

(1997) 11 DEL CK 0045
In the Delhi High Court
Case No : Suit No. 2061 of 1988

National Small Industries Corporation Ltd.	APPELLANT
Vs	
Tenmand Engineers and Others	RESPONDENT

Date of Decision : 06-11-1997

Acts Referred:

Citation : (1997) 11 DEL CK 0045

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Mr. Alakh Kumar, for the Appellant;

Judgement

C.M. Nayar, J.—The plaintiff has filed the present suit against the defendants there-by praying for the following relief?s:

"a) That a decree for the amount of Rs. 75,520/- being the arrears of installments of hire rent and interest on over due payments and other charges etc. be passed against the defendants jointly and severally and in favor of the plaintiff.

b) that a decree for the recovery of the possession of the machines hired or in the alternative its residual value amounting to Rs. 35,000/- be passed in favor of the plaintiff and against the defendants jointly and severally in case delivery of the possession of the machine cannot be had;

c) Pendent elite and future interest at the rate of 16 1/2 per cent annum be allowed to the plaintiff on the amounts claimed from the date of filing of suit till the realisation of the decretal amount;

d) cost of the suit may be allowed to the plaintiff, and

e) that any other relief which this Hon"ble Court deems fit may be allowed."

2. The plaintiff is a Government Company as defined under the companies Act, 1956 and is registered as a joint stock company under the Indian companies Act

having its Registered Office near Okhla Industrial Estate, Okhla, New Delhi-110020. Shri B.L. Malhotra is one of the Principal officers of the company and is its General Attorney who is able to depose as to the facts of the case derived from the records of the company maintained in the office and is competent and authorised to sign and verify the plaint and to file the suit. 2. With a view to promote development of small Scale Industries in the country, the plaintiff provides plant, machinery, tools etc. to the entrepreneurs in the Private Sector on hire purchase basis on the prescribed rate of interest.

3. Defendant No.2 is the Sole proprietor of the business carried on in the name and style M/s. Tenmand, Engineers, the defendant No. 1.

4. The brief facts of the case are that defendant No.1 approached the plaintiff to take on hire the following machines:

- a) Soap making plant
- b) Heating Oven for Soap industries

At the approach and request of the defendant No. 1 the plaintiff agreed to give on hire purchase the following machines:

- a) Soap making plant as per order No. D/3030/81 dated 1.6.1981.
- b) Heating Oven for Soap Industries as per Order No. D/3031/81 dated 1.6.81.

5. It is alleged that on 11.9.81 the agreement was entered into between the plaintiff and the defendant No.1 to give and take on hire One Soap making plant and/or equipment as described in Schedule-1 of the said agreement on the terms and conditions mentioned therein. The agreement was executed as plaintiff being the owner and the defendant No.1 being the hirer. The machine was supplied to defendant No.1 vide delivery Note No.230 dated 20.11.1981. The hire purchase value of the machine and/or equipment being Rs.64,992/- inclusive of insurance charges and further according to the terms of the agreement the defendant No.1 was required to pay to the plaintiff the first installment of Rs.8,882/- inclusive of insurance charges on or before the 1st day of June, 1983 and the subsequent half yearly installment were to be paid in the sum of Rs.4,365/- inclusive of insurance charges on or before the 1st day of each December and June of each year till the payment of entire hire purchase price with the number of installments being 13.

6. It is further alleged that on 11.9.81 another agreement was entered into between the plaintiff and the defendant No.1 to give and take on hire one Heating Oven for Soap Industries and/or equipment as described in Schedule-I of the said agreement on the terms and conditions mentioned in the agreement. The agreement was executed as plaintiff being the owner and the defendant No.1 being the hirer. The machine was supplied to the defendant No.2 vide delivery Note No.209 dated 5.11.1981. The hire purchase value of the machine and/or equipment being Rs.12,976/- inclusive of insurance charges and further

according to the terms of the agreement the defendant No.1 was required to pay to the plaintiff the 1st installment of Rs. 1,508/- inclusive of insurance charges on or before the 1st day of May, 1983 and the subsequent half yearly installments were to be paid in the sum of Rs.741/- inclusive of insurance charges on or before the 1st day of each November and May of each year till the payment of entire hire purchase price with the number of installments being 13. Defendant No.1 also agreed under clause 7 of the Agreement that in case defendant No.1 failed to pay any installment of hire on its due date, it would be liable to pay interest at the rate of 16.5% per annum on such defaulted installments or part there-of as the case may be until payment.

