

(2011) 12 DEL CK 0063
In the Delhi High Court
Case No : CS (OS) No. 1690 of 2010

M/s Brakewel Automotive Components (India) Pvt. Ltd. APPELLANT
Vs
P.R. Selvam Alaghapan RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Limitation Act, 1963 — Section 19

Citation : (2011) 12 DEL CK 0063

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : J.S. Bakshi With Mr. Amitesh Singh Bakshi, for the Appellant; V. Senthil Kumar With Mr. V.N. Subramaniam, for the Respondent

Judgement

V.K. Jain, J.—This is a suit for recovery of Rs. 20,94,953/-.

The case of the plaintiff is that in November, 2002, the defendant approached the plaintiff company for supply of auto components to him and pursuant thereto, the parties entered into a Wholesaler Agreement at New Delhi, whereby it was agreed that all disputes between them will be subject to Delhi/New Delhi jurisdiction only. Two accounts were opened for the goods supplied to the defendant, one in the name of M/s Kargappa Auto Products and the other in the name of M/s Paans Auto Products.

The plaintiff supplied Auto components and parts to the defendant from time to time and bills were raised for those components and parts. A sum of Rs. 8,01,708 is stated to be due in respect of the goods supplied in the account M/s Kargappa Auto Products, as on 15.10.2007, and a sum of Rs. 4,93,952/- was due in the account M/s Paan Auto Products as on 06.6.2008, thereby coming to a total sum of Rs. 12,95,660/-. Since the defendant has failed to pay the aforesaid amount, the plaintiff has claimed a sum of Rs. 12,95,660/- as the principal sum along with the amount of Rs. 7,99,293/- as interest @ 24% per annum, thereby making a total sum of Rs. 20,94,953/-.

2. Since written statement was not filled by the defendant, his defence was struck off vide order dated 20.10.2011. The plaintiff, however, was directed to file affidavit by way of evidence in order to satisfy the Court with respect to the merits of its case. The plaintiff has, accordingly, filed an affidavit of Mr. Sandeep Arora, one of its Directors in support of its case. In his affidavit, Mr. Sandeep Arora has supported on oath the case set-out in the plaint and has stated that a sum of Rs. 8,01,708 was due to the defendant in the account M/s Kargappa Auto Products as on 15.10.2007 and another sum of Rs. 4,93,952/- was due from him in the account M/s Paans Auto Products, as on 06.6.2008. He has also proved the documents filed by the plaintiff company in evidence.

3. "Ex. PW1/1" is the copy of certificate of incorporation of the plaintiff company, whereas, "Ex. PW1/2" is the copy of the Resolution passed by its Board of Directors dated 20.6.2010, authorizing Mr. Sandeep Arora to institute legal proceedings and to appear and act in all courts on behalf of the plaintiff company.

4. "Exs. PW1/7" to PW1/44" are the copies of various invoices whereby goods were supplied by the plaintiff to the defendant. In his affidavit, Mr. Sandeep Arora has also stated that the wholesalers Agreement between the parties was entered into at Delhi and the payment was also made at Delhi. He has further stated that the cheques received from the defendant were deposited for payment at Delhi. If the agreement between the parties for supply of goods by the plaintiff to the defendant was entered into at Delhi, as stated to be by Mr. Sandeep Arora and the payments were also to be made at Delhi, the cause of action to file this suit, at least partly arose in Delhi and Delhi Courts, therefore, have territorial jurisdiction to try the present suit.

5. "Ex. PW1/4" is the copy of statement of account in respect of the goods supplied to the defendant in the account M/s Paans Auto Products. A perusal of the statement of account would show that a sum of Rs. 4,93,952.30/- was due to the plaintiff in this account as on 06.6.2008. This statement of account would show that the defendant has been making payment to the plaintiff from time to time and last payment was made vide cheque no.441615 dated 28.5.2008 drawn on HDFC Bank, Delhi on 06.6.2008 for Rs. 1,33,130/-. One payment of Rs. 1,37,892/- was received vide cheque no. 435996 dated 20.5.2008. One payment of Rs. 1 lac was received on 17.8.2007 vide cheque no.404038 dated 09.8.2007 drawn on HDFC Bank, New Delhi, and payment of Rs. 22,307/- was received vide cheque no.403469 dated 30.3.2004 drawn on Bank, SBI Chandni Chowk on 02.4.2004.

Since the defendant has been making part-payment in writing, a fresh period of limitation starts from each such payment in view of the provision of u/s 19 of Limitation Act. The suit, therefore, is well within the limitation having been filed in 08.8.2010.

6. A perusal of "Ex. PW1/3", which is the statement of account in respect to goods supplied in the account M/s Kargappa Auto Products would also show that

the defendant has been making payment in writing from time to time. Last payment of Rs. 1 lac was made on 17.1.2008. One payment of Rs. 1 lac was received on 17.8.2007 vide cheque no.391162 dated 11.8.2007 drawn on HDFC Bank, Delhi. A number of payments were received on 03.9.2004 vide cheques drawn on HDFC Bank, Delhi. Since a fresh period of limitation starts from each such payment, the suit is well within limitation, in respect of the goods supplied under their account M/s Kargappa Auto Products.

7. No payment has been made by the defendant to the plaintiff during pendency of the suit. The plaintiff is, therefore, entitled to recover a sum of Rs. 12,95,660/- from the defendant. A perusal of the invoices would show that the defendant was liable to pay the interest @ 18%, if the bills were not paid within 15 days. Since, the agreement between the parties restricted the interest to 18% per annum cannot claim interest at a higher rate. The plaintiff is entitled to the interest amount @ 18% p.a, which comes to Rs. 5,99,417/-. The plaintiff, thus, is entitled to recover a total sum of Rs. 18,95,077/-.

In view of the above discussions, a decree for recovery of Rs. 18,95,077/- with proportionate costs and pendente lite and future interest @ 12% per annum is hereby passed in favour of the plaintiff and against the defendant. Decree sheet be drawn accordingly.

Memo of fees be filed during the course of the day.