**(1987) 05 DEL CK 0050**

**In the Delhi High Court**

**Case No :** Suit No. 766 of 1979

Mrs. Saroj Kapur and another APPELLANT

Vs

M/s. Nitin Castings Ltd. RESPONDENT

**Date of Decision :** 14-05-1987

**Acts Referred:**

**Citation :** AIR 1987 Delhi 349

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

**Bench :** Single Bench

**Advocate :** G.R. Chopra, for the Appellant; Arjun Bhandari, for the Respondent

## Judgement

C.L. Chaudhry, J.—The relief claimed in this suit by the plaintiffs is for a preliminary decree for rendition of accounts against the defendant. It is stated in the plaint that M/s. Allied Metal Industries, plaintiff No. 2 was appointed as agent by the defendant by a letter dated 29/31-12-1973 for representing the defendant in all matters including follow-up of all enquiries and the business introduced directly or indirectly through the organisation of the plaintiff. The terms on which the plaintiff No. 2 was appointed as agent are contained in the said letter dated31-12-1973. It is further stated that as per the agreement dated 31-12-1973 the plaintiffs were entitled to 5% commission on all the orders received during the subsistence of agency from the territory of Uttar Pradesh besides the incidental expenses actually incurred. The defendant company terminated the agency on 20-9-1975. The case of the plaintiffs is that the defendant did not pay the commission, nor settled nor submitted any statement of account of commission due to the plaintiffs. The defendant company had agreed to pay the commission for the entire business introduced up to 20-10-1975, one month''s period being the notice period during which the goods were despatched by the defendant company to different constituents of the plaintiffs. It is further stated that on 1-6-1977 the defendant company withheld the payment and the settlement of the commission on the ground that some parties mentioned in the letter had not paid various sums of money due to the defendant. It is further claimed that the defendant company in spite of their undertaking to settle (he payment of commission as contained in the letter dt. 1-6-1977 have failed to fulfil their commitments. It is further claimed that the plaintiffs have introduced the total business of Rs. 20,50,688.40. Despite various demands made the defendant has not settled the account of the plaintiffs and that is how the necessity of filing this suit has arisen. It is claimed that a decree for rendition of accounts be passed in favour of the plaintiffs and the defendants be directed to render the account of the commission which has become due and payable to the plaintiffs.

2. The defendant has contested the suit and repudiated the claim of the plaintiffs. In the written statement filed on its behalf it is stated that the plaint does not disclose any cause of action. The plaintiffs are under a statutory obligation to render accounts of all the dealings with the defendant and the plaintiff is not entitled either under the statute or under the contract to claim accounts from the defendant. Jurisdiction of this Court to try the suit was denied and a further plea was taken that the suit of the plaintiff was not within time. However, the appointment of the plaintiffs as agents of the defendant vide agreement dated 31-12-1973 was not denied. It is further stated that the validity of the agreement expired on 30-6-1974 and thereafter the said agreement was not revalidated. It is further stated that the defendant issued a termination letter No. 25041 dated 21-9-1975 effecting the termination from 20-10-1975. The claim of the plaintiff for payment of commission was denied on the ground that the defendant company has paid all the commission payable to the plaintiff. It was further stated that the plaintiff was only entitled to commission on orders booked up to 30-10-1974 and material despatched up to 20-10-1975.

3. The plaintiffs have filed the replication by which the pleas raised by the defendant were controverted and reiterated their claim as laid in the plaint.

4. On the pleadings of the parties the following issues were framed :

1. Is the plaintiff not entitled to the rendition of accounts?

2. Does the plaint not disclose any cause of action?

3. Is the suit within limitation?

4. Did the defendant pay a sum of Rs. 91,730.04 on account of commission?

5. Relief.

In support of their case the plaintiffs have examined P.W. 1, Nirmal Kumar, Accountant of plaintiff No. 2. He proved the letter dated 1-6-1977 received by the plaintiffs from the defendant, which is Ex. P.W. 1/1.

