

(2008) 12 DEL CK 0166

In the Delhi High Court

Case No : Regular First Appeal (OS) 90 of 2007 and CM No's. 17177-78 of 2007

General Rubber Works and Another

APPELLANT

Vs

Continental Carbon India Ltd.

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 2(3)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 12 DEL CK 0166

Hon'ble Judges : Mukul Mudgal, J; Manmohan, J

Bench : Division Bench

Advocate : K. Rajeev, for the Appellant; Arijit Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—With the consent of the parties, these appeals are taken up for final hearing.

2. By this common order we are disposing of the aforementioned appeals arising out of the impugned order dated 30th July, 2007 passed by learned Single Judge of this Court.

3. The facts of the case briefly stated are as follows:

A. The appellants are stated to have been buying Carbon Black of various qualities being manufactured by the respondents. The goods were also supplied by the respondents on credit. The supplies were always accepted and there is no issue of quality.

B. The dispute arose between the parties on account of the fact that cheques issued by the appellants from time to time, as set out in Schedule "A" to the plaint, amounting to Rs. 31,25,398/- were dishonoured for insufficient funds.

C. The respondents served a legal notice and instituted proceedings u/s 138 of the Negotiable Instruments Act, 1881 (in short "NI Act").

D. Thereafter on 26th July, 2004, a letter was issued by the appellants and post-dated cheques in the sum of Rs. 24,60,000/- were issued in partial discharge of the liability.

E. Even these cheques, details of which are set out in Schedule "B", were returned for insufficient funds and similarly after issuance of notice, proceedings u/s 138 of the NI Act were initiated.

F. That the Respondent/plaintiff filed CS(OS) No. 443/2006 under Order XXXVII of the CPC claiming a total amount of Rs. 30,62,949.00 with interest from the appellant in RFA No. 90/2007, RFA No. 91/2007 and in RFA No. 92/2007. The suit was filed claiming for a sum of Rs. 30,62,949/- plus a sum of Rs. 1,13,050/- towards "C" Forms not supplied.

4. The learned Single Judge has noted that during the pendency of the criminal proceedings, the appellants defendants has admitted the liability towards plaintiff for a sum of Rs. 25,00,000/- but disputed their liability to the extent of Rs. 5,62,949/-. The learned Single Judge has passed a decree in favour of the respondents upon service of the summons on defendants/appellants in April, 2007 but no address for service having been filed within the period of ten days or even upto date. The learned Single Judge has passed the impugned judgment decreeing the suit under Order XXXVII of the CPC for a sum of Rs. 30,62,949/- along with pendente lite and future interest @ 15% per annum.

5. In our view and as per the admitted position, the disputes arose between the parties on account of the fact that the cheques issued as set out in Schedule A to the plaint filed under Order XXXVII of the Civil Procedure of Code (hereinafter to be referred as "CPC") by the respondents/defendants amounting to Rs. 31,25,398/- were dishonoured. It is stated by learned Counsel for the appellants that some of the cheques were stale though the learned Single Judge's order referred that the cheques were dishonoured for "insufficient funds", a finding which is not disputed.

6. Firstly, the appellants' case before the learned Single Judge was that some time may be given to file written statement as a vakalatnama had been filed. The proviso to Order XXXVII Rule 2 Sub-rule (3) of the CPC clearly stipulates that unless an appearance is entered, as prescribed under Order XXXVII of the CPC, a decree shall follow. The learned Single Judge relied upon that provision and granted the decree in favour of plaintiff/Respondent. De hors the above plea in order to ascertain the bona fides of the appellants, we asked him that the Court would consider grant of limited leave to defend to the extent of Rs. 30,62,949/- subject to deposit of Rs. 25,00,000/-. The defendants/appellants have expressed inability to do so. Therefore, we find no reason to interfere with the impugned judgment of the learned Single Judge.

7. The appeals stand dismissed accordingly.