

(1992) 09 DEL CK 0052
In the Delhi High Court
Case No : Suit No. 293 of 1987

Indexim Consultants Pvt. Ltd.

APPELLANT

Vs

M/s. Vidya International and others

RESPONDENT

Date of Decision : 25-09-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3, Order 37 Rule 5

Citation : AIR 1993 Delhi 16 : (1992) 24 DRJ 288 : (1993) 41 ECC 175 : (1992) RLR 520

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : Mr. S.P. Kalra, for the Appellant; Mr. D.K. Kapur, for the Respondent

Judgement

1. M/s. Indexim Consultant Pvt. Ltd., herein referred to as the plaintiff filed this suit for recovery of Rs. 1,44,093.10/-under the provisions of O. 37, C.P.C. against Vidya International, hereinafter referred to as defendant No. 1 and its proprietor Smt. Malathi Rajagopalan, defendant No. 2. Shri A. Rajagopalan husband of defendant No. 2 was also imp leaded as defendant No. 3 but later on he was given up and the suit was proceeded only against defendants 1 and 2. As per the facts, which are apparent from the pleadings, defendant No. 1 deals in export of brass-ware and in terms of Government policy, an exporter of brass-ware is entitled to certain cash incentives and replenishment license after the exports. The exporter is entitled, in accordance with the said policy, to dispose of or transfer the replenishment license to any one with or without profit and there is no legal impediment to the same.

2. The parties have been dealing with each other since 1983 and entering into agreement for the sale and purchase of replenishment licenses of different value after settling the premium payable by the plaintiff.

3. By an agreement dated 16-7-1983 defendants Nos. 1 and 2 offered to sell a replenishment license of the value of Rs. 3,12,000/- to which the defendants said that they were entitled to on account of their exports from January to March,

1983 and the premium was settled at 7.5%. The total sum payable by the plaintiff to the defendants after receipt of the replenishment license was Rs. 23,472/- out of which Rs. 15,000/- was paid to the defendants. It was stipulated in the agreement that the balance amount of Rs.8172/- would be paid within fifteen days of their producing evidence of having received the cash assistance and the FOB value of the exports having been admitted by the Joint Chief Controller of Import and Export, CLA It was also agreed that after receipt of the balance amount of Rs. 8172/- the defendants shall give a transfer letter and the debit notice to the plaintiff and the license shall be delivered to the plaintiff within three days of the receipt thereof by the defendants from the office of the Joint Chief Controller of Import and Export CLA New Delhi.

4. By another agreement dated 16-9-1983, the defendants offered to sell another replenishment license of the value of Rs. 3,69,334/- on a premium of 9% and the same was accepted by the plaintiff. The total amount payable by the plaintiff was Rs.60240/- out of which the plaintiff paid Rs.45000/- and the balance amount of Rs. 15240.06/- was to be paid within fifteen days of their producing evidence of having received the cash assistance and the FOB value of the exports having been admitted by Joint Chief Controller of Import and Export. CLA. It was agreed that application for grant of replenishment license would be filed by the defendants through the plaintiff by or before 21-10-1983.

5. Again on 16-9-1983 the defendants offered to sell another replenishment license for Rs. 1,97,431/- on a premium of 10% and the same was accepted by the plaintiff. The total amount payable by the plaintiff to the defendants was Rs. 19743.10 which the plaintiff paid vide cheque dated 16-7-1983. It was stipulated that the application for grant of license would be filed by the defendants through the plaintiff by or before 10-10-1983 and the license would be delivered to the plaintiff along with transfer letter within three days of the receipt of the same by the defendants from the office of Joint Chief Controller of Import and Export CLA, New Delhi.

6. The plaintiff accepted the said offers and paid different sums of money on different occasions towards its agreements but on 3-1-1984, the plaintiff received three letters sent by the defendants, all of the same date, in which the defendants cancelled all the agreement, one dated 16-7-1983 and the other two dated 16-9-1983 and terminated the agreements. The defendants also enclosed three cheques, one for Rs. 15,000/-, second for Rs.45000/- and the third for Rs. 19743.10/-which amount the defendants had received from the plaintiff at the time of execution of the aforesaid agreements dated 16-7-1983 and 16-9-1983. All the three cheques were dated 30-1-1984.

7. It is also pleaded that on 16-12-1983, the defendants approached the plaintiff for a loan of Rs. 15,000/ - and undertook to repay it on 9-1-1984. The plaintiff acceded to the request of the defendant and gave Rs. 15000/-by cheque No. 039235 dated 16-12-1983 drawn on Union Bank of India and the defendant in repayment of the loan issued a post dated cheque dated 9-1-1984 for Rs.

