

**IN THE COURT OF SH. MANISH GUPTA,
ADJ-04, NORTH-WEST, ROHINI COURTS, DELHI.**

CS No. 577162/16

M/s East West Fire Engg. Co. (P) Ltd.
160, Shyam Shanti Market,
Ajmeri Gate, New Delhi-110006.

..... Plaintiff

Versus

M/s Sameer Builtaid Pvt. Ltd.
S-4, 2nd Floor, B-49, Joshi Colony,
IP Extension, Delhi-110092.

Also At,
C-3/13, Sector-71,
Noida (U.P).

..... Defendant

Date of filing of the suit: 24.07.2015
Date of Judgment : 08.01.2018.

08.01.2018.

J U D G M E N T

1. This is a suit for recovery of Rs. 3,02,406/- (Rupees Three Lacs, Two Thousand, Four Hundred & Six only). In brief, the relevant facts of the case as mentioned in the plaint are that the plaintiff company has passed a resolution in favour of Sh. Pawan Gupta, who is one of the Directors of the plaintiff company and involved in day to day affairs of plaintiff company, to file this suit against the defendant. It is further mentioned that there is running

account with respect to the sale of goods and rendering of services by the plaintiff company to the defendant and a sum of Rs. 3,02,406/- is lying outstanding in favour of plaintiff company and besides other transactions of sale of goods by the plaintiff company to the defendant, goods were sold by the plaintiff to the defendant vide various purchase orders and invoices.

2. It is further mentioned in the plaint that in order to discharge the liability of Rs. 3,02,416/- (although the suit is with a prayer to recover Rs. 3,02,406/-) arising out of goods supplied by the plaintiff to the defendant, defendant issued a cheque bearing No. 000903, dated 25.07.2014, drawn on Bank of Baroda in the sum of Rs. 3,02,416/- in favour of the plaintiff and on presentation it was dishonored vide returning memo dated 22.09.2014 due to "insufficient funds" and the plaintiff issued a legal notice dated 11.05.2015 upon defendant and since the defendant failed to pay the said amount to the plaintiff, therefore, this suit has been filed.

3. The defendant has filed the WS wherein it is only mentioned in para no. 6 of the reply on merits that the contents of para no. 7 of the suit are wrong and denied and it is denied that the cheque bearing No. 000903 for a sum of Rs. 3,02,416/- was issued by the defendant towards discharge of liability, however, defendant had issued the cheque as security.

4. On the basis of the pleadings, following issues were framed on 19.01.2016:

- (i) Whether the plaintiff is entitled for recovery alongwith interest, as prayed for? OPP.
- (ii) Any other relief.

It is relevant to note that on 22.07.2016, Sh. Sachin, counsel for defendant appeared. Earlier also there was appearance on behalf of the defendant. I have already heard final arguments and perused the record. Counsel for plaintiff has addressed final arguments and none has appeared on behalf of defendant for addressing the final arguments despite several calls since morning. In fact, none is appearing for defendant for last few dates of hearing consecutively. Therefore, I have proceeded to decide the case on merits on the basis of material and evidence on record. Now I shall give issue wise findings.

5. Issue No. 1:- Whether the plaintiff is entitled for recovery alongwith interest, as prayed for? OPP.

Onus of proving this issue was upon the plaintiff. It is relevant to note that initially the present suit was filed before the Central District & the plaint was returned as per order dated 29.07.2015 of Ld. ADJ-02, Central District, Delhi on the point of territorial jurisdiction & subsequently the plaint was filed in North-

West District, Delhi.

The plaintiff has examined PW-1 Sh. Pawan Gupta as the only witness who has filed his evidence by way of affidavit which is Ex. PW1/A. He has also relied upon some documents in support of the contentions as mentioned in the plaint. His examination in chief was recorded on 11.07.2017 and since none appeared for defendant, therefore, the opportunity of defendant to cross examine the PW-1 was closed. The testimony of the witness remains unchallenged and unrebutted. No other witness has been examined in this case. Defendant has also failed to lead evidence in his defence. PW-1 has also relied upon the original cheque dated 25.07.2014 bearing No. 000903 in the sum of Rs. 3,02,416/- which is Ex. PW1/5. The cheque returning memo of the bank is Ex. PW1/6. The cheque is issued by the defendant in favour of the plaintiff. The copy of legal notice dated 11.05.2015 is Ex. PW1/8. The registered postal receipt is Ex. PW1/9. The resolution in favour of Sh. Pawan Gupta, is Ex. PW1/1. Copy of ledger account is Ex. PW1/2. The suit is within limitation. There is nothing on record to disbelieve the testimony of the plaintiff as the defendant has utterly failed to cross examine the plaintiff's witness and has failed to lead any evidence in his defence. Hence, the plaintiff has proved his case. The plaintiff has prayed for simple interest @ 12% per annum. In my considered opinion, the simple interest @ 10% per annum, if awarded, shall meet both the ends of justice

considering that the rates of interest are falling down considerably. Accordingly, I award the interest @ 10% per annum on the principal amount of Rs. 3,02,416/- from the date of first filing of the suit i.e. 24.07.2015 till the date of realization. The present issue stands disposed off accordingly.

6. Issue No. 2:- Any other relief.

In view of overall facts and circumstances and in view of the findings given above, I deem it fit to award costs of the suit also to the plaintiff. Accordingly, the plaintiff is also awarded the costs of the present suit.

7. In view of above findings, the present suit is hereby decreed in favour of the plaintiff and against the defendant and **following reliefs are awarded** in favour of the plaintiff and against the defendant:-

- (i). Sum of Rs. 3,02,416/- (Rupees Three Lacs, Two Thousand, Four Hundred and Sixteen Only) towards the principal amount.
- (ii). Simple Interest @ 10% per annum on the principal amount from the date of filing of suit i.e. 24.07.2015 till its realization.
- (iii). Costs of the suit.

8. Decree sheet be prepared accordingly.

9. File be consigned to record room after completing the necessary formalities.

Passed & announced in
the open court today.

(Manish Gupta)
ADJ-04(NW)/Rohini Courts
Delhi/08.01.2018.