
(1997) 09 DEL CK 0008
In the Delhi High Court
Case No : Suit No. 1096 of 1995

National Small Industries Corporation Ltd.	APPELLANT
Vs	
Vivek Electrodes (India) and Others	RESPONDENT

Date of Decision : 01-09-1997

Acts Referred:

Citation : (1997) 4 AD 94 : (1997) 68 DLT 708

Hon'ble Judges : Lokeshwar Prasad, J

Bench : Single Bench

Advocate : Alakh Kumar, for the Appellant;

Judgement

Lokeshwar Prasad, J.

(1) The plaintiff has filed the present suit for the recovery of the arrears of hire installments and for the possession of the hired machines against the defendants, named above, averring that the plaintiff is a Government Company, registered as a Joint Stock Company under the Companies Act, 1956, having its registered office at Okhla Industrial Estate, Okhla, New Delhi and Shri O.P. Sharma, Regional Manager and one of the Principal Officers of the plaintiff Company is duly authorised to sign and verify the plaint and to institute the present suit on behalf of the plaintiff-Company.

(2) It is stated that with a view to promote the development of small scale industries in the country the plaintiff Company provides plants, machinery, tools etc. to the entrepreneurs in the private sector on hire purchase basis at the prescribed rate of interest. It is further stated that defendant No. 2 is the sole proprietor of defendant No. 1. The defendants, as per the case of the plaintiff, approached and requested the plaintiff to give on hire the machines for increasing their business, being carried on in the name and style of M /s. Vikas Electrodes (India). At the above request of the defendants it is alleged that the plaintiff Company agreed to give on hire Welding Electrode Manufacturing Plant Model: Micro-2T, Welding Transformer, Weighing Machine , Post Grinder and

Piston Drill to the defendants. It is stated that on 14th March, 1991, an Agreement was entered into between the plaintiff and defendant No. 1 to give and take on hire the machines referred to above. The above said Agreement was executed as plaintiff company being the owner and defendant No. 1 being the hirer. In pursuance of the Agreement, the machinery/equipments, referred to above, were supplied to defendant No. 1 vide delivery note dated the 30th March, 1991.

(3) It is averred that according to the terms of the agreement, the hire purchase value of the machines/equipments, inclusive of insurance charges, was Rs. 9,81,015.00 . In terms of the above said Agreement, the defendants were required to pay to the plaintiff company the first Installment of Rs. 67,719 .00 inclusive of insurance charges on or before 1st October, 1992 and the subsequent half yearly installments were to be paid each in the sum of Rs. 67,713.00 inclusive of insurance charges on or before 1st day of April and October every year. The total number of installments to be paid was 13.

(4) In terms of the above said Agreement, the plaintiff, in the event of default in the payment of hire installments or breach of the terms and conditions of the Agreement, was entitled to terminate the Agreement and to retake the possession of the machines in question. As per the provisions of Clause 3 of the above said Agreement, the hirer was given option to purchase the machines in question after 3 years from the date of the Agreement by paying the entire amount of the hire purchase value of the machines and it was only after the full payment that the hirer was entitled to the ownership of the machines in question and until such time, as per the terms of the Agreement, the machines were to remain the sole property of the plaintiff and the defendant was to remain as a hirer and a mere bailee thereof. In terms of the above said Agreement, it was also agreed that in case the hirer failed to pay the installments of hire on due date(s), the hirer would be liable to pay interest @ 18% per annum on such defaulted payment and installments or part thereof until the payment was made.

(5) It is stated that the defendants have failed to keep up the promise and have also failed to make the payment of the installments as and when the same fell due. It is stated that vide letter dated 24th December, 1992, the defendants sent a pay order of Rs. 20,000.00 only as part payment towards the amount due and outstanding and assured/promised to pay the balance amount in the following week. The defendants sent another cheque for Rs. 60,000.00 dated the 16th December, 1992 which on presentation was dishonoured. The plaintiff Company informed the defendants about the cheque being dishonored vide letter dated 29th January, 1993 and called upon the defendants to pay the amount within 15 days. It is stated that vide letter dated 12th March, 1993, the defendants sent a demand draft of Rs. 25,000.00 only as part payment towards the amount due and outstanding. Again the defendants sent a cheque for Rs. 27,000.00 dated the 30th March, 1993 which on presentation was also dishonoured. The above fact of the cheque being dishonoured was informed by the plaintiff Company to

