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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 08.05.2024*

+ **RFA(COMM) 183/2023 and CM APPL. 44379/2023**

SUKRA LOGISTICS & ORS. Appellants
Through: Mr.Naman Dwivedi, Mr.Vishnu
Unnikrishnan, Advocates.

versus

EMU LINES PVT. LTD. Respondent
Through: Mr.Uday Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (Oral)

1. Appellant No.1, a partnership firm and, Appellant Nos.2 and 3 being partners of Appellant No.1 firm, (defendants in the suit – hereafter collectively referred to as *the defendants*) have filed the present appeal impugning an order/decreed dated 14.03.2023 (hereafter *the impugned judgement*) rendered by the learned Commercial Court in CS (COMM) 171/2022 captioned *Emu Lines Private Limited v. Sukra Logistics and Others*. By the impugned judgement the learned Commercial Court decreed a sum of ₹10,39,513/- along with interest at the rate of 12% per annum from the date of the filing the suit till its realisation in favour of the respondent (plaintiff in the suit– hereafter also referred to as *the plaintiff*). The learned Commercial Court also decreed costs towards litigation expenses, legal fees and court fees amounting to ₹23,550/- in favour of the plaintiff and against the defendants.



2. The plaintiff is a private limited company registered under the Companies Act, 1956 and is involved in the business of International Logistics, Shipping and, forwarding of goods and allied services. The plaintiff instituted the suit for recovery [CS (COMM) 171/2022] claiming that it had provided services of lifting of consignments from Indian ports to overseas destinations. It had also raised invoices for the services rendered, but the defendants had not paid the invoiced amounts and the sum of ₹6,68,372/- remained outstanding. The plaintiff also sought interest at the rate of 24% per annum on the amount of invoices (₹6,68,372/-) from the date of the invoices to the date of the issuance of the legal notice, which was quantified at ₹3,81,141/-. In addition, the plaintiff also sought *pendente lite* and future interest.

3. Although the learned counsel for the appellants (defendants in the suit) contends that the summons were issued on 26.04.2022, the Trial Court Record indicates that the directions for the suit to be registered and summons to be sent by all possible modes, were issued by the court on 02.03.2022 and the matter was listed for appearance of the defendants on 26.05.2022.

4. In compliance with the said order, the summons were issued on 29.04.2022. The learned counsel for defendant nos.1 and 2 (appellant nos. 1 and 2 in the present appeal) had appeared before the learned Commercial Court on 26.05.2022. The order recording the proceedings indicate that on the said date, the plaintiff had filed certain applications including an application for amendment of the plaint. The same were heard and



opportunity was granted to defendant nos.1 and 2 to file a reply within a period of four weeks. The matter was thereafter listed on 24.08.2022 for appearance of defendant no.3 as well as for considering other applications.

5. On 24.08.2022, the Presiding Officer was on leave and the matter was thereafter directed to be re-listed on 07.11.2022.

6. On the said date (that is, on 07.11.2022), the plaintiff's application for correcting the name of defendant no.3 (appellant no. 3 in the present appeal) was allowed and the amended Memo of Parties was taken on record. The Court further issued directions for filing written statement along with admission and denial of the documents within the prescribed period. The matter was thereafter listed on 23.12.2022. However, the defendants did not file their statement as directed. The matter was taken up by the learned Commercial Court on 23.12.2022 and was directed to be re-listed on 14.02.2023 for completion of pleadings. The defendants neither filed their written statement nor the statement of admission and denial of documents despite sufficient opportunity. None appeared on behalf of the defendants on 14.02.2023 as well.

7. Since the maximum time available (120 days) for filing the written statement had elapsed, the learned Commercial Court had proceeded to close the rights of the defendants to file written statement and passed the impugned judgment and decree.

8. The learned Commercial Court found that the plaintiff's case was founded on 13 invoices, which were produced and were also supported by



an affidavit. In addition, the plaintiff had also affirmed that it had maintained a regular books of accounts in the ordinary course of business and had also produced the statement of accounts reflecting an outstanding balance of ₹6,68,372/-.

9. Since the defendants had not controverted the averments made in the plaint and had not disputed the invoices or the statement of accounts, the learned Commercial Court referred to Order VIII Rule 10 of the Code of Civil Procedure, 1908 (hereafter *the CPC*) and decreed the suit on the basis of the material on record.

