(2009) 07 DEL CK 0404

In the Delhi High Court

Case No : C.S. (OS) No. 1214 of 2005

Lufthansa German Airlines APPELLANT

Vs

IFC Despatch (I) Pvt. Ltd. RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:
Limitation Act, 1963 — Section 18

Citation : (2009) 07 DEL CK 0404

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Neelam Rathore and Sarika Gandhi, for the Appellant; Rajiv Bansal and Shwetank Sailwal, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The plaintiff has filed the present suit for recovery of the sum of Rs. 1,19,25,865.45/-. The plaintiff has its head office at Von-Gablenz Strasse, 2-6 D-50664, Cologne, Germany and its Indian branch office at 56, Janpath, New Delhi. The cargo division of the plaintiff handles transportation of luggage to and from India.

2. The defendant company is engaged in the business of couriering and merging retail courier companies, and in its line of practice approached the plaintiff for air carriage of its couriers agreeing to pay the freight and payable charges on the same. The operations of the defendant started in May 1993 whereupon it used the plaintiff?s services regularly. The plaintiff kept a running account of the bills raised upon the defendant. The plaintiff submits that the defendant was often irregular with the payment of freight and other charges payable and in fact, on various occasions the cheques issued by the defendant in lieu of the plaintiff?s services were dishonoured.

3. There occurred various correspondences between the two parties. The plaintiff submits that vide its letter dated 29th June, 1995, it conveyed to the defendant

that as the latter?s cheques were being dishonoured, the plaintiff was compelled to reduce its credit limit to Rs. 30 lac on a 15 day credit basis. The plaintiff then sent a follow up to the previous letter by a letter dated 6th July, 1995. Due to continuous non-payment on behalf of the defendant, the plaintiff sent to the defendant three letters dated 11th July, 1995, 21st July, 1995 and 29th August, 1995 ? all to the effect that the plaintiff would discontinue its business with it if the latter persisted in non-payment of its long outstanding dues. The plaintiff sent similar letters dated 29th September, 1995 and 19th October, 1995, but to no avail. The only effect that the plaintiff?s letters had on the defendant was that it sent an apology and promise to pay by letter dated 8th July, 1995, and gave empty assurances of prompt payment by further two letters dated 24th May, 1995 and 30th July, 1995.

4. Eventually, by letter dated 22nd November, 1995 the plaintiff gave an ultimatum to the defendant to the effect that if its outstanding dues were left unpaid till after 1st December, 1995, the plaintiff would not only stop accepting shipments on cash basis but also inform others in the trade, of the defendant?s mala fides and initiate legal action as well. The plaintiff alleges that the defendant issued three cheques totalling a sum of Rs. 1,22,93,433/-. These cheques, however, were all allegedly dishonoured on presentation on 8th January, 1996. The cheque numbers and Cheque dates of these three cheques are given as:

i) Cheque No. 972366 dated 04.01.1996 ii) Cheque No. 972365 dated 05.01.1996 iii) Cheque No. 972364 dated 08.01.1995

5. The plaintiff submits that in a meeting held between the parties on 22nd November, 1995, the defendant verbally assured the plaintiff that it would clear its dues of Rs. 1,22,93,433/- by 21st December, 1995. The said amount was also allegedly mentioned as a cautious reminder by the plaintiff in its letter dated 5th February, 1996, which was a reply to the defendant''s letter dated 31st January, 1996 wherein the latter had informed the former that it had prepared a bank draft of Rs. 25,00,000/- in its favour. However, the plaintiff contends that no such draft or other payment was received by it from or on behalf of the defendant.

6. The plaintiff avers that around this time the defendant closed its Delhi office without any intimation to the plaintiff. It is the contention of the plaintiff that the said closure was only a tactic of evasion on the defendant?s part. Pursuant to an inspection in the Registrar of Companies. records, the plaintiff sent a Legal Notice dated 19th April, 1996 to the defendant''s Mumbai office, claiming the due sum of Rs. 1,22,93,433/-. The said office replied vide letter dated 13th May, 1996 that the above-mentioned Legal Notice would be replied to after receiving appropriate instructions.

7. Since no reply was received, the plaintiff again sent a Legal Notice dated 20th May, 1996 to which the defendant''s counsel replied on 20th June, 1996, allegedly raising false excuses and baseless counter claims. The plaintiff further

alleges that various meetings were held thereafter between the parties, and the defendant persistently promised that the dues would be paid and requested the plaintiff to accommodate the delay till the defendant''s financial condition improves a little.

8. To verify the actual financial condition of the defendant, the plaintiff claims that it inspected the records of the Registrar of Companies again, and on such inspection found that the defendant had made several acknowledgments of its debts to the plaintiff. The plaintiff submits that in its Balance Sheet for the financial year of 1998, filed with the Registrar in 1999, the debt owed to the plaintiff is acknowledged by the defendant to be of Rs. 1,08,70,556.45/-. The Balance Sheet for 1999, filed in 2000, reduces this liability to Rs. 25 lac. Strangely, the Balance Sheets for the years 1996 and 1997 were filed very belatedly by the defendant in June 2002 and August 2002 respectively, and in both places the defendant has claimed a liability of Rs. 1,08,70,556.45/- to the plaintiff.

9. The plaintiff claims that the amount due to it from the plaintiff is of Rs. 1,19,25,865.45/- after adjustment from the original amount of Rs. 1,22,93,433/-. The plaintiff submits that it is basing its present suit on the basis of the defendant''s admission of liability of Rs. 1,08,70,556.45/- in its Balance Sheet filed with the Registrar of Companies on 29th August, 2002 (for the financial year 1997). As per this submission, the plaintiff further avers that the period of limitation for filing the present suit would be till 29th August, 2005 and the plaintiff filed the present suit on this day, i.e. on 29th August, 2005.