7. Defendants No.3 and 4 are sureties and executed the agreement as sureties whereby they undertook to observe and perform all the terms and conditions and covenants contained therein. Under Clause 4 of the above said Hire purchase agreements the sureties agreed that the guarantees shall not be determined or in any way prejudice by any absorption of by the owner or by any amalgamation thereof or therewith but shall ensure and be available for and by the absorbing or amalgamating Corporation of concern. The sureties also agreed that the owner shall be entitled to act as if the first surety and the second surety were the principal debtors to the owner for all payments and covenants guaranteed by them as aforesaid to the owner. The defendants 3 and 4 also agreed to pay on demand to the owner, the whole of such installment/installments of hire, rent and other moneys which shall become due to the owner. The defendants have failed to keep the promise to pay the outstanding installments due to the plaintiff and have failed to make payment of the installments as and when they fall due. Further facts are enumerated in paras 15 to 27 which may be reproduced as under:

"15. That vide letter dated 9.6.1983 the plaintiff informed the defendant No.1 that an amount of Rs.8,882/- was due and outstanding against the Soap making plant. Consequently the plaintiff called upon the defendant No.1 to deposit the same immediately along with interest and other charges.

16. That vide letter dated 16.8.1983 the plaintiff again informed the defendant No.1 that an amount of Rs.10,390/- was due and outstanding against the defendant No.1 and consequently called upon the defendant No.1 to remit the same along with interest by 25.8.1983 to avoid legal action.

17. That the defendant No.1 sent a cheque for Rs.2,000/- dated 15.9.1983 towards the amount due and outstanding. The said cheque was returned by the bankers of the defendant No.1 with the remarks "Not arranged for".

18. That vide letter dated 14.11.1983 the plaintiff informed the defendant No.1 that when the officer of the plaintiff was at Jodhpur the defendant No.1 had promised to pay the amount due and outstanding by 27.9.1983. The plaintiff also informed that the cheque dated 15.9.1983 had been dishonoured and consequently the plaintiff called upon the defendant No.1 to send the bank draft

for Rs.10,000/- by 25.11.1983 to avoid seizure of the machines.

19. That vide telegram dated 16.3.1984 the plaintiff informed the defendant No.1 that an amount of Rs.15,496/- was due and outstanding against the defendant No.1 and consequently called upon the defendant No.1 to pay the same immediately to avoid taking possession of the hired machines.

20. That the defendant No.1 sent a cheque for Rs.1,000/- dated 25.8.1984 as part payment towards the amount due and outstanding. The said cheque was dishonoured by the bankers of the defendant No.1 with the remarks "Refer to drawer". The defendant No.1 also sent a cheque dated 28.9.1984 for Rs.1,000/- as part payment towards the amount due and outstanding. The said cheque was also dishonoured by the bankers of the defendant No.1 with the remarks "Refer to drawer".

21. That vide letter dated 23.1.1985 the plaintiff informed the defendant No.1 that both the cheques of Rs.1,000/- had been dishonoured. The plaintiff also reminded the defendant No.1 that during the visit of its representative the defendant No.1 had assured that it will send a payment of Rs.5,000/- in January, 1985. The plaintiff informed the defendant No.1 that the said payment of Rs.5,000/- had not been received by the plaintiff. The plaintiff further informed the defendant No.1 that an amount of Rs.75,000/- was approximately due and outstanding against the defendant No.1 in respect of both machines and consequently called upon the defendant No.1 to make substantial payment by the first week of February, 1985 to avoid legal action.

22. That vide letter dated 5.2.1985 the defendant No.1 informed the plaintiff that it could not pay the installments and other charges due to certain compelling reasons. The defendant No.1 further assured plaintiff that the business had picked up and would pay the amount due and outstanding in the year 1985-86. The defendant No.1 also sent two cheques each of Rs.2,500/- as part payment towards the amount due and outstanding. The said cheque dated 15.2.1985 and 26.2.1985 each of Rs.2,500/- were dishonoured by the bankers of the defendant No.1 with the remarks "Refer to drawer".

23. That vide letter dated 26.4.1985 the plaintiff informed the defendant No.1 that to clear the dues it had assured the plaintiff that it would be making payment of at least of Rs.1,000/- every month regularly. The plaintiff further informed the defendant No.1 that no payment had been made during April, 1985. Consequently the plaintiff called upon the defendant No.1 to make a payment of Rs.2,000/- immediately as part payment towards the amount due and outstanding.

