
(2006) 01 DEL CK 0117

In the Delhi High Court

Case No : I.A. 10277/02 and 1072 of 2006 in CS (OS) 952 of 2002

National Horticulture Board

APPELLANT

Vs

Infragro Industries Limited and Others

RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 24 Rule 4

Citation : (2006) 127 DLT 661 : (2006) 87 DRJ 438

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Sanjiv Singh, for the Appellant; Dheeraj Malhotra and B.K. Shali, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—This application has been filed on behalf of the defendants. However, in the meanwhile, defendant No.3 passed away and his legal heirs have been brought on record. They have moved a separate application being I.A. No. 1072/2006 which, although styled as an application under Order XXIV Rule 4 of the Code of Civil Procedure, is actually an application for leave to defend on behalf of the legal heirs of the deceased defendant No.3. Both these application are taken up for disposal.

2. The suit has been filed on behalf of the plaintiff on the ground that a sum of Rs 60,00,000/- was extended by way of loan facility to the defendant No 1 and the defendants 2, 3 and 4 gave personal guarantees for repayment of the loan. The defendant Nos.2, 3 and 4 were Directors in the defendant No.1 company. The learned counsel for the plaintiff submitted that the suit was filed primarily on the written agreement between the plaintiff and the defendant No.1 and on the basis of the guarantees extended by the defendants 2, 3 and 4 to the plaintiff. The defendants, however, submit that in the plaint, particularly in paragraph 27 of the plaint, the plaintiff has also claimed penal interest which is nowhere provided in the contract and according to them, the plaintiff is not entitled to

charge any penal interest. The learned counsel for the plaintiff, on the other hand, submitted that he was in law entitled to charge penal interest. However, no specific provision in the contract was pointed out by the learned counsel for the plaintiff. Therefore, according to the submissions made by the parties, it appears that an issue does arise with regard to whether the plaintiff is entitled to penal interest or not.

3. Apart from this, the defendants have also submitted that there was a tripartite agreement between the defendant No.1 and the plaintiff on the one hand and between the defendant No.1 and Pradeshia Industrial and Investment Corporation of U.P. Limited (PICUP) on the other hand. The learned counsel for the defendants further submitted that the properties of the defendants which were mortgaged by way of security for the repayment of the said loan were both moveable and immovable properties and the same stood mortgaged to both the plaintiff as well as the PICUP and both the plaintiff and PICUP had a *pari passu* charge in respect of the same. The learned counsel for the defendants also submitted that a settlement had been arrived at between the defendant No.1 and PICUP and consequent thereupon the repayment of the loan was rescheduled by PICUP as well as the plaintiff. However, the learned counsel for the plaintiff disputes any re-schedulement on its part. The learned counsel for the plaintiff submitted that he was unaware of any arrangement between the defendant No.1 and PICUP with regard to the rescheduling of the loan repayment. The learned counsel for the defendants also submitted that PICUP would be a necessary party in these proceedings and yet it has not been joined as a party.

4. Considering all these submissions made by the counsel for the parties, I am of the view that the leave to defend application does raise triable issues indicating that the defendants have a fair and reasonable defense and, Therefore, they would be entitled to unconditional leave to defend in terms of the principles for grant of leave to defend as per the settled position of law indicated in *M/s. Sunil Enterprises and Another Vs. SBI Commercial and International Bank Ltd.*, . Accordingly, this leave to defend application stands allowed. The defendants are granted unconditional leave to defend. The suit shall now proceed as a normal suit. This application stands disposed of.

CS (OS) 952/2002

The defendants shall now file their written statements within thirty days. Replication(s), if any, be filed within two weeks thereafter.

List the matter for admission/denial of documents before the Joint Registrar on 4th April, 2006. In the meanwhile, the parties may file their documents.