 2024
and in favour of the plaintiff.

RELIEF

29. In view of my findings to above issues, the suit of the plaintiff is decreed for an amount of Rs. 8,67,103/- alongwith interest @ 9% per annum from the date of filing of the suit till actual realization alongwith costs of the suit.

CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.13 of 14 Decree sheet be drawn accordingly.

File be consigned to record room.

(Announced in the open Court)	ASHUTOSH (Ashutosh ASHUTOSH Kumar) KUMAR KUMAR District Judge (Commercial Court)-1	Date: 2024.12.23 16:35:35 +0530
	West, Tis Hazari Courts, Delhi 23-12-2024	

CS (COMM.) No. 451/2019 Galaxy Office Chair Vs Design & Organize Page No.14 of 14