In the Court of LXXXIV Additional City Civil and Sessions Judge (CCH-85) (Commercial Court), Bengaluru

Dated this the 26th day of November, 2021

Present: Smt.H.R.Radha B.A.L., LL.M.
LXXXIV Addl. City Civil and Sessions Judge,
(CCH-85 - Commercial Court) Bengaluru.

Com.O.S.No.8498/2018

Plaintiff	M/s Solvis Pharmaceuticals, a partnership Business Concern having its Office at No.127/2, Ground Floor, Bull Temple Road, Chamarajapet, Bengaluru – 560018 Represented by its Managing Partner, Sri G.Devi Prasad, aged about 42 years, S/o Gurram Sambasiva Rao, **(By Sri.V.B.Shivakumar, Advocate)**
Vs	
Defendants	1. M/s Genesis Distributors (Durgapur) CHD Supplies RD 15, Mahiskapur Plot, Benachity, Durgapur - 713213. Burdwan District, West Bengal 2. M/s Manjit Singh Kang, Proprietor, M/s Genesis Distributors, RD 15, Mahiskapur Plot, Benachity, Durgapur - 713213. Burdwan District, West Bengal **(By Sri.B.T.Prasanna Kumar, Advocate)**

Date of Institution of the suit	27-11-2018		
Nature of the suit	For recovery of money		
Date on which First Case Management Hearing took place	03-04-2021		
Date of Commencement of recording of evidence	09-04-2021		
Date on which judgment pronounced	26-11-2021		
Time taken for disposal	**YEARS**	**MONTHS**	**DAYS**
1) Total duration	**03**	**00**	**00**
2) From the date of first case management hearing Under order XV-A CPC as amended by section 16 of the Commercial Courts Act	**00**	**07**	**13**

(H.R.RADHA)
LXXXIV Addl. City Civil & Sessions Judge
CCH-85 Commercial Court) Bengaluru.

JUDGMENT

This is a suit for recovery of Rs.21,76,216/- in all from the defendants with interest at 18% and cost.

2. This suit was transferred from CCH-5, Bengaluru to the Commercial Court CCH-83 by notification dated 17-08-2020 and then to this court, by a subsequent notification dated 22-12-2020.

3. Brief facts of the plaintiff's case are that it is a duly registered partnership firm carrying on the business of distributorship of pharmaceuticals and has registered under VAT rules and the provisions of GST. The 2nd defendant who is the proprietor of the 1st defendant also runs another shop by name M/s Genesis Distributors (BNG Supplies) at the same address. Towards the orders placed by the defendants, it has periodically supplied the goods and maintained books of accounts relating to such transactions. The defendants are due a sum of Rs.8,32,131/- against the credit invoices and Rs.2,71,814/- towards subsequent supplies and to pay interest at 18% p.a. on delayed payments, amounting to Rs.7,98,427/- and Rs.2,73,844/- respectively. Blank cheques bearing No.113 and 114 dated 14.09.2015 issued by the defendant as security for the transaction, came to be dishonoured and therefore, CC.No.7224/2016 was initiated

U/s 138 of N.I.Act, but it was dismissed; the defendant cannot be exonerated from paying the amount due, on account of dismissal of the criminal case. The suit is based on accounts and not the cheques issued by the defendant; the same is in time and this court has jurisdiction to try the suit.

4. The defendants have filed the written statement contending that the supply were made by the plaintiff prior to 2014 and the suit claim relates to the same, as such the suit is time barred and this court has no jurisdiction to try the suit. The plaintiff though not supplied some of the items, raised invoice for the same. Most of the items were returned but, the plaintiff has not accounted for the same. The 2nd defendant has already made payment towards the supplies. Though he had spent money to promote the plaintiff's products, supplies were made to another person without their knowledge and the supply was unilaterally stopped. This resulted in loss to the 2nd defendant, As such O.S.No.178/2016 is filed at Durgapura in West Bengal challenging the plaintiff's notice and the same is pending.

The finding in CC.No.7224/2016 that the plaintiff had misused blank cheques issued as security for the transaction has attained finality, as no appeal is filed against the same.

