(2005) 07 DEL CK 0017

In the Delhi High Court

Case No : CS (OS) 1599 of 2001

American Express Travel Related Services Co. Inc.	APPELLANT
Vs	
ATN Arihant International Ltd. Formerly known as Arihant Credit Capital Ltd., Mr. Santosh Kumar Jain, Chairman-cum-Managing Director, ATN Arihant International Ltd. and Mr. Pramod Kumar Jain, Director, ATN Arihant International Ltd.	RESPONDENT

Date of Decision : 14-07-2005

Acts Referred:

Citation : (2005) 123 DLT 582

Hon'ble Judges : Madan B. Lokur, J

Bench : Single Bench

Advocate : Sanjay Jain and Ruchi Jain, for the Appellant; Pawan Upadhyay and Bikram Singh Dkhar, for the Respondent

Judgement

Madan B. Lokur, J.—The plaintiff is engaged, inter alia, in the business of issuing Travellers'' Cheques of different foreign currencies while the Defendant is a licensed full fledged money changer.

2. The parties admittedly entered into an Agreement dated 14th February, 1996. The Agreement is called a Trust Agreement G?" Full Liability. In terms of the Agreement between the parties, the plaintiff was required to supply Travellers'' Cheques to the Defendant who was to receive and hold in trust these Travellers'' Cheques. Thereafter, upon sale of the Travellers'' Cheques, the Defendant was required to remit the sale proceeds to the plaintiff but in respect of unsold Travellers'' Cheques, the Defendant as required to hold the same in trust until they were returned in terms of the Agreement between the parties.

3. Between August, 1997 and December, 1997, the plaintiff supplied to the Defendant a large number of Travellers'' Cheques but, according to the plaintiff, the Defendant neither remitted the sale proceeds to the plaintiff nor did it return the unsold Travellers'' Cheques. Accordingly, the plaintiff sent a letter dated 23rd July, 1998 calling upon the Defendant to comply with the terms of the Agreement

between the parties and also to render a statement of account in respect of the Travellers'' Cheques held the Defendant in trust. On its part, the plaintiff submitted a statement of account indicating that an amount of US 2,86,255.53 was due from the Defendant to the plaintiff.

4. Since there was no response to the letter dated 23rd July, 1998, the plaintiff sent a lawyer''s notice dated 10th July, 2001 but again to no avail.

5. Faced with this situation, the plaintiff has filed a suit under Order xxxvII of the CPC claiming a principal amount of US 2,86,255.53 and interest for the period 23rd July, 1998 to 12th June, 2001 amounting to US 1,53,146.70. In other words, the total amount claimed is US 4,39,402.23 = Rs. 2,08,93,576/-.

6. The Defendant has filed an application for leave to defend and during the course of arguments, learned counsel for the Defendant stated that the only contention being urged was that the claim of the plaintiff is barred by limitation. According to learned counsel, since the Travellers'' Cheques were issued and delivered to the Defendant between July, 1997 and December, 1997, the suit filed by the plaintiff in 2001 was barred by time.

7. I am afraid there is no substance in this contention urged and it deserves to be rejected.

8. There is no dispute about the fact that the parties had entered into the Agreement dated 14th February, 1996. The terms of the Agreement make it clear that the Defendant is to receive and hold in trust any Travellers'' Cheques that are delivered to it.

If the Travellers'' Cheques are sold in accordance with the instructions of the plaintiff, the Defendant is obliged to remit the proceeds of sale to the plaintiff within a specified period of time. On the basis of this Agreement, the plaintiff handed over to the Defendant various Travellers'' Cheques to be held in trust and for sale.

9. The Defendant having received the Travellers'' Cheques was under an obligation to account for the same. Since the Defendant did not either return any unsold Travellers'' Cheques to the plaintiff or remit the sale proceeds of the Travellers'' Cheques to the plaintiff, there was no option for the plaintiff but to issue a notice dated 23rd July, 1998 followed by a lawyer''s notice dated 10th July, 2001.

10. According to learned counsel for the Defendant, since the Travellers'' Cheques were issued in 1997, the suit filed by the plaintiff in 2001 was barred by time. In view of the above facts, this submission is untenable; it was the duty of the Defendant to remit the proceeds of sale to the plaintiff or to return the unsold Travellers'' Cheques. The Defendant failed to perform either of its obligations under the Agreement. The date of handing over of the Travellers'' Cheques is of no consequence, particularly for the purposes of limitation. The Travellers'' Cheques are continuously held by the Defendant in trust and,

Therefore, the cause of action in favor of the plaintiff is in the nature of a continuing cause of action in as much as the Travellers'' Cheques can be sold at any point of time even though they may have been issued in 1997. After sale of the Travellers'' Cheques the sale proceeds have to be handed over by the Defendant to the plaintiff within a specified period of time.

11. Since the Defendant did not indicate to the plaintiff at any point of time that the Travellers'' Cheques were unsold and also did not return the unsold Travellers'' Cheques or account for the same, the plaintiff is entitled to assume that the Travellers'' Cheques have been sold by the Defendant. The Defendant was thereupon obliged to remit the sale proceeds to the plaintiff but it failed to do so. Quite clearly, Therefore, the period of limitation does not start in 1997 when the Travellers'' Cheques were issued but perhaps from the date when the Travellers'' Cheques were sold by the Defendant or the Defendant intimated to the plaintiff that it was unable to sell the Travellers'' Cheques and was returning the unused Travellers'' Cheques to the plaintiff.

12. Till date the Defendant has not indicated what has happened to the Travellers'' Cheques issued to it. Consequently, the cause of action continues to survive in favor of the plaintiff and against the Defendant. Therefore, it is incorrect on the part of the Defendant to contend that the claim made by the plaintiff is barred by the law of limitation.

13. No other defense having been raised by the Defendant, there is no option but to reject the application for leave to defend and consequently to decree the suit in favor of the plaintiff.

14. The plaintiff will be entitled to the decretal amount of US 4,59,402.23 equivalent to Indian Rs. 2,08,93,576.00. On the principal amount claimed by the plaintiff, that is, US 2,86,255.53 equivalent to Indian Rs. 1,36,11,450.45 calculated at the rate of 1 US to Rs. 47.55, which is the exchange rate at the time of filing of the suit, the plaintiff will be entitled to interest @ 15% per annum from the date of filing the suit, that is, 23rd July, 2001 till the decretal amount is paid. The plaintiff as also purchased court fees of Rs. 2,06,350/- and has incurred litigation expenses, which are quantified at Rs. 15,000/-. The court fees as well as the litigation expenses incurred by the plaintiff will also form a part of the decrials amount due from the Defendant to the plaintiff.

15. The suit is decreed in terms of the above.