
(2009) 05 DEL CK 0395
In the Delhi High Court
Case No : CS (OS) No. 2374 of 2008

Bridgestone India Pvt. Ltd.

APPELLANT

Vs

Chawla Tyre House and Others

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 2(1), Order 37 Rule 2(3)

Citation : (2009) 05 DEL CK 0395

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Harish Malhotra, N.K. Kantawala and Mukesh K. Verma, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—The plaintiff has filed the present suit for recovery of Rs. 39,28,997/- (Rupees Thirty Nine Lac Twenty Eight Thousand Nine Hundred Ninety Seven only), together" with cost and interest, against the defendants, under Order XXXVII of Code of Civil Procedure. It is submitted that the plaintiff is a private limited company duly incorporated under the Companies Act, and is engaged in the business of manufacturing and sale of tyres, tubes etc." Mr. Subhash Kumar Chillar has been authorised to file the present suit by virtue of resolution passed by the Board of Directors of the plaintiff company in a meeting held on 20.9.2008.

2. It is alleged that the defendant No. 1 is a partnership firm and the defendant Nos. 2 to 4 are its partners. The defendant No. 1 was appointed as a dealer for the sale of tyres, tubes etc., manufactured by the plaintiff and the plaintiff had been supplying the tyres, tubes etc. as per orders placed by the defendants. The plaintiff has been maintaining proper books of account in the regular course of business and as such the goods were supplied to the defendants against invoices, the plaintiff used to debit the amount of the invoices in the books of account and as and when the defendants used to make any payment, the same

was credited in the account of the defendant, treating the entire amount due on that day.

3. It is further alleged that during the period 14.9.2005 to 14.3.2006, the defendants purchased and the plaintiff supplied the tyres, tubes etc., for a total amount of Rs. 38,53,041.47 against various invoices, copies of invoices duly acknowledged by the defendants are filed with the suit which are collectively marked as Annexure "A" (Colly). The defendants in order to pay the amount of the above invoices gave various cheques, 46 in numbers, to the plaintiff with the assurance that the cheques are good for payment and shall be honoured by the banks on their due dates. Original cheques have also been filed with suit. All the cheques issued by the defendants were returned unpaid and the cheques returning memos have also been filed.

4. The plaintiff after receipt of every dishonoured cheque, informed to the defendants about the same with a request to pay the amount of the cheques, but in vain and ultimately, the plaintiff demanded the amount of the cheques from the defendants by means of notices dated 21.8.2006. The defendants despite having received the notices failed to pay the amount due against them.

5. The plaintiff has claimed interest @ 9% per annum and besides the amount of the invoices, the defendants are liable to pay Rs. 9,71,653.84 towards interest till the date of filing of the suit. In total a sum of Rs. 48,24,695.32 (Rupees Forty Eight Lacs Twenty Four Thousand Six Hundred Ninety Five and Paise Thirty Two only) has been claimed from the defendants. It is submitted that a sum of Rs. 7,44,618/- for security deposit plus interest stands credited in the account of the defendants and after adjusting the above amount a sum of Rs. 39,28,997/- (Rupees Thirty Nine Lacs Twenty Eight Thousand Nine Hundred Ninety Seven only) is due from the defendants to the plaintiff and the plaintiff has claimed the said amount in the suit.

6. The plaintiff contended that the defendants were duly served with the summons of the suit and have not entered the appearance till date and as such as per provisions contained in Order XXXVII Rule 2(3) CPC the allegations contained in the plaint shall be deemed to be admitted and the plaintiff is entitled to the decree and the suit of the plaintiff is liable to be decreed with pendent elite interest @ 9% per annum till payment and costs of the suit.

7. Order XXXVII Rule 2 Sub-rule (3) clearly and specifically provides that where a defendant shall not defend the suit referred to in Sub-rule (1) unless he enters an appearance and in default of his entering an appearance the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree.

8. The plaintiff has filed the original documents. The allegation made in the plaint have gone unrebutted as the defendant has not put appearance within the time prescribed Under Order XXXVII CPC and failed to defend the suit. Therefore, the

allegations in the plaint are deemed to be admitted and the plaintiff shall be entitled to a decree for a sum of Rs. 39,28,997/- together with pendent elite interest @ 9% per annum till payment. The suit is disposed of. Decree Sheet be prepared accordingly.