5. Based on the above pleadings, this court has framed the following:

ISSUES

1. Whether the plaintiff proves that the defendants are due a sum of Rs.8,32,131/- towards credit invoice?

2. Whether the plaintiff proves that defendants are due a sum of Rs.2,71,814/- towards supplies?

3. Whether the plaintiff is entitled for interest at 18% p.a. on the above amounts as claimed ?

4. Whether the suit in in time?

5. Whether the plaintiff is entitled for the suit claim?

6. What decree or order?

6. The plaintiff and the 2nd defendant have filed affidavits in-lieu of his examination-in-chief, examined themselves as Pw1 and Dw1 respectively. The plaintiff has got marked

Ex.P1 to P33, the defendant not adduced any documentary evidence.

7. The plaintiff has filed written arguments. I have heard Sri.B.T.Prasanna Kumar for the defendants and reply of Sri.V.B.Shivakumar for the plaintiff .

8. My findings on the above issues are:

Issue No.1: As per the discussion
Issue No.2: As per the discussion
Issue No.3: In the negative
Issue No.4: In the Negative
Issue No.5: In the Negative
Issue No.6: As per final order for the following:

REASONS

9. Issues 1 to 5: These issues involve discussion of common facts and evidence and therefore are taken up together for consideration to avoid repetition.

10. The plaintiff has filed written argument contending that on being registered partnership firm it has filed the suit for recovery of dues towards the supplies made to the 1st

defendant, based on the accounts and towards the bills for subsequent supplies. The defendants has accepted the supplies under the Tax Invoices and these supplies were made through logistic service providers; tax invoices and logistic receipts are produced at Ex.P4 to P22. The delayed payments attract interest at 24% p.a. and the disputes are subject to Bengaluru jurisdiction as provided in the tax invoices. But Dw1 has not produced any documents either to show that the due are cleared or most of the supplies were returned, as such the acquittal in CC No.7224/2016 does not absolve him of the liability to pay the dues with interest.

11. Per contra, the learned counsel for the defendant argues that the plaint averments are silent as to when the amounts claimed become due, the basis for claiming interest at 18% p.a. and when subsequent supplies worth Rs.2,71,814/- was made and Pw1 has not offered any clarification in this behalf during evidence. The plaintiff misused the blank cheques issued as security 22.08.2014 and filed CC No.7224/2016 U/s 138 of N.I.Act. The invoices do not provide for levying interest as claimed in the suit. The

last transaction was on 30.12.2014; the supplies were made at Durgapura and therefore the suit is not maintainable in Bengaluru.

12. In reply the learned counsel for the plaintiff submits that Ex.P33, the ledger account extracts form 01.04.2013 to 31.03.2014 to 05.10.2018 speaks about the outstanding amount of Rs.8,32,131/- towards the supplies made to the 1st defendant Genesis Distributors (CHD Supplies) upto 30.12.2014. As per the same ledger account extract, supplies worth Rs.5,59,345/- was made to the 2nd defendant's establishment Genesis Distributors (BNG Supplies) and out of this the defendant paid Rs.2,87,531/- leaving the balance at Rs.2,71,814/- as on 30.03.2015. Having not denied the transaction and also the plaintiff's claim that the 2nd defendant is also the proprietor of Genesis Distributors (BNG Supplies), he cannot be permitted to avoid the liability. Though the invoices provide for payment of interest at 24% p.a., the plaintiff has restricted the same as 18% and even the amounts due ar calculated including interest at the said rate.

13. As submitted by the learned counsel for the plaintiff, the suit is based on accounts and not the two cheques at Ex.P25 and P27. Even otherwise considering that CC No. 7224 of 2016 for the offence U/s 138 of N.I.Act is dismissed by the 42nd ACMM Court, Bengaluru and the plaintiff has not chosen to challenge the same, the findings therein as to plaintiff misusing the two cheques has attained finality and therefore Ex.P24 to P32 may not be relevant for our purpose.

