

(2005) 05 DEL CK 0254

In the Delhi High Court

Case No : Regular First Appeal 324 of 2002

National Small Industrial Corporation Ltd.

APPELLANT

Vs

Sh. Takdir Singh

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23
Limitation Act, 1963 — Section 18, 19

Citation : (2005) 3 BC 303 : (2005) 120 DLT 397 : (2005) 82 DRJ 286

Hon'ble Judges : Rekha Sharma, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Rama Arora, for the Appellant; Nemo, for the Respondent

Judgement

Rekha Sharma, J.—The National Small Scale Industries Corporation Limited (in short called NSIC) which is a Government of India Undertaking, with a view to promote small scale industries, supplies machinery to small entrepreneurs. One of the beneficiaries of the said scheme was Shri Takdir Singh who is respondent before us. On 8.5.1991 the NSIC supplied to the respondent three lathe machines and on 31st May, 1991 the parties entered into a Hire Purchase Agreement. The payment towards the hire charges for the said machines was to be made by way of thirteen half- yearly Installments. The first Installment, as per the terms of the Agreement, was for Rs. 17,113/- and it was payable on or before 1st July, 1992. The remaining twelve Installments were for Rs.10,550/- each and were payable after every six months. The respondent however, committed default in making the payment towards Installments due. In fact, he made no payment on due dates against any of the Installments. He had issued three cheques dated 28.2.1995, 30..1996 and 30.8.1997 for a sum of Rs.3000/-,Rs. 1000/- and Rs. 1000/- respectively. All these three cheques on presentation were dishonoured on account of insufficient funds. Thereafter he sent a letter dated 25.11.1998 to the appellant and along with a cheque of Rs. 2000/- Not a single cheque issued by him was in terms of the Hire Purchase Agreement in as much as each Installment was of Rs. 10,550/- while the

cheques issued were for a paltry sum of Rs. 1000/- to 3000/-. Faced with this situation and the defaults so committed by the respondent the NSIC which is appellant before us instituted a suit against the respondent for the recovery of Rs.1,42,813/- towards the hire charges along with interest at the rate of 16% per annum and also for the recovery of machines or in the alternative a decree in the sum of Rs. 25,050/-

2. The respondent though served did not put in appearance and as such he was proceeded ex- parte. The learned Trial Judge after having recorded ex parte evidence dismissed the suit solely on the ground that it was barred by limitation. The learned Trial Judge proceeded on the basis that the cause of action accrued in favor of the NSIC from the date of the Agreement of Hire Purchase and that the prescribed period of limitation for filing the suit was three years, which when computed from 31st May, 1991 expired on 31st May, 1994. The suit was instituted by the NSIC on 12th October, 2000 and as such it was held to be barred by limitation.

3. It was argued before the learned Trial Judge that the cheques which were issued on 28th February 1995, 30th June, 1996 and 30th August, 1997 even though were dishonoured had the effect of extending limitation for a further period of three years in terms of Section 19 of the Limitation Act, 1963. It was further argued that the letter of the respondent dated 25.11.1998 and the cheque of Rs. 2000/- sent along with it constituted acknowledgment in terms of Section 18 of the Limitation Act and, Therefore, the said letter also had the effect of extending limitation by three years. The Trial Court after considering Sections 18 and 19 of the Limitation Act felt that neither the cheques nor the letter dated 25.11.1998 promising to pay the future Installments regularly were of any help to the appellant as the cheques and the letter were issued after the period of limitation had already expired and that the benefit of these Sections could be availed of by the appellant only if the respondent had issued the cheques or the so-called letter of acknowledgment before the expiry of the period of limitation which the learned Judge felt was 31st May, 1994.

4. Aggrieved by the judgment and decree, the National Small Scale Industries Corporation Limited has preferred this Regular First Appeal.

5. Notices of the appeal were issued to the respondent which were served upon him and he also entered appearance through his counsel but when the matter was taken up for hearing, none appeared for him. We, thus, did not have the benefit of what he wanted to say.

6. Undoubtedly, the agreement was executed between the parties on 31st may, 1991. The relevant part of the Clause dealing with requirement to pay Installments is as under:-

"the Hirer hereby agrees and undertakes to pay to the owner at X the Head Office of the owner situated near Okhla Industrial Estate, New Delhi-20 X its Regional Office situated at New Delhi, B.O at Ludhiana or at such other place or

places as may be so directed by the owner in that behalf from time to time. Rupees sixteen thousand seven hundred twenty three)(Rs.16,723/-) on or before 1st day of July, 1992 as the first Installment of hire rent for the said property and thereafter shall punctually pay the rest of the Installments of hire rent, the value of each of such rest of the Installments being Rupees ten thousand five hundred and fifty only (Rs. 10,550/-) on or before 1st day of each July and January of each year, the payment of the second Installment of hire rent to be made on the 1st day of January, 1993 until the total of such payments together with the payments, made in respect of the above said first Installment shall amount to aggregate to Rs one lac fifty seven thousand three hundred fifty one only (Rs. 1,57,351/-)."

7. As would be borne out from a bare perusal of clause reproduced above, the first Installment became payable on or before 1st July, 1992. The next Installment became due on 1st January, 1993 and in this manner each subsequent Installment was payable after the expiry of every six months. Since the first Installment became payable w.e.f. 1st July, 1992 and was not paid by that date, Therefore cause of action for the recovery of that Installment accrued to the appellant when that Installment became due. In this manner the cause of action for the subsequent Installments arose only when those particular Installments became due. Thus, we feel that the learned Trial Judge was wrong in saying that the cause of action accrued for the entire amount of Installments from the date of execution of the agreement. To make things clear, we feel that cause of action accrued separately with regard to each and every Installment only when that particular Installment became due and the period of limitation for that particular Installment will be three years commencing from the date that particular Installment became payable. This is how the period of limitation is to be computed and, if it is so computed, the cheques in question and so also the letter written by the respondent may urn out to be relevant requiring reconsideration. Of course, we are not returning any finding that the cheques and the letter in question would extend the period of limitation. We are leaving to the learned Trial Judge to consider this aspect.

8. Since the learned Trial Judge has not given finding on the merits of the suit and has decided the same only on the point of limitation and as we feel for the reasons stated above that the question of limitation needs to be given a fresh look in the light of what has been observed by us, it has become necessary for us to remand the appeal under Order 41 Rule 23 CPC with a direction to the Trial Court to re- admit the suit under its original number in the Register of Civil Suits and to proceed with the suit in accordance with law.