
(1992) 10 DEL CK 0006
In the Delhi High Court
Case No : Suit No. 768 of 1989

Kanoria Chemicals Industries Limited	Vs	APPELLANT
Upendra Gariyali and Another		RESPONDENT

Date of Decision : 20-10-1992

Acts Referred:

Citation : (1992) 2 BC 623 : (1993) 49 DLT 115

Hon'ble Judges : C.L. Choudhary, J

Bench : Single Bench

Advocate : S.P. Aggarwal and Sandeep Agarwal, for the Appellant;

Judgement

C.L. Chandhry, J.

(1) The plaintiff has filed the suit for recovery of Rs. 1,58,420.00 on the allegations that the plaintiff is a company duly incorporated under the Companies Act and the suit has been instituted by Shri Suraj Narain, who holds a Power of Attorney executed by the Board of Directors. Upon the request of the defendants the plaintiff has been supplying Chemical goods to the defendant from time to time starting from November, 1982 onwards and the defendant has been making payments on account. The last part payment of Rs. 30,000.00 was made by cheque dated 19.5.1988. On the date of filing of the suit an amount of Rs. 3,56,798 was due on account of principal. The defendants acknowledged their liability to the plaintiff by their letter dated 26.12.1985 admitting the balance of Rs.4,38,290.00 as due to the plaintiff on 30.6.1985. Subsequently the defendant again confirmed the balance in favor of the plaintiff by letter dated 19.5.1988 for a debit balance of Rs.3,86,798.00 . Interest is claimed at the rate of 21% per annum. Amount on account of interest is claimed as Rs. 5,01,622.00 , thus making a total claim of Rs. 8,58,420.00 .

(2) Despite service none appeared on behalf of the defendants and they were proceeded ex parte vide order 23.6.1990. Liberty was given to the plaintiff to produce ex parte evidence by way of affidavits. This has been done. In support

of the claim of the plaintiff the affidavit of Shri Suraj Narain has been filed. He has deposed that he is the power of attorney holder of the plaintiff company and the plaint has been signed and verified by him. He has supported the allegations made in the plaint on all material particulars. He has also proved certain documents. Ex. Public Witness . 1/1 is the power of attorney in favor of Shri Suraj Narain. Ex. Public Witness . 1 /2 is the letter dated 28.12.1985 by which the defendant confirmed the balance as on 30.6.1985 to be Rs 4,38,219.00 . Ex. Public Witness . 1/3 is the copy of the letter dated 7.1.1986 demanding the amount from the defendant. Ex. Public Witness . 1/4 is the letter dated 19.5.1988 written by the defendant whereby the defendant confirmed the balance outstanding in favor of the plaintiff for a sum of .Rs.3,86,798.00 . Ex. Public Witness . 1/5 is the copy of the letter dated 6.6.1988 to the defendant demanding the amount. It is stated that the plaintiff is entitled to interest @ 21% per annum as per terms of the agreement of sale. Ex. Public Witness . 1/6 is a copy of the account books of the plaintiff. Ex. Public Witness . 1/7 to Public Witness . 1/24 are the copies of the bills for the material supplied to the defendants.

(3) I have given due consideration to the oral as well as documentary evidence led by the plaintiff. In my opinion the plaintiff has been able to substantiate its claim ex parte. The suit was filed on 16.3.1989. The defendants by their letter dated 19.5.1988 Ex. Public Witness . 1/4 admitted that a balance of Rs. 3,56,798.00 was due from them. By this letter also the defendant sent a cheque for Rs. 30,000.00 to the plaintiff. The claim of the plaintiff for the amount of Rs.3,86,798.00 is within time. After deducting the amount of Rs. 30,000.00 the balance comes to Rs. 3,56,798.00 . From the copies of the bills produced on the record of this case the date on which the suit was filed. The amount on account of interest comes to Rs. 67,207.50. The plaintiff has been able to establish his claim ex parte to the tune of Rs. 4,24,005.50. Accordingly. I pass an parte decree for the recovery of Rs. 4,24,005.50 in favor of the plaintiff and against the defendant with proportionate costs. The plaintiff shall also be entitled to pendente lite and future interest on the principal amount of Rs. 3,56,978.00 @ 12% per annum from the date of institution of the suit till realisation of the amount.