14. It is evident from Ex.P23 that the 2nd defendant handed over two cheques Ex.P25 and P27 to the plaintiff's officer as early as on 22.08.2014 as security and they were blank cheques as specifically pleaded in plaint para No.8. These cheques were not issued towards discharge of the amounts due on 14-09-2015 as stated in the plaintiff's letter Ex.P24. Though this letter refers to notice dated 22.06.2015, the same is not produced before the court.

15. Ex.P1 is the certified copy of registered Partnership Deed dated 27.08.2012 and Ex.P2 is Form-C issued by the Registrar of Firms, Bengaluru on 08.10.2012. Ex.P3 is the

Value Added Tax register certificate dated 27.06.2013 permitting the plaintiff to deal with medicines, surgical goods and equipment, OTC and Ayurvedic products. The defendants do not dispute that the plaintiff is a duly registered partnership firm and that it has VAT registration.

16. The plaintiff relies on Ex.P4 to 22, the invoices and the logistic receipts to establish that the supplies were made to the defendant as reflected in the ledger account extract at Ex.P33. As seen from the invoices the supplies were made from Bengaluru and Chandigarh to the defendant, who is admittedly residing and carrying on the business in Durgapur, West Bengal.

17. It is the specifically contended in the written statement that the defendants did not transact with the plaintiff after 30.12.2014 and the defendants suggestion to this effect is no denied even by Pw1. It is also relevant to note the plaint as well as Pw1's affidavit, are silent as to the date of purchase order, date of supply and the date on which the amounts claimed in the suit became due?

18. In this back ground, the details of supplies such as, invoice number, date of invoice, amount invoiced, place of origin of the supplies and logistic services employed for supplying, as found in Ex.P4 to P22 are extracted here below for easy reference:

Bills raised by Solvis Pharmaceuticals, Chandigarh

Exhibits	Bill No.	Date of Bill	Logistic service provider	Amount (Rs)
Ex.P13	002/14/SA/319	30.12.2014	Spot-on	1,17,741
Ex.P15	002/14/SA/262	20.11.2014	-do-	1,68,348
Ex.P17	002/14/SA/197	13.10.2014	Bombay-Delhi Road carrier	2,37,091
Ex.P18	002/14/SA/019	15.10.2014	-do-	1,39,046
Ex.P19	002/14/SA/204	15.10.2014	-do-	23,542
Ex.P21	002/14/SA/114	13.08.2014	-do-	3,26,346
			TOTAL	**10,12,114**

Bills raised by Solvis Pharmaceuticals, Bengaluru

Exhibits	Bill No.	Date of Bill	Logistic service provider	Amount (Rs)
Ex.P4	001/14/SA/29	30.05.2014	VRL Logistics	91,775
Ex.P6 & Ex.P7	001/14/SA/50	30.06.2014	-do-	1,44,660
Ex.P9	001/14/SA/66	31.07.2014	-do-	21,638
Ex.P11	002/14/SA/132	21.11.2014	-do-	54,942
			TOTAL	**1,68,355**

From the above, it is clear that the suit is in respect of the supplies made by the plaintiff Solvis Pharmaceuticals (BNG) and also by Solvis Pharmaceuticals, Chandigarh. But there is absolutely no pleading or evidence as to how Solvis Pharmaceuticals, Chandigarh is related to the plaintiff, whether it is a branch or an agency of the plaintiff etc.

19. That apart, from internal page No.88 of the ledger extract for the period from 01-04-2014 to 31-03-2015 at Ex.P33 it is seen that the opening balance was Rs.1,48,089/- and the defendant was due a sum of Rs.5,59,345 towards the supplies under Ex.P4, 6&7, 9 and 11, including Rs.98241/- under Bill No.001/14/SA/12 dated 30-04-2014. The defendant had paid Rs.2,00,000/- by cheque on 18-07-2014 and returned supplies worth Rs.24,385/- and Rs.63,146/- on 21-11-2014 and 30-03-2015 under credit notes.

