

M/S Cnr Exports vs Mohd. Qadeer Prop. Of M/S Mehtab Export ... on 2 April, 2025

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 02.04.2
+ RFA(COMM) 48/2025 and CM Nos.3855-56/2025

M/S CNR EXPORTS Appe

versus

MOHD. QADEER PROP. OF M/S MEHTAB
EXPORT HOUSE Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Akanksha Jha & Ms. Shashi Mohan,
Advs.

For the Respondent : Mr. Maneesh Gumber, Mr. Rohit K., M
Tarun Gumber & Mr. Lalit Kishore
Chaudhary, Advs.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J.

1. The appellant (defendant in the suit) has filed the present appeal under Section 13(2) of the Commercial Courts Act, 2015 read with Order XLI of the Code of Civil Procedure, 1908 [hereafter the CPC], impugning a judgment dated 13.09.2024 [hereafter the impugned judgment] passed by the learned District Judge (Commercial Court)-

o4 [hereafter the Commercial Court], in CS (COMM) 614/2022 titled Mohd. Qadeer v. M/s CNR Exports.

2. The respondent (hereafter also referred to as the plaintiff) had filed the said suit [CS (COMM) No.614/2022] for recovery of a sum of 3,73,383/- along with pendente lite and future interest at the rate of 24% per annum till the date of realization of the said amount. Additionally, the plaintiff had also sought a decree for costs and litigation charges. The learned Commercial Court allowed the

aforementioned suit by the impugned judgment and decreed a sum of 3,73,383/- along with pendente lite and future interest at the rate of 9% per annum from the date of the filing of the suit till the date of realization.

FACTUAL CONTEXT

3. The appellant (hereafter also referred to as the defendant) is a sole proprietorship concern of Mr Vinayak Choudhary. It is stated that, he is engaged in the business of manufacturing and exporting of leather and leather garments under the name of his proprietorship concern (M/s CNR Exports). The plaintiff is the sole proprietor of M/s Mehtab Export House and is engaged in the business of raw skin, finished leather, hides and skins.

4. It was the plaintiff's case that Mr. Vinayak Choudhary had approached him to purchase certain goods (skins), which were supplied to him. The plaintiff had thereafter raised invoices for the sale of the said goods, however, the defendant failed to discharge the said invoices in entirety and a sum of 3,73,383/- remained outstanding. The plaintiff had thereafter pursued the defendant for recovery of the said amount, however, the defendant had failed to repay the same.

5. The plaintiff claimed that he caused a legal notice dated 26.09.2020 to be issued to the defendant. The same was duly served on the defendant but the defendant had not responded to the same.

6. In the given circumstances, the plaintiff initiated pre-institution mediation proceeding, which was a non-starter.

7. The defendant filed a written statement contesting the suit. He claimed that he had placed an order for supply of certain raw material with the plaintiff sometime in July-August, 2020. He claimed that the total price of the goods, along with the rate difference, leather shaving charges, and freight charges was 3,73,383/-, however, the plaintiff did not raise any invoice with respect to sale and purchase of the said goods. He claimed that the goods in question arrived at his factory and were found to be defective and not upto the mark. Accordingly, he claimed that transaction for purchase of the goods was cancelled, and the goods were returned. He stated that he had issued two debit notes dated 24.08.2020, aggregating an amount of 3,73,381/- and the goods were returned to the plaintiff on the very same date.

8. The defendant claimed that on the said date, that is 24.08.2020, the plaintiff visited the factory premises and was handed over a cheque amounting to 2,45,528/- which was the amount outstanding with respect to the past transactions/business dealings between them.

ISSUES

9. In view of the rival pleadings, the learned Commercial Court framed the following issues for consideration:

- "1. Whether the plaintiff is entitled to recovery of Rs.3,73,383/- alongwith interest from the defendants, as alleged? OPP.
2. Whether the suit is not maintainable? OPD.
3. Whether there is no cause of action? OPD.
4. Relief."

10. Both parties led the evidence. The plaintiff examined himself as PW-1 and testified to the invoices raised [Ex.PW-1/3 (colly)]; Certificate of GST Registration [Ex.PW-1/2] Statement of Accounts/Ledger [Ex.PW-1/5]; Messages exchanged between the parties [Ex.PW-1/6 (colly)]; the legal notice dated 26.09.2020 [Ex.PW-1/7] and the postal receipts and tracking reports evidencing its service [Ex.PW-1/8 (colly) and Ex.PW-1/9 (colly)]. The plaintiff also furnished an affidavit in compliance of Section 65-B of the Indian Evidence Act, 1872 [Ex.PW-1/11].

