(2012) 09 DEL CK 0001

In the Delhi High Court

Case No : CS (OS) 125 of 2012

M/s. CHL Limited APPELLANT

Vs

M/s. Alitalia-Linee Aeree Italiane S.P.A. RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0001

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Ravi Kant Chadha with Mr. R.K. Gautam and Ms. Manoshree, for the Appellant;

Judgement

Kailash Gambhir, J.—The plaintiff has filed the present suit for mandatory injunction to direct defendant nos. 1 & 2 to give TDS certificates in respect of various invoices issued by the plaintiff in terms of details given in Annexure A attached with the plaint. The plaintiff also seeks in the alternative a relief to direct defendants to pay a sum of Rs. 39,59,455.23 in the event of the failure of the plaintiff to issue the said TDS certificates. Since nobody has appeared on behalf of the defendant to contest the present case despite the defendant being served, the defendant was proceeded ex-parte vide order dated 19.7.2012.

2. Ex-parte evidence was adduced by the plaintiff by the affidavit filed by Mr. N.K. Goel, vice President and authorised representative of the plaintiff company.

3. The case as set out by the plaintiff in the pliant is that defendant nos. 1 & 2 had approached the plaintiff in the year 2006 for providing accommodation along with other services of the hotel for its cargo and passenger crew members. After due negotiations had taken place between the parties, written agreement dated 18.9.2006 was signed and executed by both the parties for providing accommodation in the hotel of the plaintiff and the said agreement came into effect from 1.10.2006 and remained effective till 30.9.2008. Accordingly, the cargo and passenger crew members of the defendant airlines started using the

accommodation and other facilities of the plaintiff as per the agreed terms. It is also the case of the plaintiff that the agreement dated 18.9.2006 was extended by another integrated agreement signed between the parties on 18.9.2007, whereunder, new rates were agreed between the parties for the term starting from 1.10.2007 till 30.9.2008. It is also the case of the plaintiff that for the period from 1.10.2008 till 30.9.2009, the rates were again revised along with the revision in the tax rates. It is also the case of the plaintiff that initially the defendant used to make payments against the bills raised by the plaintiff but the payments became erratic later during the period from 11.8.2008 to 10.1.2009. Various reminders were sent by the plaintiff but the defendant did not come forward to make the payment of the outstanding amount. Due to the non-payment of the outstanding amount, the plaintiff was constrained to file a civil suit for recovery of Rs. 39,18,606.37 against the defendant vide CS(OS) 728/2009 and the same was decreed by this court vide ex-parte judgment and decree dated 2.6.2011 for a sum of Rs. 39,18,606.37 along with pendentelite and future interest @ 12% per annum. The plaintiff had also filed an application bearing IA No. 15855/2009 in the said suit to seek direction against the defendant for issuing the TDS certificates in respect of various invoices but the court was of the view that such an order can be passed by the court in an independent suit to be filed by the plaintiff and not in an interim application. This court accordingly granted leave to the plaintiff to file an appropriate suit to claim relief with regard to the delivery of TDS certificates. After grant of the said leave by the court, the plaintiff has filed the present suit for mandatory injunction so as to direct defendant nos. 1 & 2 to issue TDS certificates in respect of all the invoices as per the details given by the plaintiff in Annexure A or in the alternative to direct the defendant to pay a sum of Rs. 39,59,455.23 to the plaintiff. Vide order dated 27.2.2012, this court directed the plaintiff to file an undertaking that in the event of the failure of the defendant to issue TDS certificates and consequently the court granting alternative relief to the plaintiff for the recovery of the said amount of Rs. 39,59,455.23, the plaintiff shall deposit the requisite court fee on the said amount. It is needless to mention that the said undertaking was filed by the plaintiff in compliance with the order dated 27.2.2012.

4. The plaintiff has proved its case by filing the affidavit of Mr. N.K. Goel in evidence, who is stated to be Vice President of the plaintiff company and been duly authorised to sign, file and depose in evidence on behalf of the plaintiff company in terms of the Board Resolution proved on record as Ext.PW1/1. The plaintiff has further proved on record certified copy of the judgment dated 2.6.11 as PW1/2 and the certified copy of the decree dated 2.6.2011 as Ext.PW1/3. The plaintiff has also proved on record copy of the interim application filed by the plaintiff in CS(OS) 728/2009 as Ext.PW1/4 and the statement giving details of all the invoices in respect of which the defendants having failed to issue TDS certificates as Ext.PW1/5.

5. The averments made by the plaintiff in the plaint and the testimony of the

plaintiff in evidence has remained uncontroverted, unchallenged and unrebutted and therefore there is no reason to disbelieve the case of the plaintiff which the plaintiff has been able to successfully prove in the evidence. It will also be relevant to mention here that the defendant also remained ex-parte in CS (OS) 728/2009 and therefore it is manifest that defendant has deliberately avoided to contest the previous case as well as the present suit.

6. Decree of mandatory injunction is accordingly passed in favour of the plaintiff and against defendant nos. 1 & 2 thereby directing defendant nos. 1 & 2 to issue all the TDS certificates as per the details of these certificates disclosed by the plaintiff in Annexure A attached with the plaint.

7. In case the defendants fail to issue the said TDS certificates within a period of three months from the date of passing of this judgment and decree then the plaintiff shall become entitled to recover an amount of Rs. 39,59,455.23 from the defendants and in that eventuality the plaintiff shall deposit the court fee on the said amount. It is made clear that decree to recover the said amount shall become executable only on the deposit of the court fee amount by the plaintiff. Decree sheet be drawn up accordingly.