

**(2002) 09 DEL CK 0156**  
**In the Delhi High Court**  
**Case No : Suit No. 839 of 1997**

|                                             |            |
|---------------------------------------------|------------|
| National Small Scale Industries Corporation | APPELLANT  |
| Vs                                          |            |
| Shree Balaji Plastics and Others            | RESPONDENT |

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**Date of Decision :** 03-09-2002

**Acts Referred:**

**Citation :** (2002) 09 DEL CK 0156

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

**Bench :** Single Bench

**Advocate :** Chetan Dutt, for the Appellant; Nemo, for the Respondent

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## Judgement

Mukundakam Sharma, J.—The present suit is instituted by the plaintiff praying for a decree for recovery of Rs. 5,62,794/- along with pendente lite and future interest and also for recovery of the machinery and cost of the suit.

2. The plaintiff is a Government Company incorporated under the Indian Companies Act. It is engaged in supplying machinery on hire purchase basis to entrepreneurs in order to provide them encouragement for establishing industry. The defendant No.1 has its registered office and factory at village and Post Office Bidasar, District Churu, Rajasthan, of which the defendants No.2 and 3 are the partners.

3. The defendants approached the plaintiff to start a small scale industry under a hire purchase scheme. Being satisfied with the credentials of the defendants, the plaintiff agreed to supply to the defendants 50 mm PP Bag and Sutli Plant for hire purchase value of Rs. 3,79,228/- Pursuant to the contract between the parties, the defendants made the aforesaid supply and the machinery was delivered to the defendants vide delivery note. No.6 dated 25th May, 1989. A Hire Purchase Agreement was signed between the plaintiff and the defendants on 18th May, 1989 for a total hire purchase value of Rs. 3,79,228/-. The first Installment amounting to Rs. 27,655/- was payable by the defendants to the plaintiff on 1st December, 1990 and the second Installment of Rs. 27,646/- was

payable on 1st June, 1991 whereas, the last Installment was due on 1st December, 1996. The defendants, however, failed to keep the undertaking given and the promise made and defaulted in making regular payments. In view of the aforesaid defaults committed by the defendants, the plaintiff sent its officers to visit the defendant firm and it was found that the partners of the firm had no intention to run the unit and the same was found to be closed. It was also found that there was no power connection or infrastructure available for the purpose of running the unit. Accordingly, the account of the defending was ordered to be frozen with effect from 1st April, 1992.

4. The defendants, when contacted, informed the plaintiff that they would surrender the machinery and would settle payment but failed to abide by the said promise. In view of such failure on the part of the defendants, the plaintiff issued a legal notice on 12th July, 1996, terminating the Hire Purchase Agreement entered into with the defendants on 18th May, 1989 and also directed the defendants to pay to the plaintiff an amount of Rs. 4,67,794/- with interest at the rate of 15% as on 30th September, 1995.

5. In terms of the Hire Purchase Agreement, de jure possession of the machines would remain with the plaintiff company. Under Clause 2(vi) of the Hire Purchase Agreement, if the hirer makes defaults in payment of any sum when the same was due, the plaintiff who is the owner of the machines automatically becomes entitled to immediate possession of the hire purchase property as because de jure possession of the machines always remains with the owner, who is the plaintiff. It is also stated that an amount of Rs. 4,67,794/- was due and payable by the defendants as on 30th September, 1995 and accordingly the present suit was filed in this court seeking for recovery of the aforesaid amount and also for a decree for possession of the hired machinery along with pendente lite and future interest and costs.

6. While issuing summons to the defendants, an ad interim injunction was passed restraining the defendants from handing over possession of machinery in dispute to any person other than the plaintiff. Summons were sent for service on the defendants through the Civil Court, Rajasthan and on delivery of the aforesaid summons, the defendants refused to take the said summons. Accordingly, it was ordered that the suit would proceed ex parte as against the defendants. The plaintiff was allowed to lead evidence by filing affidavit in terms of which an affidavit by way of evidence is filed in this court along with some documents. The relevant documents have been also proved in evidence by giving exhibit marks on the said documents.

