(2009) 09 DEL CK 0258

In the Delhi High Court

Case No : Regular First Appeal 547 of 2000

Narang International Hotels Ltd. APPELLANT

Vs

Swati Enterprises RESPONDENT

Date of Decision : 09-09-2009

Acts Referred:

Citation : (2009) 09 DEL CK 0258

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : Abhinav Vashisht and Sumit Singh Benipal, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Rekha Sharma, J.—This appeal has been preferred against the judgment and decree passed by an Additional District Judge dated July 21, 2000 holding the respondent entitled to a sum of Rs. 1,26,771.27P with interest at the rate of 18% per annum.

2. The respondent had made a claim of Rs. 1,62,262.15P before the trial Court out of which Rs. 1,26,771.27P was towards the principal amount and the balance towards the interest calculated on the principal amount at the rate of 24% per annum.

3. The appellant has assailed the aforementioned judgment and decree on the submission that it was entitled to a discount of 40% on the principal amount claimed by the respondent on the strength of document Ext.PW1/D1. Before I deal with the submission it will be appropriate to refer to the document which reads as under:

To,

The General Manager,

The Ambassador?s Sky Chef

I.G.I. Air Port,

Palam Gurgaon Road,

New Delhi-110037.

Sub: Outstanding payment.

Dear Sir,

As requested by your management we hereby agree for discounting the parcel of 40% on the prices of supplies made by us which is pending for payment as on date.

Thanking you,

For Swati Enterprises,

Sd/-

Partner.

4. The trial Court in the impugned judgment has declined to place reliance on ExtPW1/D1 on the ground that the appellant was entitled to rebate in terms thereof only if it had made payment of the outstanding dues within seven days.

5. It is contended by Learned Counsel for the appellant that the document Ext.PW1/D1 is completely silent with regard to the time period by which the outstanding payment was to be made and one therefore fails to comprehend on what basis the trial Court has held that the document contemplated payment of outstanding dues to be made within seven days.

6. I have perused the document Ext.PW1/D1 and I find myself fully in accord with the submission of Learned Counsel for the appellant that Ext.PW1/D1 says nothing about the period within which the outstanding payment was to be made. It simply says that the management has agreed to give discount of 40% on price of supplies made, which is pending for payment. I do find from the record that respondent led oral evidence to show that Ex. PW-1/D-1 contemplated discount of 40% if only the outstanding payment was made within 7 days of the receipt of communication but such oral evidence in my view is of no consequence. The document has to be read as it stands. No oral evidence can be looked into to prove the contents of a document when the document itself is available on the record. As already noticed above Ext.PW1/D1 does not say that the discount of 40% was available to the appellant only if he made payment within seven days of the receipt of communication.

7. In view of the above, I hold that the trial Court fell into error by not giving discount of 40% to the appellant on the strength of Ex. PW-1/D-1.

8. The trial Court in the operative part of its judgment has awarded a sum of Rs. 1,26,771.27P in favour of the respondent with interest at the rate of 18% per

annum from May 1992 to August, 1993 and pendente lite and future interest at the rate of 18% per annum till realisation.

9. It is submitted by Learned Counsel for the appellant that the interest awarded is on the higher side and in any case, the respondent was entitled to interest from the date it had sent legal notice to the appellant demanding payment of the outstanding amount and not from any date prior to that date. The legal notice as per the record was sent on May 22, 1993. I find force in this submission of the Counsel as well. Hence I hold that the respondent shall be entitled to a discount of 40% on the sum of Rs. 1,26,771.27P in terms of Ex.PW-1/D-1 and shall also be entitled to interest from the date of the notice i.e, May 22, 1993 at the rate of 9% per annum. The respondent shall also be entitled to interest at the same rate from the date of the filing of the suit, till the date of deposit of the decretal amount in this Court.

10. The appeal is allowed to the aforementioned extent. The Registry shall draw up modified decree in terms of what has been held above. The appellant shall be at liberty to seek refund of the amount which has become payable to it in view of the order as modified.

11. The appeal is disposed of.