(2009) 02 DEL CK 0313

In the Delhi High Court

Case No : CS (OS) No. 24 of 2004 and IA No. 10765 of 2007

Durham Careline India Pvt. Ltd. — APPELLANT

Vs

Studio Line and Others — RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:
Limitation Act, 1963 — Section 18

Citation : (2009) 160 DLT 740 : (2009) 156 PLR 14 : (2010) 8 RCR(Civil) 1811

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Rajiv Kapur and Kiran Bairwa, for the Appellant; R.M. Bagai, for the Respondent

Judgement

S.N. Aggarwal, J.—The plaintiff has filed this suit against the defendants for recovery of Rs. 20,57,350/-. The suit was filed on 18.12.2003. The defendants have filed an application being IA No. 10765/2007 for dismissal of the suit being barred by limitation.

2. Heard.

3. Briefly stated, the facts of the case are that the plaintiff is a company incorporated under the Indian Companies Act, 1956 and it runs its business of restaurants under the name and style of Copper Dome and a Pub under the name and style of Nevilles Cross Free House at Nevilles Cross Complex, Darlington Road, Durham City, County; Durham, London (U.K.).

4. The plaintiff wanted furniture to renovate its restaurant at London. The defendants are stated to be manufacturer of furniture in India. The plaintiff in order to renovate its restaurant at London placed purchase order on the defendants for purchase of some furniture. The purchase order was placed in November, 1999. The terms and conditions of supply of furniture by the defendants to the plaintiff were reduced in writing and are contained in document annexed as Annexure-A at page 20 of the paper book. The furniture

was supplied by the defendants as per order contained in the purchase order of November, 1999. The defendants raised a bill being Bill No. 265 dated 3.3.2000 for Rs. 12,94,200/- which the plaintiff is stated to have paid and cleared to the tune of Rs. 12,32,350/- after retaining the amount equivalent to 5% retention amount in terms of the purchase order. The said payment was made by the plaintiff to the defendants on 10.3.2000. The defendants thereafter sent legal notices dated 5.7.2002 and 10.07.2002 asking it to give ST-49 forms or in the alternative to pay Rs. 1,49,634/- on account of sales tax liability in respect of furniture supplied to the plaintiff. Since neither ST-49 forms were given by the plaintiff nor amount of Rs. 1,49,634/- asked for on account of sales tax liability was given, the defendants filed a recovery suit for recovery of Rs. 1,49,634/- against the plaintiff under Order XXXVII CPC and that suit of the defendants filed against the plaintiff is stated to be pending before the Civil Judge, Delhi.

5. The present suit seeking recovery of Rs. 20,57,350/- has been filed by the plaintiff against the defendants on account of return of amount of Rs. 12,94,200/- paid by the plaintiffs to the defendants against defendant''s bill No. 265 dated 03.3.2000 and also on account of alleged damages suffered by the plaintiff because of alleged defective supplies of the furniture.

6. Para 29 in the plaint deals with cause of action and gives various dates on which cause of action allegedly arose to the plaintiff for filing of this suit.

Para 29 of the plaint is extracted below:

29. That the cause of action arose to the petitioner in November 1999, when the petitioner placed the order with the defendant, thereafter it arose on 3.3.2000 when the defendant raised the bill No. 265, then again arose on 10.01.2000 when the defendant sent the e-mail regarding the material attaching the pictures etc. of the furniture, it again arose when the defective material was received by the petitioner at London, thereafter, it arose in September 2000 when the petitioner obtained the first opinion from the expert at London and arose again on or around September/October 2000 when the defendants handed over the drawings to the petitioner on CD-Rom, it again arose on when the petitioner had to air-freight the chair and the drawings for opinion to Great Britain, it again arose on or around 27.01.2000 when the petitioner had a meeting regarding the defective furniture with the defendants and handed over the photographs to the defendants on its arrival to India, it again arose when the petitioner had obtained the estimate for the repairs of the furniture at London, it again arose on 05.07.2002 and 10.07.2002 when the defendants got issued a legal notice to the petitioners through its advocate and it arose also on 31.07.2002 when the petitioner served the reply notice through its advocate upon the defendants demanding the relief, it again arose on or around 05.08.2002 when the defendants approached the petitioner for settlements in response to the said reply notice but failed to arrive at any suitable and mutually acceptable settlement, it again arose on 29.07.2002 when the petitioner gave the Bank Guarantee to the Sales Tax Authorities regarding the said bill of defective

furniture. The cause of action is still subsisting on each and every passing day as the defendants have till date neither rectified the defects nor refunded the money.

7. The grievance of the plaintiff in the suit is that the furniture supplied by the defendants to it was of defective quality. As per para 29 of the plaint extracted above, the plaintiff is relying on a date some time in September/October, 2000 when the defendants allegedly handed over the drawings to the petitioner on CD-Rom. The plaintiff further relies on date of 5.8.2002 as according to it cause of action also arose in its favour on that date when a meeting between the parties was held and in that meeting the defendant allegedly agreed to the defects pointed out in the supply of furniture made to the plaintiff.

8. The last date of alleged cause of action pleaded by the plaintiff in the plaint is of 5.8.2002. Mr. Rajiv Kapur, learned Counsel appearing on behalf of the plaintiff has contended that the limitation for the purpose of filing of this suit should be reckoned from 5.8.2002 when the defendants had acknowledged that the furniture supplied by them to the plaintiff was defective. On being asked, Mr. Rajiv Kapur, learned Counsel appearing on behalf of the plaintiff fairly stated that there is no document on record to show that the defendants had acknowledged their liability that furniture supplied by them to the plaintiff was defective. He has further admitted that the minutes of alleged meeting of 5.8.2002 were not recorded in writing and is not there on record.

9. The limitation for filing of this suit had started when the furniture was supplied by the defendants to the plaintiff and the payment of such supply was made by the plaintiff on 10.3.2000. The alleged meeting of 5.8.2002 in which the defendants are alleged to have acknowledged their liability by admitting the defect in the supply of furniture cannot be used for extending the period of limitation in view of provisions contained in Section 18 of the Limitation Act which mandates that the acknowledgment in order to extend limitation must be in writing.

10. Even if for a moment the plea of the plaintiff that the meeting had taken place between the parties on 5.8.2002 in which defendants had allegedly acknowledged their liability is accepted, still it would not save the present suit from limitation because the minutes of meeting of 5.8.2002 were not reduced into writing and, therefore, the same cannot be used for giving the benefit of the same to the plaintiff. No useful purpose is going to be served by keeping this suit alive because the alleged acknowledgment is not in writing so as to bring the suit within the purview of Section 18 of the Limitation Act.

11. In my opinion, this suit filed by the plaintiff on 18.12.2003 with regard to cause of action that allegedly arose prior to three years of filing of the suit, is liable to be dismissed as barred by limitation.

12. In view of the above and having regard to the submissions made by the Counsel for the parties, IA No. 10765/2007 filed on behalf of the defendants is allowed and the main recovery suit of the plaintiff is hereby dismissed as barred

by limitation leaving the parties to bear their own costs.

13. Any observations in this order will not influence the decision of the suit pending before the Civil Judge, Delhi.