(2011) 12 DEL CK 0062

In the Delhi High Court

Case No : CS (OS) No. 60 of 2009

M/s Pioneer Publicity Corporation Pvt. Ltd. APPELLANT

Vs

M/s Vian Infrastructure Ltd. RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:
Interest Act, 1978 — Section 3

Citation : (2011) 12 DEL CK 0062

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

Bench : Single Bench

Advocate : Anjali Chopra, for the Appellant;

Judgement

V.K. Jain, J.—Vide order dated 14th November, 2011, the defendant was granted leave to contest the suit subject to its furnishing a bank guarantee or an FDR for a total sum of Rs. 1,59,49,965/- to the satisfaction of the concerned Joint Registrar within three weeks. It has been reported by the Registry that neither bank guarantee nor FDR in terms of the order dated 14th November, 2011 has been filed by the defendant. Since the defendant has failed to comply with the condition subject to which leave to contest the suit was granted to it, the leave is deemed to have been refused to the defendant and the plaintiff is entitled to judgment forthwith.

The principal amount claimed by the plaintiff is Rs. 1,59,49,965/-. The plaintiff is entitled to a decree for the aforesaid amount. The plaintiff has also claimed interest amounting to Rs. 14,35,496/- at the rate of 12% per annum. The case of the plaintiff is that it had sent a legal notice dated 4th August, 2007 to the defendant, demanding the aforesaid principal sum amounting to Rs. 1,59,49,965/-. along with interest therein at the rate of 12% per annum. The Learned Counsel for the plaintiff states that there is an error in the notice and the correct principal sum is Rs. 1,59,49,956/-. Since the defendant failed to pay the principal amount despite receipt of notice, interest can be awarded to the plaintiff u/s 3 of Interest Act, 1971 which, inter alia, reads as under:-

3. Power of court to allow interest-(i) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it things fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,-

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings.

Considering the nature of transaction between the parties, I am of the view that the plaintiff should be awarded interest at the rate of 12% per annum upto the date of institution of this suit. The Learned Counsel for the plaintiff states that the amount claimed as interest has been calculated from the date of the notice. The plaintiff, therefore, is entitled to interest amounting to Rs. 14,35,496/-.

ORDER

For the reasons given in the preceding paragraphs, a decree for Rs. 1,78,85,461/- with 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.