15,000/- drawn on Bank of Baroda and assured that the said cheque would be encased when presented to the bankers. As per the allegations the said cheque of Rs. 15000/- drawn in favor of the plaintiff was presented by the plaintiff to the defendant's banker but the same was returned unpaid with the remark "funds exceed". The said cheque was presented again on 13-1-1984 but the same was returned with the remark "payment stopped".

8. Though the plaintiff challenged the termination of the agreement as arbitrary and illegal but at the same time presented other three cheques to the bank but they were returned unpaid with the remark payment stopped.

9. The plaintiff has claimed a sum of Rs.94743.10/- being the amount of four cheques issued by the defendants in favor of the plaintiff which remain unpaid and interest of Rs.49350/- calculated at 18% from 30-1-1984 to December, 1986 has also been claimed. According to the plaintiff, the claim is based on negotiable instruments and the demand is of liquidated amount and Therefore the suit is maintainable under O. 37, C.P.C.

10. The defendant made appearance, contested the suit and filed an application seeking leave to defend the suit raising various pleas. The main pleas taken by them is that it is a matter of contract and the terms of the same have been violated by the plaintiff. The plaintiff was to render the full accounts of sale of previous licenses up to 30-1-1984 but he failed. The plaintiff was not making payment of the balance amount of three replenishment licenses nor was rendering any account of the actual transactions regarding those licenses, and as such the defendants vide their letter dated 12-1-1984 cancelled the agreement letters dated 16-7-1983 and two letters dated 16-9-1983 and also terminated the further agreements. Issuance of cheques for Rs. 15,000/-, 19,743/- and 45,000/- regarding these licenses has been admitted but according to him these cheques were given postdated on the assurance of the plaintiff that the account regarding previous licenses would be settled before 30-1-1984 but as the plaintiff failed to do so, the payments of the cheques issued by the defendants were stopped. On the contrary the plaintiff has to pay Rupees 1,76,761/- regarding the previous three licenses after deducting 3% commission/ service charges but the plaintiff failed to make any payment to the defendants on that account.

11. Regarding the stopping of payment of the cheques of Rs. 15,000/- dated 9-1-1984 it has been stated that on 9-1-1984 Shri J.S. Bagga, Director of the plaintiff took a temporary loan of Rs. 15000/- on the plea that he would be going to Bombay and would get the payments from there to clear the previous account of the defendants but when the defendants found that he had not gone to Bombay the payment of the cheque was stopped. The cheque dated 16-12-1983 for Rs. 15000/- issued by the plaintiff in favor of the defendants was towards part payment of the amount due from the plaintiff and not a loan as alleged by the plaintiff.

12. While disposing of an application under O. 37, C.P.C. it is to be seen whether

valid defense or triable issues have been disclosed and if the defense is bona fide and genuine, leave to defend should be granted, unconditionally. The Court may attach conditions while granting leave to defend but this discretion must be exercised judicially and in consonance with the principle of natural justice.

13. In this case, the defense raised by the defendants does not seem to be bona fide and genuine. Admittedly, at the time when the; defendants terminated the agreements as contained in three letters dated 16-6-1983, 16-9-1983 and 16-9-1983 by sending three letters all dated 2-1-1984 enclosing three cheques of Rs. 15,000/- Rs. 19743/- and Rs. 45000/- representing the sum already received from the defendants towards these agreements, it was towards full and final settlement of the account of the plaintiff. Had there been any dispute regarding the settlement of the account between the parties prior to sending these cheques by mentioning in the forwarding letters that the same was in full and final settlement of their account with the plaintiff The plea now taken by the defendants giving justification for stopping payment is after-thought and not genuine and is mala fide. It gives no right to the defendants to seek leave to defend the suit.

14. Regarding the stoppage of payment of the fourth cheque for Rs. 15,000/- dated 9-1-1984 by the defendants admittedly issued by them in favor of the plaintiff, it is on record that this cheque was issued for repayment of Rs. 15,000/- which the plaintiff had paid to the defendants vide cheque dated 16-12-1983. The defendants did not offer any comment on the dishonour of this cheque, though asked in the letter dated 18-1-1984 written by the plaintiff. The story now put forward in the application seeking leave to defend in this regard is also afterthought, not genuine and is mala fide. This plea also does not give any ground to the defendants for getting leave to defend the suit. In the present circumstances, I find no valid and genuine ground to grant leave to defend the suit and Therefore, I dismiss this application, I.A. 2331 /89 of the defendants under O.37, R. 5, C.P.C.

15. The suit is under O. 37, C.P.C. for recovery of the liquidated amount based on dishonoured cheques so I hereby pass a decree against defendants 1 and 2 only for Rs. 1,44,093.10/- towards the principal amount of four cheques and interest calculated at 18% p.a. from 30-1-1984 till December 1986. The plaintiff will also be entitled to future interest @18% during the pendency of the suit till realisation. Cost of the suit is also awarded.

16. Order accordingly.