(2011) 06 DEL CK 0016

In the Delhi High Court

Case No : CS (OS) No. 728 of 2009

CHL Ltd. APPELLANT

Vs

Alitalia Airlines and Others RESPONDENT

Date of Decision : 02-06-2011

Acts Referred:

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

Citation : (2011) 06 DEL CK 0016

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

Bench : Single Bench

Advocate : Ravi Kant Chadha and Mansi Chadha, for the Appellant; None, for the Respondent

Judgement

V.K. Jain, J.

IA No. 9272/2011

Vide this application, the Plaintiff seeks to give full name of the Defendant.

Heard. Allowed.

The amended memo is taken on record.

The application stands disposed of.

CS(OS) 728/2009

1. This is a suit for recovery of Rs. 3918606.37. The Plaintiff company is running a Hotel named "Crowne Plaza Hotel" at New Friends Colony, New Delhi. It is alleged that the Defendant approached the Plaintiff in the year 2006 for providing accommodation along with other services to its Passenger Crew and Cargo Crew. An agreement was executed between the parties on 18.09.2006. The agreement was valid from the period from 01.10.2006 to 30.09.2008. Under the agreement, the Plaintiff bank was required to set aside 20 to 31 rooms throughout the year, 10/11 rooms per day for "Passenger Crew" checking-in and 10/11 rooms per day

for "Passenger Crew" late checking-out(overlap) and 9 rooms for Cargo Crew back to back for the year. The room rent was fixed at Rs. 7.000 per double room (single use) plus taxes for the period 01.10.2006 to 30.09.2007. The rate for the period from 01.10.2007 to 30.09.2008 was to be mutually agreed not later than 30.06.2007 and the maximum increase could have been 15%. Rs. 3,000 including taxes per room per night were agreed for the overlap.

2. The agreement dated 18.09.2006 was extended by Integration of Agreement signed on 18.09.2007 wherein new rates were agreed from the period 0.10.2007 to 30.09.2008. These were, Cargo Crew Rs. 8,050 per room per night plus taxes Passenger Crew Rs. 8,050 room per night plus taxes and Overlap Crew Rs. 3,450 per room per day inclusive of taxes. Thereafter, for the period from 01.10.2008 to 30.09.2009, the rates were fixed at Rs. 9500/- plus tax for single occupancy and Rs. 10500 plus 13.13% for double occupancy along with breakfast charges of Rs. 500/- plus tax for each person.

3. The Plaintiff - Company raised bills for providing accommodation to the Defendants from time to time. The case of the Plaintiff is that a sum of Rs. 3694889.37 remains due to it for the period from 11.08.2008 to 10.01.2009. The agreement was terminated vide letter dated 07.01.2009 written by one Professor A.N. Augusto Fantozzi claiming to be Extraordinary Administrator of the Defendant. The termination, however, had no effect in respect of the services till 10.01.2009. Now, the Plaintiff has claimed the aforesaid unpaid amount of Rs. 36,94,889/37 Ps. from the Defendant along with interest thereon at the rate of 18% per annum amounting to Rs. 2,23,717/- thereby making a total sum of Rs. 39,18,606/-.

4. The Defendant was proceeded ex-parte on 10.03.2011. The Plaintiff has filed the affidavit of its Vice President Mr. N.K. Goel by way of ex-parte evidence In his affidavit, Mr. Goel has stated on oath, the case set up in the plaint and has stated that the tariff was fixed at Rs. 8,050/- per room per night plus taxes for Passenger Crew, Cargo Crew and Rs. 3,450/- (inclusive of tax) per room per day for overlap Crew. He has further stated that the tariff for the period from 01.10.2008 to 30.09.2009 was fixed at Rs. 9,500 per day plus tax for single occupancy and Rs. 10,500/- per day plus taxes for double occupancy along with breakfast charges Rs. 500/- plus taxes per person per day. He has further states that the amount of the following six bills is still due from the Defendant.