11. The defendant (DW-1) also tendered an affidavit as his examination-in-chief. He testified the issuance of debit notes dated 24.08.2020 [Ex.DW-1/1 and Ex.DW-1/2] as well as the challan/gate pass dated 24.08.2020 [Ex.DW-1/3]. Both the witnesses PW-1 and DW-1 were cross-examined.

12. The learned Commercial Court evaluated the evidence on record and found that the plaintiff had established his claim. The learned Commercial Court found that the defendant was unable to establish that the goods supplied by the plaintiff were defective as no evidence in this regard was produced other than the bare statement of the defendant that the goods supplied were defective. The learned Commercial Court also did not accept that debit notes and challans (Ex.DW-1/1, DW-1/2 and DW-1/3) were sufficient, since they were not corroborated by any other evidence. The learned Commercial Court noted that the defendant had not produced the ledger account of the plaintiff maintained in his books of account and observed that the documents appeared to be the result of an afterthought. In view of the above, the learned Commercial Court passed the impugned judgment awarding an amount of 3,73,383/- in favour of the plaintiff. Additionally, the learned Commercial Court also awarded interest at the rate of 9% per annum on the outstanding amount from the date of filing of the suit till actual realization as well as costs.

SUBMISSIONS

13. Ms. Akanksha Jha, the learned counsel appearing for the defendant, contended that the learned Commercial Court had failed to appreciate the evidence led by the defendant. She contended that the defendant had clearly proved the issuance of the debit notes and return of the goods and therefore, the impugned judgment was not sustainable.

REASONS & CONCLUSION

14. The controversy between the parties is in a narrow compass. It is the plaintiff's claim that he is entitled to 3,73,383/- being the outstanding amount payable by the defendant in respect of the

goods supplied. The defendant on the other hand relies on the debit notes dated 24.08.2020 (Ex.DW-1/1 and Ex.DW-1/2), which he claims were issued as the goods supplied were found to be defective and were thus returned. It is implicit from above that the defendant acknowledges receiving the goods of the value as claimed by the plaintiff. However, according to him, the said goods were returned to the plaintiff. Thus, the key question to be addressed is whether it is established that the goods in question were returned to the plaintiff and therefore, no amount is outstanding and payable by the defendant to the plaintiff.

EVIDENCE

15. It would be relevant to examine the evidence led by the parties to address the disputes. The plaintiff (PW-1) claimed that the defendant had approached him for purchasing the goods in question, which were duly supplied to him. The plaintiff had also testified that invoices for the goods were raised and proved the same [Ex.PW- 1/3(colly)]. In his cross-examination, he testified that the invoices were raised at the time of supply of goods and the same were sent along with the goods supplied. The plaintiff was also confronted with the debit notes as well as the challans. However, he testified that he had never come across the said documents and the same did not bear either his signature or the signature of any of his employee or any person authorized by him. The plaintiff's testimony that the invoices in question were sent along with the goods, thus, effectively remained uncontroverted.

16. The defendant (DW-1), on the other hand, had testified that he never received the said invoices. According to him, the plaintiff had not raised any invoices in respect of the goods, which were returned. He also testified that he had placed orders for the goods in question sometime in the month of July-August, 2020 and the total price of the said goods including rate difference, leather shaving charges and freight charges was 3,73,381/-.

17. The defendant's testimony in this regard cannot be accepted, as the same is intrinsically conflicting. If the defendant's testimony is to be accepted - that he had not received any invoices for the goods supplied, there would be no reason for the defendant to have issued the debit notes. The debit notes are issued only for the purposes of debiting the account of a party maintained in the books of the party maintaining such accounts. Therefore, the debit notes would thus be required to be entered into as debit entries in the ledger account of the plaintiff maintained in the books of the defendant. However, if the defendant had not received the invoices for the goods in question, as claimed by him, the plaintiff's ledger account and his books would not have been credited. Thus, there would be no reason for the defendant to have issued debit notes in the first place. The ledger account of a party supplying goods is required to be credited on receipt of the invoices for such supplies or by credit notes in respect of discount or other charges. The said account is required to be debited on account of payments made or any other charges or debits, for which debit notes and vouchers are to be issued. In the present case, the defendant claims that he had not received invoices and in absence of such invoices, the plaintiff's account would not have been credited. Issuing debit notes in such circumstances would effectively result in the account of the plaintiff reflecting a debit balance. In other words, it would reflect that the plaintiff owed the defendant money on account of the debit notes. But, according to the defendant, the account was squared up by issuing the debit

notes. In other words, the plaintiff's ledger account in the defendant's book was credited on receipt of goods, which the defendant claims were returned.