10. We have examined the Trial Court Record and find that the plaint was duly supported by an affidavit and a Statement of Truth as required under Order VI Rule 15A of the CPC as applicable to commercial disputes under the Commercial Courts Act, 2015. It was the plaintiff's case that it had rendered services and had raised invoices from time to time. The plaintiff had produced the relevant tax invoices as well as the statement of ledger accounts. The statement of accounts was also supported by a certificate under Section 65B of the Indian Evidence Act, 1872 (hereafter *the Evidence Act*). The plaintiff had also produced a legal notice sent to the defendants by speed post along with an internet tracking report indicating that the same was served. The said notice was also sent through email, a print out of which was produced along with a certificate under Section 65B of the Evidence Act. The invoices recorded certain terms and conditions, which included the term that interest would be charged at the rate of 24% per annum on the delayed payment.



11. In view of the above, the plaintiff had also claimed interest at the rate of 24% per annum from the date of invoice till the date of the issuance of legal notice dated 23.02.2021 and quantified the same at ₹3,81,141/-. In terms of the legal notice dated 23.02.2021, the plaintiff had demanded a sum of ₹10,39,513/- [*sic rect.* ₹10,49,513]. A tabular statement indicating the computation of the amount claimed as set out in the legal notice (as well as in the plaint) is set out below:

Invoice	Invoice dt	Delay	Amount PP	Int@24%	Total in Rs.
DD006638	03-09-2018	903	79,854	47413	₹1,27,267.27
DD007755	26-09-2018	880	590	341	₹931.39
DD009543	03-11-2018	842	590	327	₹916.65
DD008592	15-10-2018	861	49,970	28290	₹78,259.87
DD008515	12-10-2018	864	59,676	33903	₹93,578.51
DD008516	12-10-2018	864	1,15,912	65851	₹1,81,762.72
DD008988	23-10-2018	853	60,896	34155	₹95,051.15
DD007969	01-10-2018	875	59,779	34393	₹94,172.40
DD008117	04-10-2018	872	1,475	846	₹2,320.72
DD006990	11-09-2018	895	58,349	34338	₹92,686.48
DD009482	02-11-2018	843	60,049	33285	₹93,334.24
DD008772	17-10-2018	859	60,896	34395	₹95,291.40
DD009215	29-10-2018	847	60,337	33604	₹93,940.58
	Total in Rs.		6,68,372	3,81,141	10,49,513

12. There is an apparent typographical error in as much as the tabular statement reflects the amount as ₹10,49,513/-, but the amount claimed is ₹10,39,513/-. The learned Commercial Court had restricted the decree to ₹10,39,513/-.

13. The plaintiff's claim was based on documentary evidence, which was



produced before the learned Commercial Court. The plaintiff had also filed Statement of Truth affirming its claim. In this view, there was no further evidence that was required to be produced by the plaintiff for establishing its claim. The defendants had not controverted either the documents or the averments made in the plaint despite sufficient opportunities. In this view, the decision of the learned Commercial Court to render the impugned judgment and decree in the suit cannot be faulted.

14. The learned counsel appearing for the defendants contended that the plaintiff's claim was based on correspondence and invoices raised on Sukra Logistics Private Limited – a Private Company. However, the plaintiff had sued Sukra Logistics, which was a firm, and its partners. He stated that all the orders were procured through Sukra Logistics Private Limited and therefore, the defendants were not liable to pay any amount for the services rendered.

15. It is relevant to note that in the present appeal, the defendants have averred as under:

“2. That the Commercial Suit was instituted through Mr Hira Bisht Asst Manager of the respondent's company who is an authorized representative of the respondent's company against the appellant on the strength of some invoices, in spite of the appellant is partnership firm name as M/s Sukra Logistics not in the name of M/s Sukra Logistics Pvt. Ltd and all orders were placed only through the M/s Sukra Logistics Pvt. Ltd., and even all of the invoices filed by the respondent before Ld Commercial Court had booked orders by M/s Sukra Logistics Pvt. Ltd. Copy of the C.S. (COMM) No.171/2022 instituted by the respondent against the appellants is annexed hereto and



marked as **ANNEXURE-A-1.**”

16. It is relevant to note that the learned counsel for the defendants had confined his submissions to the averments made in paragraph 2 of the appeal (as set out above).

17. We find it difficult to follow the said contention as it is unsubstantiated. We had, accordingly, pointed out to the counsel, from the Trial Court Record that the invoices produced by the plaintiff on which it had founded its case, were addressed to Sukra Logistics and not to a Private Company. The legal notice was also forwarded to Sukra Logistics and its partners (defendant nos.2 and 3). Defendant no.1 firm (Sukra Logistics) was registered under the Central Goods and Services Tax Act, 2017 and the plaintiff had also produced print outs of the documents from the GST Department. The contention that all orders were placed through M/s Sukra Logistics Private Limited is unsubstantiated.

18. We find the said contention unmerited and plainly, contrary to the documents on record.

19. The appeal is unmerited and, accordingly, dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 08, 2024

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