7. The affidavit by way of evidence is filed by Shri P.V. P. Rao, Development Officer (Law) of the plaintiff Company. He has stated that Shri B.L.Malhotra, who has signed and filed the present suit was the Regional Director of the plaintiff Company and was one of the Principal Officers and, Therefore, was fully conversant with the facts of the case. It is also stated by him that Shri B.L. Malhotra holds the general Power of Attorney in his favor issued by the plaintiff

Company and, Therefore, he is entitled to institute the suit. The Power of Attorney is proved as Exb. P-1. He has also stated that the defendant No. 1 is a partnership concern of which the defendant No.2 and 3 are the partners. The said witness has also proved the Hire Purchase Agreement between the plaintiff and the defendants dated 18th May, 1989. He has also proved the delivery note dated 25th May, 1989 as Exb. P-4, which proves and establishes that the machineries, namely, 50 mm PP Bag and (SIC) Plant for hire purchase value of Rs. 3,79,228/- was delivered to the defendants.

8. The said witness has also stated on oath that the first Installment in terms of the aforesaid Hire Purchase Agreement amounting to Rs. 27,655/- was payable on 1st December, 1990 and the second Installment of Rs. 27,646/- was payable on 1st June, 1991 whereas, the last Installment was due on 1st December, 1996. The defendants defaulted in making regular payments right from the beginning for which the plaintiff had to send its officers to visit the unit of the defendants upon which it was found that there was no power and that no infrastructure was available for the purpose of running the unit, which is proved from the evidence on record. The inspection report has also been placed on record proved as Exb. P-5 (Colly). The witness has also stated that the account of the defendants was ordered to be frozen with effect from 1st April, 1992. The letters written by the defendants informing the plaintiff Company that they would surrender the machinery have been proved as Exb. P-6 (Colly) and the legal notice issued by the plaintiff to the defendants is proved as Exb. P-7 which is dated 12th July, 1996.

9. Reference could also be made to Clause 2(vi) of the Hire Purchase Agreement which provides that if the hirer makes defaults in payment of any sum when the same was due, the plaintiff, who is the owner of the machines, automatically becomes entitled to immediate possession of the hired property as because de jure possession of the machines always remains with the owner, who is the plaintiff. It is also stated that in case the plaintiff is not given possession of the hired machines, in that case the plaintiff is entitled to claim alternatively a sum of Rs. 95,000/- being the residual value of the said amount.

10. The witness has stated that in terms of the Hire Purchase Agreement, the defendants are liable to pay interest at the rate of 15% per annum pendente lite and future interest. The statement of account is proved as Exb. P-8 which proves and establishes that an amount of Rs. 4, 67,794/- is due and payable by the defendants to the plaintiff.

11. The aforesaid evidence on record produced by the plaintiff clearly proves and establishes that the amount of Rs.4,67,794/- along with interest, total amounting to Rs. 5,62,794/- is due and payable to the plaintiff by the defendants on the date of filing of the suit. There is no rebuttal evidence adduced by the defendants and, Therefore, the evidence produced by the plaintiff goes un rebutted and unchallenged.

12. In view of the aforesaid discussion, a decree is passed in favor of the plaintiff and against the defendants making each one of them liable for repayment of the aforesaid amount due and payable to the plaintiff. A decree is also passed in favor of the plaintiff and against the defendants for possession of the hired machinery 50 mm PP Bag and Sutli Plant and upon failure of the plaintiff to get possession of the said hired machinery, a further decree for a sum of Rs.95,000/- is passed in favor of the plaintiff and against the defendants. The plaintiff shall also be entitled to interest at the rate of 12% per annum from the date of decree till realisation along with cost which I assess at the amount for which Court fee has been paid by the plaintiff.