20. No doubt, the ledger account entries at Ex.P33 show that the defendant was due a sum of Rs.8,32,131/- as on 30.12.2014 towards the supplies made by Solvis

Pharmaceuticals (Chandigarh) and Rs.2,71,814/- to the plaintiff as on 21.11.2014, but the credit note raised by the defendant was given due deduction by the plaintiff on 30.03.2015. Thereafter, there was absolutely no transaction whatsoever kind between the plaintiff and the defendant.

21. In the absence of convincing and acceptable evidence to say that Solvis Pharmaceuticals, Chandigargh is a branch or an agent of the plaintiff, any amount of evidence in the form of ledger account entries cannot confer jurisdiction on the courts in Bengaluru with regard to the supplies made from Chandigarh to Durgapur in West Bengal. The argument of Sri.VBS that the dispute is subject to Bangalore jurisdiction cannot be accepted, because there is no such clause in the invoices raised by Solvis Pharmaceuticals, Chandigarh.

22. In relation to supplies made by Solvis Pharmaceuticals, Chandigarh, the plaintiff ought to have filed the suit either in Chadigargh where a part of the cause of has arisen or in Durgapur, where the defendant ordinarily resides or carries

on business, as provided under section 20 of CPC, but not in Bengaluru.

23. Article 16 of the Limitation Act provides that a suit for the price of the goods sold and delivered to be paid for by a bill of exchange, no such bill being given ought to be filed within three years when the period of the proposed bill lapses. The invoices relied upon the plaintiff show that the mode of payment was cheque, which is a bill of exchange and the payments delayed above 30 days would attract interest. In other words, the time stipulated for payment under Ex.P4 to P22 was 30 days.

24. Admittedly the defendant, except issuing the two cheques at Ex.P25 and P27 towards security on 22.08.2014 as evidenced from Ex.P23, did not issue any cheque other towards payment of invoiced amounts. Therefore the plaintiff ought to have filed the suit within three years from the date when the period proposed for payment in the bill expired.

25. When the finding in CC No.7224/2016 that the cheque bearing No.000113 for Rs.3,51,754/- was not issued on 14-09-2015 towards discharge of legally enforceable debt is not challenged, argument of the plaintiff that these cheques and returning of the goods under credit notes on 30-03-2015 amounted to acknowledgment of debt, cannot be accepted.

26. Assuming that the credit note dated 31-03-2015 was acknowledgment of liability, the suit ought to have been filed within 3 years from that day in respect of the supplies made by Solvis Pharmaceuticals (BNG); and the suit filed on 27-11-2018 is hopelessly time barred. Thus viewed from any angle the plaintiff is not entitled for the relief sought and accordingly the issues for consideration are answered.

27. Issue No.6: In the result I pass the following :

ORDER

Suit of the plaintiff is dismissed with cost in favour of the defendants.

Draw decree accordingly.

Office to send copy of the judgment to the parties through email, if mail ID is furnished.

(Dictated to the stenographer, transcribed and typed by her corrected and pronounced by me on this the **26th** day of **November 2021**)

(H.R.Radha)
LXXXIV Addl.City Civil and Sessions Judge,
(CCH-85 Commercial Court) Bengaluru

ANNEXURE

List of witnesses examined for the plaintiff:

Pw1 G. Devi Prasad

List of documents marked for the plaintiff:

Ex.P1	Certified copy of partnership deed dated 27.08.2012
Ex.P2	Certified copy of acknowledgment of registration of firm
Ex.P3	Certified copy of VAT registration certificate
Ex.P4 to P22	Certified copy of 19 tax invoices with logistic receipts
Ex.P23	Certified copy of letter dated 22.08.2014
Ex.P24	Certified copy of letter dated 14.09.2015
Ex.P25 to P28	Certified copy of two cheques with bank memos

Ex.P29	Certified copy of legal notice dated 01.10.2015
Ex.P30	Certified copy of 5 postal receipts
Ex.P31	Postal acknowledgment
Ex.P33	Certified copy of complaint in CC.No.7224/2016
Ex.P33	Certified copy of the statement of ledger account extract from 01.04.2014 to 05.10.2018

List of witnesses marked for the defendant:

Dw1 Manhar Singh Kang

List of documents marked for the defendant : NIL

(H.R.Radha)
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