24. That the defendant No.1 sent a cheque for Rs.2,000/- dated 30.3.1986 as part payment towards the amount due and outstanding. The said cheque was dishonoured by the bankers of the defendant No.1 with the remarks "Exceeds arrangements".

25. That vide telegram dated 4.11.1986 the plaintiff called upon the defendant No.1 to make payment of the amount due and outstanding immediately to avoid re-possessing of the hired machines.

26. That again vide letter dated 22.12.1986 the plaintiff informed the defendant No.1 that an amount of Rs.66,480/- was due and outstanding against the defendant No.1 and consequently called upon the defendant No.1 to make the payment immediately to avoid unpleasant situation. The same request was made by the plaintiff vide letter dated 19.2.1987 and 23.5.1987.

27. That vide letter dated 26.10.1987 the plaintiff informed the defendant No.1 that an amount of Rs.58,180/- plus other charges was due and outstanding against the defendant No.1 and consequently called upon the defendant No.1 to pay the same with all other charges to avoid legal action."

8. It is submitted that a legal notice was issued to the defendants dated June 12,1988 terminating the said hire purchase agreements thereby demanding payment of the outstanding dues of Rs.75,520/- as on 29th February, 1988. The details of the outstanding amounts against the defendants in respect of Soap Mailing Plant and Heating Oven for soap Industries are mentioned in para 29 of the plaint. The arrears of hire dues as on 29.2.1988 with the agreed rate of interest and interest on delayed payments and other charges etc. is Rs.75,520/- in respect of the hired machines. It is further stated that the plaintiff claims the possession of the hired machines under Clause 2 of the agreement and in case the defendants have damaged or destroyed the machines or removed them or for any other reason the machines cannot be handed over back in sound condition the plaintiff is entitled to claim in the alternative, the residual value in respect of the machines as under:

Particulars of the machine Residual value 1. Soap making plant Rs.25,000/- 2. Heating Oven for soap Rs.10,000/- Industries Total Rs.35,000/- The defendants have been using the above said machines but have failed to pay the dues and they have wrongfully and illegally been continuing to withhold and use the machines and thus the value of the machines has been depreciating day by day thereby causing loss to the plaintiff.

9. Summons in the suit were issued and they were duly served. During the course of proceedings defendant No.4 expired and defendant no.3 was impleaded as legal heir vide order dated April 6, 1989. Thereafter defendants failed to appear in Court and vide order dated August 10, 1990 they were proceeded ax parte.

Affidavit by way of ax parte evidence has been filed by the plaintiff.

10. Exhibit P-1 is the General Power of Attorney executed in favor of Shri M.L.Malhotra, the principal officer of the company by Shri J.S. Juneja, the Chairman of the Corporation by which he was authorised to institute the suit. Exhibit P-2 is the Hire Purchase Agreement dated September 11, 1981 executed

between the parties. Defendant No.2 has executed the same on behalf of defendant No.1 and also on behalf of herself. Defendant No.3 and Shri Gopi Krishan Purohit (since deceased) have signed the same as sureties. Another agreement dated September 11, 1981 executed between the parties is Exhibit P-3. Exhibits P-4 to P-15 are the copies of the letters/telegram sent to the defendants by the plaintiff. Exhibits P-16 to P-28 are the original cheques along with banker's dishonored slips and letters sent by the defendants to the plaintiff. The same bears the signature of defendant No.2. The legal notice sent by the plaintiff is Exhibit P-29 and Exhibits P-30 to P-41 are the registered AD receipts etc. Copies of the statement of account of defendants No.1 duly certified are Exhibits P-42 and P-43.

11. I have heard learned counsel for the plaintiff and also perused the documents on record. The defendants have neither appeared in Court nor put forward their defense to repudiate the claim of the plaintiff. The plaintiff has proved the claim and the same is supported by evidence which has been filed by affidavit and the documents on record.

12. Accordingly, I pass a decree in favor of the plaintiff and against the defendants in the sum of the Rs.75,520/- being the arrears of installments of hire rent and interest on over due payments and other charges etc. A decree for the recovery of possession of the machines hired or in the alternative its residual value amounting to Rs.35,000/- is also passed in favor of the plaintiff and against the defendants. The plaintiff shall also be entitled to costs and interest at the rate of 12 per cent per annum on the decretal amount from the date of institution of suit till realisation.