10. The defendant has vehemently opposed the plaintiff''s suit on the ground that it is hopelessly barred by limitation. It has been submitted that the dues are with respect to services provided for the period from May, 1993 to January 1996. The alleged ?admissions. of liability for the sum of Rs. 1,08,70,556.45/- were made on 29th November, 1996, 10th November, 1997 and 10th September, 1998 for the financial years of 1996, 1997 and 1998 respectively, i.e. when these balance sheets were signed by and on the defendant?s behalf.

11. The defendant has also contended that there were several disputes between the parties as the plaintiff did not weigh the courier bags at the check in counter as per proper procedure. Further, the defendant was neither allowed to present the Airway Bills nor did it receive any credit for free baggage allowance in spite of being entitled to the same. Further still, the defendant contends that there were frequent cases of mishandling of baggage by the plaintiff so much so that on an average there were at least two cases of mishandling in a fortnight.

12. The defendant has submitted various counter claims to the plaintiff?s present suit. These are:

i) Rs. 45,171.75/- for wrongful weighing of the baggage;

ii) Rs. 44,82,609/- on account of non-deduction of baggage allowance;

iii) Rs. 62,34,363.55/- on account of mishandled baggage; and,

iv) Rs. 4,05,437/- on account of non-acceptance of debit notes of the plaintiff for which the defendant is entitled to due credit.

13. On the basis of the pleading of the parties, following issues were framed on 25th February, 2008:

1. Whether the plaintiff is entitled to a decree in a sum of Rs. 1,19,25,865.45, or such other amount, as claimed? OPP

2. Whether the plaintiff is entitled to interest at the rate of 12% as claimed? OPP

3. Whether the written statement is liable to be rejected as not being properly verified? OPP

4. Whether the defendant is entitled to claim any set-off as shown in paras 4(i) to 4(o) of the written statement, and if so, to what effect? OPD

5. Whether the suit is barred by limitation? OPD

6. Relief.

14. Issue No. 5 is treated as a preliminary issue and arguments were heard on this point by this Court.

15. The plaintiff relied upon various case laws. The defendant relied upon the case of Bank of Baroda Vs. S.K. Aggarwal, wherein a similar issue was involved and it was held that ?under Section 18 of the Limitation Act, 1963, an acknowledgment of liability must be made before the expiration of limitation and it must be of a subsisting liability or existing jural relationship which must be signed by the party or his authorised agents?. It was held in para 11 as under:

11. Apparently, in order that an acknowledgment may give a fresh starting point u/s 18 of the Limitation Act

(i) It must have been made before the expiration of the period of limitation for the suit, appeal or application, as the case may be.

(ii) It must be of a subsisting liability or existing jural relationship though the exact nature or the specific character of the specific liability may not be indicated in words.

16. In the present case, as submitted by the defendant the claim on the basis of which the plaintiff?s suit was based arose during the period of May 1993 to January 1996. The suit has been filed on 29th August, 2005. In view of the judgment in the case of S.K. Aggarwal (supra), it is clear that for an acknowledgment to give a fresh starting point u/s 18 of the Limitation Act, it must have been made before the expiration of the period of limitation for the suit, appeal or application and it must be of a subsisting liability or existing jural relationship though the exact nature or the specific character of the specific

liability may not be indicated in words.

17. In the present case, it is argued by the learned Counsel for the plaintiff that the filing of the respective Balance Sheets with ROC amounts to acknowledgement by defendant with respect to accounts or liability due towards the plaintiff which were respectively made from the year ending on 31st March, 1996 to the year 2000. The defendant in reply to the submission of the plaintiff argues that it is the date of signing of the Balance Sheet which is the relevant date for the making of an acknowledgment. The defendant submits that the Balance Sheets of the defendant for the Financial Year ending 31.03.1996 to 31.03.1999 were respectively signed, and filed with the ROC on the dates mentioned here-in-below:

Balance Sheet Date of Date of Filing For the Year ending Signing With ROC

31.3.1996 29.11.1996 29.01.1997 31.3.1997 10.11.1997 01.01.1998 31.3.1998 10.09.1998 22.12.1998 31.3.1999 04.09.1999 25.02.2000.

18. u/s 18, a statement in a balance sheet submitted as per statutory requirement acknowledging a debt due is sufficient. In each balance sheet, there is thus an admission of a subsisting liability to continue the relation of debtor and creditor, and a definite representation of a present intention to keep the liability alive until it is lawfully determined by payment or otherwise. It is the date of the signing of the balance sheet that starts a fresh period of limitation though the period for which the balance sheet was actually prepared was different.

19. The contention of the plaintiff that the balance sheet was filed in the year 2002 and thus the acknowledgement period starts from that date, has no force as it is only the date of signing of balance sheet that is to be seen in order to acknowledge the liability. In the last years i.e. 1999 and 2000, the defendant has not shown the liability of the subject matter in the list of Sundry creditors in its balance sheet. As regards the cause of action of the plaintiff is concerned, the relevant date of acknowledgment of the liability has to be seen from the date of signing of balance sheet and not from the date of filing or obtaining the copy received from the authority.

20. From the above, it is clear that the suit was not filed within three years from the date of acknowledgement of the liability by the defendant, the suit is clearly time barred and is not maintainable u/s 18 of the Limitation Act. Hence, issue No. 5 is decided against the plaintiff and in view thereof, the suit of the plaintiff is dismissed accordingly. No costs.

