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**(2001) 07 DEL CK 0191**

**Delhi High Court**

**Case No:** Suit No. 2048 of 1993

Mina Exports Limited

APPELLANT

Vs

Mr. Ajit Kumar Jain

RESPONDENT

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**Date of Decision:** July 16, 2001

**Hon'ble Judges:** Vinod Sagar Aggarwal, J

**Bench:** Single Bench

**Advocate:** Mr. Anirudh Sethi, for the Appellant;

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### **Judgement**

@JUDGMENTTAG-ORDER

V.S. Aggarwal, J.

Mina Exports Limited, hereinafter described as the plaintiff has filed the civil suit for recovery of Rs. 8,56,909.70 for the costs of fabric and damages.

2. The facts alleged are that the plaintiff has been placing orders for fabrication and supply of packed shipment for garments to the exported by it on the defendant (Ajit Kumar Jain), sole proprietor of Appel Overseas. The orders were for fabricating the said garments. The plaintiff was supplying the fabrics for the said purpose along with the other accessories such as buttons. The defendant had to carry out fabrication as per specification provided by the plaintiff. After fabrication was complete and inspection was given goods were packed and shipped by the defendant. The plaintiff in March, 1993 supplied fabrics worth Rs. 2,82,285.50 which included 250 mtrs of lining for fabrication of the garments. The defendant at that time was specifically told that said garments were to be shipped on 30<sup>th</sup> March, 1993 and immediately after fabrication the plaintiff should be informed so that the necessary checking/inspection can be effected.

3. The defendant is alleged to have failed to execute the orders and deliver the garments as directed. There was otherwise inordinate delay as a result of which the plaintiff claims Rs. 5 lakhs which he would have earned in the form of profit. plaintiff also claimed interest @24% from the date of the notice till payment.

4. The defendant was served by substituted service and had been proceeded ex parte because of his failure to appear.

5. During the course of submissions, learned counsel for the plaintiff claimed Rs. 5 lakhs which is alleged to have suffered because, according to the learned counsel, the plaintiff would have earned the said amount had he exported the consignment. But before such a claim could be allowed it was necessary that it should be proved as to how and in what manner the plaintiff would have earned the said amount. In the absence of any material as to what damage he had suffered or how he would have earned so much if the consignment would have been effected/exported indeed such a claim cannot be allowed. There is no hesitation in refusing the same.

6. However, as regards the other goods that had been supplied, the plaintiff has placed on the record certain debit notes to indicate that the said articles had been supplied, the value of the same is shown to be Rs. 2,82,285.50. The plaintiff is entitled to the recovery of the same.

7. Accordingly, the suit is decreed ex parte, Rs. 2,82,285.50 with interest @12% P.A. from the date of the filing of the suit till the amount as such is paid.