5. I have heard the Learned Counsel for the parties at length and have given my thoughtful consideration to the matter at issue.

My findings on these issues are as under : - Issue No. 1 :

 

6. It is the admitted case of the parties that by letter dated 29-12-1973 the plaintiffs were appointed agents of the defendant. The letter dated 29-12-1973 (Ex. P-1) reads as under :

Nitin Castings Private Ltd. Eastern Express Highway, Thana Our Ref: Sales/194

Dec. 29. 1973.

M/s. Allied Metal Industries 1/23-8, Asaf Ali Road, New Delhi-1.

Dear Sirs,

With reference to your letter No. AMI-NC-1/728/73 dated 18-10-1973, we are hereby extending the validity of the Agency Agreement up to 30-6-74 on the following terms and conditions :

You will be representing Nitin Castings Pvt. Ltd. for the S tate of Uttar Pradesh only.

(1) You have to go through local newspapers and trade journals, take out the enquiries and forward the same to our works.

(2) You have to follow up all the enquiries for which we will be quoting directly to the parties with copy to you and send us your comments on the same. You have to send monthly statement regarding pending quotations.

(3) You have to make periodical visits to parties and send your reports to us.

(4) You have to look after the recovery of outstandings and other matters regarding sales.

(5) You have to do any other work of special nature instructed by us.

Termination :

Any party can terminate the agreement by giving one month''s notice to the other party.

Commission:

You will be paid 5% commission on the orders received during your period of working, either directly or indirectly, from your territory. This commission will be paid to you after the orders are executed and the amounts are recovered. Terms of Payment:

Your account will be settled every 6 months ending in June, and December within 30 days from the ending period.

Incidental Expenses :

all incidental expenses of minor nature will be to your account

Other conditions :

 

You will send in duplicate all your correspondence and the same should be typewritten.

You should not commit anything to any party either verbally or in writing till you get confirmation from us in writing.

Thanking you,

Yours faithfully,

for Nitin Castings Pvt. Ltd.

Sd/- Mg. Director.

PS :Please return the duplicate copy of this letter duly signed as a token of your acceptance of the above conditions.

Agency Terms and Conditions contained in this letter are acceptable to us.

For Allied Metal Industries.

Sd/ (S. KAPUR)

7. In terms of this agreement the plaintiffs are entitled to commission @5% on the orders received during their period of working either directly or indirectly from the State of Uttar Pradesh. The plaintiffs are to get this amount after the orders were executed and the amounts were recovered. The case of the defendant is that the plaintiffs have been paid the entire amount due to them on account of commission. However, the plaintiffs are contending that they have not been paid the commission. There is nothing on record to justify the stand of the defendant that the entire commission has been paid to the plaintiffs. Admittedly the defendant is keeping all the accounts relating to the receipt of the orders, their execution and the amounts recovered. The defendants are liable to render the accounts to the plaintiff in terms of Ex. P-1. The issue is decided in favour of the plaintiffs and against the defendant.

Issue No. 2 :

8. This issue was framed on the preliminary objection taken by the defendant which reads in the following terms:

The plaint does not disclose any cause of action, admittedly, the plaintiff was the agent of the defendant. He himself is, therefore, under statutory obligation to render accounts of all dealings with him, to the defendants, and is not entitled either under statute or under contract to claim accounts from the defendant. The entire pleading of the plaintiff (apart from the same being untrue as shown herein below) does not disclose any special circumstances which would entitle the plaintiff to claim accounts from the defendants. The plaint is, therefore, liable to be rejected straightway on this ground alone.

I am unable to appreciate the stand taken by the defendant. Under the terms of the agreement the plaintiff is entitled to receive his commission. He has filed the suit for rendition of accounts about the commission which he is entitled under the terms of agreement dated 29-12-1977. The plaint does disclose a cause of action. The issue is decided against the defendant.

