

(2013) 12 DEL CK 0251

In the Delhi High Court

Case No : Regular First Appeal 502 of 2013

M/s. Goel Trading Co. and Another

APPELLANT

Vs

M/s. Merific Sales and Another

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2013) 12 DEL CK 0251

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : R.C. Gupta, for the Appellant;

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—Notice of this appeal issued to the respondents remains unserved with the report of the respondents having left the address given. The counsel for the appellants states that the appellants are not aware of any other address of the respondents and the respondents were served with the summons of the suit also by publication at the said address and had failed to appear in the suit.

2. On enquiry as to how the appellants will then recover the monies from the respondents, the counsel states that the appellants will continue to make enquiries of the whereabouts of the respondents.

3. In the circumstances, need is not felt to complete the formality of ordering service of the respondents by publication or by pasting especially when the only grievance against the ex parte judgment and decree dated 22nd July, 2003 of the Court of the Addl. District Judge, Central-9, Delhi in Civil Suit No. 273/2013 (Unique Case ID No. 02401C0011102013) is of denial of interest to the appellants.

4. The appellants i.e. appellant no. 1 M/s. Goel Trading Company and its proprietor Shri Prem Chand Goel had instituted the suit from which this appeal

arises for recovery from the respondents/defendants i.e. respondent no. 1 M/s. Merific Sales and its proprietor Shri M.K. Wadhwa of a sum of Rs. 3,04,160/- along with interest at 18% per annum from the date of institution of the suit till realization, pleading that the appellants had sold/supplied/delivered goods to the respondents/defendants inter alia vide two bills both dated 11th September, 2012 for the sums of Rs. 1,65,750/- and Rs. 2,86,700/- i.e. for a total amount of Rs. 4,52,450/-; that the respondents/defendants in payment of the said bills had issued cheque No. 511793 for Rs. 1,65,750/- and cheque No. 512104 for Rs. 2,86,700/-; however payment only of the cheque No. 511793 was received and the cheque No. 512104 was dishonoured and payment thereof not made inspite of repeated requests and reminders; that it was a term of the sale between the parties, printed on the bills that for delay in payment beyond 15 days, interest @ 18% per annum will be paid; accordingly the suit under Order 37 of the CPC for recovery of Rs. 2,86,700/- together with cheque return charges of Rs. 1,200/- and interest at 18% per annum till the date of institution of the suit, was filed.

5. The respondents/defendants failed to enter appearance within the prescribed time inspite of service by publication. The learned Add. District Judge after verifying that the claim was within limitation, decreed the suit for recovery of Rs. 2,86,700/- and though noticing the stipulation on the bills was for payment of interest at 18% per annum but observing that interest at 14% per annum shall serve the purpose of justice, awarded interest to the appellants/plaintiffs on the said sum of Rs. 2,86,700/- @ 14% per annum from the date of filing of the suit and till the date of decree. No reason was given for denying to the appellants/plaintiffs interest for the period prior to the institution of the suit or from the date of the decree till realization.

6. Though the learned Addl. District Judge has also denied to the appellants/plaintiffs the bank charges of Rs. 1,200/- but the counsel for the appellants/plaintiffs has not raised any grievance with respect thereto and the only grievance is for non-grant of interest for the period prior to the institution of the suit and for the period after the decree and to reduction of the rate of interest from 18% to 14% per annum. Reliance is placed on Coim India Pvt. Ltd. Vs. Kurt O John Shoe Components(I) Pvt. Ltd. and Another, where in a Order 37 suit, interest @ 22% per annum stipulated on the bills from the date of each invoice till the institution of the suit, pendente lite and future was awarded.

7. Though the appellants/plaintiffs along with the Memorandum of Appeal have not filed the copy of the bills showing the stipulation for payment of interest @ 18% per annum but there is an averment to the said effect in the plaint and the learned Addl. District Judge in the impugned judgment also has observed that in view of such stipulation the plaintiffs are entitled to interest @ 18% per annum. The learned Addl. District Judge however has not given any reason for reducing the rate of interest to 14% per annum.

8. I see no reason as to why the appellants/plaintiffs should be denied interest at the contractual rate and for the period prior to the institution of the suit and till

the date of realization. The appeal is accordingly allowed. The impugned judgment and decree is modified by decreeing the suit of the appellants/plaintiffs against the respondents/defendants for recovery of Rs. 3,04,160/- together with interest at 18% per annum on Rs. 2,86,700/-from the date of institution of the suit till the date of realization. The appellants/plaintiffs shall also be entitled to costs of the suit and of this appeal.

Decree sheet be drawn up.