the defendants vide letter dated 12th May, 1993. Vide telegram dated 6th August, 1993, the plaintiff Company called upon the defendants to pay the outstanding amount immediately. It is alleged that vide letter dated 10th August, 1993, the defendants promised/assured/undertook/ agreed to clear the amount due and payable by them to the plaintiff Company but they failed and neglected to make the payment. The plaintiff Company, as per the case of the plaintiff, got served a legal notice dated the 1st December, 1994 on the defendants terminating the said hire purchase agreement and demanding the payment of outstanding amount of Rs. 2,68,822 / - the amount due and outstanding as on 31.3.1994) and also intimating that the failure on the part of the defendants to make the payment to the plaintiff in respect of hire installments, interest and other charges constituted breach of the hire purchase agreement and that the defendants should not only make the payment of the outstanding installments and other charges but should also handed over the possession of the hired machines within 10 days. It is stated that the defendants have failed /neglected/ refused to pay the arrears of hire Installment and other charges and also failed to hand over the possession of the hired machines. It is stated that the arrears of the hire dues as on 31.3.1995 with interest, and other charges payable by the defendants to the plaintiff is to the tune of Rs. 2,86,846.00 . It is further stated that under the terms of the Agreement executed between the parties, the plaintiff Company is not only entitled to claim the balance amount as on 31st March, 1995 but is also entitled to and can claim the possession and custody of the machines which were hired to defendant No. 1 as the machines continued to be the property of the plaintiff Company and in case the defendants have destroyed/damaged/removed the machines or for any other reason the same cannot be handed over back to the plaintiff, then the plaintiff is entitled in the alternative to claim a sum of Rs. 5,41,704.00 being the residual value of the machines.

(6) It has been prayed that a decree for Rs. 2,86,846.00 being the arrears of installments of hire rent and interest on over due installments be passed in favor of the plaintiff and against the defendants jointly and severally. It has further been prayed that a decree for the recovery of the possession of the hired machines or in the alternative, their residual value amounting to Rs. 5,41,704.00 be passed in favor of the plaintiff and against the defendants jointly and severally. The plaintiff Company has also claimed the costs of the proceedings and interest @ 18 % per annum from the date of the filing of the suit till realisation.

(7) As the defendants did not file any written statement despite several opportunities having been given to them, the learned predecessor of this Court vide order dated 26th November, 1996 ordered that the right of the defendants to file written statement in the present proceedings was closed. The learned Counsel for the plaintiff was permitted to adduce evidence in support of the case of the plaintiff by means of affidavits.

(8) The plaintiff Company in support of its case has adduced the evidence by means of affidavit of Shri B .S. Nagarwal, Joint Manager. This witness in his affidavit dated the 4th February, 1997, filed by way of evidence, has fully supported the case of the plaintiff Company. The evidence of this witness, adduced by means of affidavit, has gone on record unrebutted and unchallenged. On the basis of the facts, as disclosed in the affidavit of said Shri B.S. Nagarwal, Joint Manager of the plaintiff Company, filed by him by way of evidence, which has gone on record unrebutted and unchallenged, which I see no reason to disbelieve, in my opinion, the case of the plaintiff Company against the defendants stands amply proved.

(9) In view of the above discussion, a decree for Rs. 2,86,846.00 (Rupees two lacs eighty six thousand eight hundred forty six only) (being the arrears of installments of hi re rent and interest on over due installments) is passed in favor of the plaintiff Company and against the defendants jointly and severally. Further a decree for the recovery of the possession of the hired machines (as detailed in Scheduled I annexed to the Agreement Ex. P-2) or in the alternative their residual value amounting to Rs. 5,41,704.00 is also passed in favor of the plaintiff and against the defendants jointly and severally in case the delivery of the possession of the above said machines for any reason cannot be given to the plaintiff. The plaintiff Company will also be entitled to the costs of these proceedings and interest on the decretal amount @ 18% per annum from the date of the filing of the suit till realisation. Decree Sheet be drawn up accordingly and there after the file be consigned to Record Room.