
(1991) 01 DEL CK 0030
In the Delhi High Court
Case No : Suit No. 480 of 1987

Moti Lal Banarsi Dass

APPELLANT

Vs

M/s. Delhi Automobiles Pvt. Ltd

RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

Citation : AIR 1991 Delhi 192

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : Ms. Sushma, for the Appellant; Mr. D.R. Mahajan with Mr. R.L. Sharma, for the Respondent

Judgement

1. This is plaintiff's suit for recovery of Rs. 1,54,530/-. plaintiff is a registered partnership firm. The suit has been instituted through Shanti Lal Jain, a partner of the plaintiff. Defendant, a private limited company, is stated to be the promoter of a commercial complex to be constructed at Barakhamba Lane, Connaught Place, New Delhi. The plaintiff has stated that S. R. Kapoor, an employee of the defendant, approached the plaintiff for purchase of a commercial space in the proposed building of" the defendant. This was on or about 1-4-1982. The plaintiff provisionally booked a space and gave Rs. 1,01,000/- by means of a cheque to the defendant. It is stated that it was an agreed term that in case the plaintiff did not feel inclined to purchase this space, the amount would be refunded with interest at the rate of 18% per annum. Document Ext. D. W. 1/1 being form for booking the commercial space was signed by the plaintiff on 30-3-1982 for the purpose. plaintiff says it was signed blank. The defendant, however, contends to the contrary. Examination of the document, however, shows that it had been filled in three different writings. Nothing, however, turns on that because of the view which I have taken of the controversy between the parties. By letters dated 30-4-1982 (Ext. P. 7), 2-6-1982 (Ext. P-8), 2-8-1982 (Ext. P-9) and 15-9-1982 (Ext. P-10) the plaintiffs demanded refund of this amount with interest at the rate of 18% per annum. Then on 5-11-1982 (Ext.

P-1) the plaintiff received a letter from the defendant calling upon the plaintiff to pay further amounts towards price of 1000 sq. ft. of the area booked for the plaintiff at the rate of Rs. 1500/ - per sq. ft. The defendant took the stand that the total cost of the space was Rs. 15,00,000/- and 40% was to be pay at the time of booking. So, it said that an amount of Rs. 6 lakhs was payable by the plaintiff and after giving an adjustment of Rs. 1,01,000/- paid in advance it demanded a sum of Rs. 4,99,000/ -. It was also mentioned in this letter that interest at the rate of 21% would be charged for the delayed payment. The plaintiff replied by its letter dated 29-12-1982 (Ext. P-4) disputing the contention of the defendant and referred to its earlier letters. It again demanded refund of the amount of Rs. 1,01,000/ - with interest. The defendant did not acknowledge this letter of the plaintiff and instead wrote another letter dated 2-2-1983 (Ext. P-2) calling upon the plaintiff to make further payments. Then the plaintiff served two legal notices one dated 2-4-1983 and the other dated 20-9-1983 calling upon the defendant to make payments. Since the defendant did not make any payment, this suit was filed on 12-3-1985.

2. In its written statement the defendant said that Bharat Hotel Ltd. who was now constructing the commercial complex was a necessary party in the proceedings and further that the defendant had a right to forfeit the amount of Rs. 1,01,000/- since the plaintiff committed breach of the terms of the booking of the space in the commercial complex. It is also said that there was no application for allotment made by the plaintiff firm as such and the application was made in the individual names and as such there was no privity of contract between the parties. The defendant denied any agreement for refund of the amount and that to interest at any rate.

