
(2012) 10 DEL CK 0313
In the Delhi High Court
Case No : CS (OS) 1696 of 2012

Aarti Industries and Another

APPELLANT

Vs

M/s. Authentic Exports and Imports (Pvt.) Ltd. and Others

RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Citation : (2012) 10 DEL CK 0313

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Radhika Chandrashekar, for the Appellant; Akash Kakkar, for D-1.,
for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This is a suit for recovery of Rs. 31,72,274/-. The case of the plaintiffs is that he had been supplying goods to defendant No. 1 from time to time and supplied goods worth Rs. 30,94,645/- to it between 21.12.2010 to 01.03.2011. The defendant made a payment of Rs. 5,77,051, leaving a balance of Rs. 25,17,594/-, which is the principal amount claimed in the present suit. The plaintiff has also claimed interest on the aforesaid amount @ 24% per annum amounting to Rs. 6,54,680/-. The defendants were proceeded ex-parte vide order dated 25.09.2012, since there was no appearance on their behalf, despite service. The plaintiff has filed his own affidavit by way of evidence in which he has supported on oath the case set out in the plaint and has proved the documents relied upon by him. He has stated that he had supplied goods amounting to Rs. 30,94,645/- to the defendant between 21.12.2010 to 01.03.2011 against invoices mentioned in para 12 of his affidavit. He has further stated that as per the terms, he was entitled to interest @ 24% per annum incase payment was not made within the stipulated time. According to him, a sum of Rs. 25,17,594/- is due to him as principal sum and Rs. 6,54,680/- as interest.

2. Ex. PW 1/1 (Colly) are various purchase orders issued by defendant No. 1

Company who is carrying business under the name and style of Aarti Industries.

Ex. PW 1/2 (Colly) are various invoices issued by the plaintiffs to defendant No. 1.

Ex. PW 1/3 (Colly) is the statement of accounts which shows that a sum of Rs. 25,17,594/- payable by defendant No. 1 to the plaintiff.

Ex. PW 1/4 is a letter sent by the plaintiff to defendant No. 1 stating therein that a sum of Rs. 25,17,594/- was due to him from the Company. This letter has been confirmed by defendant No. 1 Company thereby admitting liability to pay Rs. 25,17,594/- to the plaintiff as on 31.03.2011.

Ex. PW 1/5 (Colly) is an email sent by an employee of defendant No. 1 Company to the plaintiff, confirming the outstanding amount of Rs. 25,17,594/-.

Ex. PW 1/6 is a copy of ledger account of defendant No. 1 Company which clearly shows that a sum of Rs. 25,17,594/- was due from them to the plaintiff.

3. The deposition of the plaintiff, coupled with the documentary evidence particularly the invoices and statement of account filed by him show that a sum of Rs. 25,17,594/- was due to him as principal sum. In fact, defendant has not only confirmed the principal amount payable by it to the plaintiff, it has also supplied, to the plaintiff, its own statement of account, confirming its liability to pay the aforesaid amount to him. The plaintiff, therefore, is entitled to recover the principal sum of Rs. 25,17,594/- from defendant No. 1.

4. A perusal of the invoices issued by the plaintiff to defendant No. 1 would show that the interest @ 24% per annum has been prominently printed on the front of the invoices. This term, therefore, constitutes an agreement for payment of interest @24% per annum incase payment was not made within the stipulated time. The plaintiff is, therefore, entitled to recover Rs. 6,54,680/- as interest for the pre-suit period.

5. For the reasons stated herein above, I hold that the plaintiff is entitled to recover a total sum of Rs. 31,72,274/- from the defendant No. 1.

6. As far as defendant Nos. 2 & 3 are concerned, there is no averment in the plaint that they had stood as guarantors for the dues payable by defendant no. 1 to the plaintiff. A company being a separate legal entity, its directors are not responsible to discharge the liability of the company, unless they have given personal guarantee for this purpose. The plaintiff, therefore, is not entitled to recover any amount from defendant no. 2 and defendant no. 3 in their personal capacity. For the reasons stated hereinabove, a decree for recovery of Rs. 31,72,274/- with costs and pendent lite and future interest @ 12% per annum is hereby passed in favour of the plaintiff and against defendant no. 1. The suit against defendant no. 2 and defendant no. 3 is dismissed without any orders as to costs. Decree sheet be drawn accordingly.