Date From To Bill No Amount No of Days 18% Interest

23/08/08 11/08/08 20/08/08 15659 570368.91 209 58787.00

02/09/08 21/08/08 31/08/08 16713 617120.46 198 60258.00

15/12/08 01/12/08 10/12/08 26399 766150.00 97 36649.00

22/12/08 11/12/08 20/12/08 27059 726350.00 87 31163.00

05/01/09 21/12/08 31/12/08 28423 776100.00 76 29088.00

12/01/09 01/01/09 10/01/09 29107 238800.00 66 7772.00

INR 3694889.37

5. Ex.PW-1/2 & Ex.PW-1/2A are the agreements where the tariff was fixed. The unpaid bills pertain to the period 11.08.2008 to 10.01.2009. Ex.PW-1/2A shows that the tariff agreed between the parties was Rs. 8050/- per room per night for cargo crew and passenger crew and Rs. 3450/- per day including taxes for the overlap, upto 30.09.2008. For the period subsequent to 30.09.2008, there is no written agreement between the parties agreeing to a particular tariff. It however, appears from Ex.PW-1/3 that the Plaintiff company was demanding tariff of Rs. 9,500/- but the Defendant wanted some reduction in the proposed tariff.

The invoices raised by the Plaintiff company on the Defendant from time to time are collectively as Ex.PW-1/4.

6. A perusal of the invoice No. 15659 for the period from 11.08.2008 to 20.10.2008 would show that the Plaintiff - Company has charged room rent at Rs. 8,050/- per day. In view of the agreement between the parties, the Defendant is liable to pay the amount of this invoice to the Plaintiff. A perusal of invoice No. 16713 for the period from 21.08.2008 to 31.08.2008 would show that the Plaintiff-Company has charged Defendant at the rate agreed between them. The Defendant - Company, therefore, is liable to pay the amount of this invoice to the Plaintiff.

Bill No. 26399 is the invoice for the period from 01.12.2008 to 10.12.2008. The tariff for this period has been charged at Rs. 8,700/- per room per day, which is more than the tariff which the Plaintiff was charging up to 30th September, 2008, but is less than the tariff which it was claiming from the Defendant for the period subsequent to 30th September, 2008. The e-mail dated September 5, 2008, sent by Mr Giorgio Elettra of the Defendant-company to Mr Munish Bhatia of the Plaintiff-company would show that the increase proposed by the Plaintiff from Rs. 8,050/- per day to Rs. 9,500/- was not acceptable to the Defendant and the Defendant-company wanted tariff less than Rs. 9500/- per room per night. The tariff charged by the Plaintiff being Rs. 8700/- per room per night, it is substantially less than the tariff which the Plaintiff claiming from the Defendant. There is no evidence of the Plaintiff having agreed to charge less than this tariff. Since the Defendant-company availed the rooms provided by the Plaintiff for stay of its employees, it is bound to pay the aforesaid tariff to the Plaintiff-company. I, therefore, hold that the Plaintiff is entitled to amount of invoice No. 26399 from the Defendant. A perusal of the Bill No. 27059 would show that it pertains to the period from 10.12.2008 to 20.12.2008. In this invoice also, the Plaintiff-company has charged tariff at the rate of Rs. 8700/- per room per night. The Defendant, therefore, is liable to pay the amount of this invoice to the Plaintiff. Bill No. 28243 pertains to the period from 20.12.2008 to 04.01.2009. In this bill also, the tariff has been charged at the rate of Rs. 8700 per room per night. The Defendant is, therefore, liable to pay the amount of this invoice also to the

Plaintiff. Bill No. 29107 pertains from 04.01.2009 to 10.01.2009 and in this invoice also, the tariff has been charged on the same rate of Rs. 8700/- per room per night. Hence, the Plaintiff is also entitled to recover the amount of this invoice from the Defendant. It would thus be seen that the Plaintiff-company is entitled to recover an amount of Rs. 3694889.37 from the Defendant-company for the rooms provided by it to the employees of the Defendant-company. A perusal of the invoice shows that interest at the rate of 18% per annum was to be charged if the bill was not paid within seven days of its receipt. Hence, the Plaintiff-company is also entitled to recover a sum of Rs. 223717 from the Defendant as interest for the pre suit period.

7. For the reasons given in the preceding paragraphs, a decree for recovery of Rs. 3918606.37 with costs and pendente lite and future interest at the rate of 12% per annum is hereby passed in favour of the Plaintiff and against the Defendant-company.

The learned Counsel for the Plaintiff states that the Defendant-company has not issued TDS certificates to the Plaintiff-company. He wants a direction to the Defendant-company to issue the aforesaid certificates to the Plaintiff-company. Since no mandatory injunction has been claimed by the Plaintiff-company, such a direction cannot be given in this suit. The learned Counsel for the Plaintiff wants permission under Order II Rule 2 of CPC. The Plaintiff-company is permitted to file an appropriate suit on account of failure of the Defendant-company to issue TDS certificates to it.

Decree sheet be drawn accordingly.