3. After the pleadings were complete, the following issues were framed :-

1. Whether the suit has been properly instituted?
2. Whether the suit is bad for non-joinder of M/s. Bharat Hotel Ltd.?
3. Whether there is no privity of contract between the plaintiff and the defendant?
4. Whether the booking was done in the commercial project of the defendant on provisional basis by the plaintiff through Shri. S. P. Jain on the assurance of Shri S. P. Kapur, an employee of the defendant and was it a term of the agreement / assurance that the amount of Rs. 1,01,000/- would be returned by the defendant with interest at the rate of 18% per annum on demand by the plaintiff?
5. Whether any terms were settled regarding this provisional booking of the space and if so what were those terms?
6. Did the plaintiff sign the form for allotment of space while it was blank and if so to what effect?
7. To what rate of interest and for what period is to plaintiff entitled?
8. Relief.

4. plaintiff examined Shanti Lal Jain, its sole witness, and the defendant examined one K. G. Arora, a property dealer, who according to the defendant had negotiated the sale of the space on its behalf and that of the plaintiff. No evidence was led in rebuttal.

5. At the outset Mr. Mahajan, learned counsel for the defendant, said that he would not press issues No. 1, 2 and 3. Accordingly, these issues are held in favor of the plaintiff. Other issues can be dealt with together.

6. At the time when issues were framed Mr. Mahajan said that the defendant did approach the plaintiff for refund of Rs. 1,01,000/- and also another sum of Rs. 3,000 / - which, he said, the plaintiff refused to accept. On the request of Mr. Mahajan, the defendant was allowed to deposit this amount in court. This was done and this amount has since been kept in fixed deposit receipts in the name of the Registrar of this court and these fixed deposit receipts are being renewed from time to time. The amount was deposited in court in April 1986.

7. From the oral evidence it is not possible to say as to what were the terms at the time when the commercial space was booked by the plaintiff. The defendant has also not brought on record its terms regarding booking of the space as mentioned in Ext. D.W. 1 / 1, the form signed by the plaintiff for booking the space. The fact remains that an amount of Rs. 1,01,000/- was paid by the plaintiff to the defendant. The defendant has not exercised any option to forfeit the amount, and again there is nothing on the record to show that the defendant had any right to forfeit this amount. The plaintiff, Therefore, became entitled to refund of this amount with interest, in any case from 29-12-1982, the date when notice (Ext. P-4) demanding refund of this amount with interest was sent to the defendant under registered post acknowledgment due. The question that remains as to what rate of interest is the plaintiff entitled? If reference is made to S. 3 of the Interest Act, 1978, the plaintiff will be entitled to interest from the date of notice at the current rate of interest which is defined in S. 2(b) of this Act. I am told that the current rate of interest is 11% per annum. There is no dispute now that the plaintiff was entitled to refund of the amount of Rs. 1,01,000/-. plaintiff is also, Therefore, entitled to interest when it called upon the defendant to refund this amount with interest. There is no document on record to show that the defendant had any right to forfeit this amount and in fact this option even if existed has not been exercised. I cannot accept the oral testimony of the sole witness of the defendant, who is the property dealer and that too in the absence of the records of the defendant itself. The plaintiff will, thus, be entitled to interest at the rate of 11% per annum from 1-1-1983 till 31-3-1986 as after institution of this suit the defendant deposited the amount of Rupees 1,01,000/- with court. No interest is payable after the amount has been deposited in court. That, of course, is again of not much relevance as the amount was put in fixed deposit receipt and is carrying interest, and the amount so deposited in court with interest accorded thereon is payable to the plaintiff. Issues No. 4 to 7 are accordingly decided.

8. Since the principal amount has already been deposited in court by the defendant for payment to the plaintiff, the suit of the plaintiff is decreed for interest being calculated at the rate of 11% per annum on the amount of Rs. 1,01,000/- from 1-1-1983 to 12-3-1985, the date the suit was instituted. plaintiff will further be entitled to interest at this rate on the amount of Rs. 1,01,000 / - from the date of institution of the suit till 31-3-1986. plaintiff will also be entitled to costs limited to Rs. 3,000/-. The principal amount and the costs have already been deposited by the defendant in the court. These shall be payable to the plaintiff with interest accruing thereof as these amounts have been kept in fixed deposit receipts as per orders of the court.

9. Order accordingly.