18. In the given facts, it is also material to note that the defendant did not produce the ledger account of the plaintiff maintained in his books of account. Thus, the defendant had not established that he had in fact accounted for the goods received and made accounting entries represented by debit notes for return of such goods. The failure to produce the ledger account specially in a case where the plaintiff had produced the ledger account of the defendant as maintained in his books raises a serious question as to the credibility of the debit notes (Ex.DW-1/1 and Ex.DW-1/2), which merely serve as the primary documents for the debit entries in the ledger account of the party in question (the plaintiff in this case).

19. The defendant (DW-1) had also not produced his stock register which would reflect the inward movement and outward movement of the goods in question. The said register would reflect that the goods in question had been returned by the defendant as claimed. The invoices produced by the plaintiff [PW-1/3 (colly)] bear the dates of the month of February, 2020. And, as noted above, the plaintiff's (PW-1) statement that the invoices accompanied the goods was not effectively controverted. The plaintiff had testified that the supply of goods in question was made in the month of February, 2020. The plaintiff had also produced the statement of accounts, which reflected the date of supply of goods as well as the integrated goods and services tax [GST] payable on the said goods. The ledger account [PW-1/5] indicated that the goods of a value of 9,18,911.04, covered under five invoices, had been supplied in the month of February, 2020. As against the said supplies, the ledger account indicated that the plaintiff had received round payments through banking channels, that is, 50,000/- on two occasions and 1,00,000/- on two occasions. Thus, in aggregate, the plaintiff had received a sum of 3,00,000/-. Accordingly, as on 31.03.2020, a sum of 6,18,911.04 was reflected as outstanding and payable by the defendant. Against the said balance, the defendant had paid a sum of 2,45,528/- leaving the remaining balance at 3,73,383.04. According to the defendant, the supply of goods was made on the same date on which it was returned, that is on 24.08.2020, however, there is no material on record to show that any goods were supplied by the plaintiff on that date. As noted above, the PW-1 had claimed payment for the supplies made in the month of February, 2020.

20. PW-1 had also produced copies of the messages [PW-1/6 (colly)] exchanged with the defendant. These messages were admitted by DW-1. The messages indicate that PW-1 had been requesting the defendant to make payments as far back as in March, 2020. The plaintiff had again sent a message requesting for release of money on 10.04.2020 and sent a reminder on 17.04.2020. The defendant responded to the said messages by stating that no payment had been made on the buyer side and the payments would be released once he was back to work. The messages indicate that the plaintiff had been pursuing the defendant for payments and there is no message, which indicates that the defendant had disputed his obligation to make the payments or made a grievance regarding any of the goods supplied being defective. As observed at the outset, the controversy is not regarding supply of goods; the controversy relates to the debit notes (Ex.DW-1/1 and Ex.DW-1/2) which, according to the defendant, were raised on return of the goods in question.

21. As discussed above, issuance of the said debit notes cannot be accepted as the plaintiff had not acknowledged credit for the goods received, which would be represented by the invoices. He had also not produced the running account, which would reflect the same. As noted above, the plaintiff had denied that he had ever come across the said debit notes and further testified that the same did not bear either his signature or the signature of any of his employees or any person authorized by him. The defendant has not produced any corroborative evidence to establish otherwise.

22. The plaintiff had also sent a legal notice [Ex.PW-1/7] and had also established that the same was delivered. This was also not effectively controverted by the defendant. In fact, the defendant [DW- 1] in his cross examination had stated that he could not admit or deny that the legal notice was received by him as he did not remember the same. There is no material on record to establish that the defendant had responded to the legal notice or had disputed its contents at the material time.

23. The only other document that the defendant had relied upon was the challan, which, according to the defendant, established that the goods had been returned. This document was disputed by the plaintiff and the defendant was unable to establish that any of the signatures appearing on the said document were that of the plaintiff or of any one of his employees. The challan does mention the registration number of the vehicle in which the goods were allegedly returned; however, no other documentary evidence, either in the form of the transporter's bill or e-way bill, was produced to evidence the transportation of the goods from the defendant's factory to the plaintiff's premises.

24. Given the weight of the evidence produced by the plaintiff, we agree that the plaintiff is entitled to the amount as claimed. We concur with the decision of the learned Commercial Court that the plaintiff has established that the amount of 3,73,383/- is due and payable against goods supplied. We, accordingly, uphold the impugned judgment.

25. The appeal is, accordingly, dismissed. The parties shall bear their own costs. The pending applications are also dismissed.

VIBHU BAKHRU, J TEJAS KARIA, J APRIL 02, 2025 'gsr'