Issue No. 3 :

9. The plaintiff has relied upon the acknowledgment made by the defendant in its letter dated 1-6-1977 in order to bring the suit within time. This letter has been proved by the statement of P.W. 1, Nirmal Kumar, who testified that the letter dated 1-6-1977 was received by the plaintiffs from the defendant. In cross-examination the witness stated that the signatures on this letter were not done in his presence, but the letter was received by the plaintiffs by post. He further stated that Mr. D. P. Kedia, whose signatures appear on this letter is one of the Directors of the defendant company and he was not in a position to identify his signatures. There is no rebuttal to the statement made by P.W. 1. Nobody from the side of the defendant has stepped into the witness box to deny the correctness of this letter. Moreover, in paragraphs Nos. 5 and 6 of the plaint the plaintiffs have specifically mentioned that the letter dated 1-6-1977 was received by the plaintiffs from the defendant. In the written statement by the defendant it was not denied that any such letter was written by the defendant to the plaintiff.

10. The letter dated 1-6-1977 (Ex. P.W. 1/1) reads as under:

ACCTS/76-77/45715

June 1, 1977.

Registered Post.

M/s. Allied Metal Industries 1/23-B, Asaf Ali Road. New Delhi-110001.

Dear Sirs,

Sub : - Settlement of commission account.

We are in receipt of your letters asking us to remit your commission amount. In this connection your attention is invited to the various outstanding amounts from Customers, commission on account of which (sales) has been paid to you. We give below details of the same and request you for early settlement of these accounts.

1. U.P. State Cement Corpn. Ltd. Dalla. Rs. 1.23,293.21

2. U.P. State Cement Corpn. Ltd. Churk Rs. 28.482.31

3. Diesel Locomotive Works. Varanasi. Rs. 54,953.08

4. Renusagar Power Co. Ltd. Renusagar Rs. 5.279.55

5. Panki Thermal Power Station, Kanpur Rs. 43.938.99

 

Total : Rs. 2.55,947.14

As soon as these accounts are settled, we shall remit your commission without any delay. Thanking you.

Yours faithfully.

For Nitin Castings Ltd.

Sd/- (D.P. Kedia)

c.c. to : M/s. Allied Metal Industries Post Box No. 105 7/145, Swaroop Nagar, Kanpur-2. -Attn. Mr. B.N. Kapur.

In this letter the defendants have clearly acknowledged their liability to pay the commission of the plaintiff. As such the period of limitation for filing of the suit is extended by 3 years from 1-6-1977 and the suit filed on 24-5-1979 is clearly within time. This issue is, therefore, decided in favour of the plaintiffs and against the defendants.

Issue No. 4 :

11. In para No. 7ofthewrittenstatement the defendant has stated that in fact the defendant has paid a sum of Rs. 91,739.04 to the plaintiff as commission. In the replication corresponding to this para the plaintiffs have denied the receipt of Rs. 91,739.04. In the statement of account filed on behalf of the plaintiff along with the plaint it is stated that Rs. 48,000/- have been received by the plaintiff. There is no evidence on behalf of the defendant that the defendant has paid a sum of Rs. 91,739.04. However, it is a matter of account as to how much commission is due to the plaintiff and how much amount has been paid to them. This is for the local commissioner to decide after taking the evidence in the matter.

Relief :

12. In view of the above findings the plaintiffs succeed and the suit of the plaintiffs is decreed. It is held that the plaintiffs are entitled to get 5% commission on the orders received during the period of working i.e. from 29-12-1973 to 30-6-1974 either directly or indirectly from the territory of State of Uttar Pradesh only. The plaintiff is entitled to this commission for the orders which were executed and the amounts recovered by the defendant. The defendant is directed to render accounts to the plaintiffs of the orders received during the period 29-12-1973 to 30-6-1974 either directly or indirectly for the State of U.P. and further which of the orders were executed and the. amount recovered thereof. For this purpose I appoint Mrs. Anita Bahri, Advocate as the Local Commissioner to go into these accounts and submit her report as to what amount, if any, is due to the plaintiffs. The fee of the Local Commissioner is tentatively fixed at Rs. 2,500/-. The plaintiff is entitled to costs of the suit.

 