
(2006) 02 DEL CK 0086
In the Delhi High Court
Case No : CCP No. 33 of 2002

Northern Aromatics Ltd.

APPELLANT

Vs

Shahzeb Khan and Others

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Constitution of India, 1950 — Article 215

Citation : (2006) 90 DRJ 23

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Girish Kaul, for the Appellant; Rajesh Banati, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Sikri, J.—The petitioner has filed CS(OS) No. 1903/1999 for recovery of Rs. 32,83,018 against M/s Bansal Cosmocare Ltd. It is, inter alia stated that the respondent admitted its liability vide letters dated 12th August, 1997 and 12th November, 1998. When the case was listed for admission/denial, these documents were admitted. Thereafter, the matter was posted before this Court on 1st October, 2001 and following order was passed:

It is contended by counsel for the plaintiff that in terms of the admission made by the defendant in view of exhibit P-2 which is a letter dated 12.11.98 written by the defendant to the plaintiff wherein the defendant has admitted an amount of Rs. 27.65 lakhs to be the balance outstanding to be paid by the defendant to the plaintiff, a decree for a sum of Rs. 27.65 lakhs be passed. At this stage, Mr. Rajesh Benati counsel for the defendant prays for some time to seek instructions.

2. Thereafter, on 17th October, 2001, another order was passed whereby the respondent had agreed to make the payment. This order is in the following terms:

Company Seceretary of respondent is present in person. He undertakes that a sum of Rs. 3 lakhs will be paid on or before 15th of January, 2002 to the plaintiff and thereafter on or before 20th of each succeeding month a sum of Rs. 1 lakh

shall be paid to the plaintiff.

3. Present contempt petition is filed on the ground that despite the aforesaid "undertaking" given by the respondent, to make the payment of Rs. 3 lacs on or before 15th January, 2001, the respondent has committed default. No subsequent payments are also made.

4. The respondents are Mr. Shahzeb Khan, Company Secretary of the respondent company who had given the undertaking, Mr. S.B. Gupta, Director and the respondent company itself.

5. In reply filed to this contempt petition, the respondents have submitted as under

(a) Case of the petitioner does not fall within the ambit of Article 215 of the Constitution.

(b) There is no willful or intentional disregard to the Court order.

(c) The Court has not passed any order against the respondents either directing them to do something or restraining them from doing a particular act and, therefore, there is no contempt. It is also stated that operative part of the affidavit in respect of the contempt petition is not as per law and, therefore, petition is liable to be rejected on this ground also.

6. On merits, it is explained that statement was made on 17th October, 2001 keeping in view that the respondents were expecting some payments (in the form of commissions for procuring the orders for other parties) on regular basis. However, since this payment was not received, it was not possible to make payment to the petitioner. Therefore, there is no willful violation.

7. It is clear from the reading of the order dated 1st October, 2001 that the Court was of the opinion that in view of the acknowledgment of debt by the respondents, a sum of Rs. 27.65 lacs was the outstanding amount payable by the respondents to the petitioner. The counsel for the respondents took time to seek instructions. On 17th October, 2001 the respondents agreed to make payment of the said amount and requested for payment of amount in instalments. No doubt the order dated 17th October, 2001 uses the expression "undertakes" it is not the form of undertaking given to the Court and accepted by the Court. In the case of Babu Ram Gupta Vs. Sudhir Bhasin and Another, the Supreme Court held that any person appearing before the Court can give an undertaking in two ways: (i) by filing an application or an affidavit clearly setting out the undertaking given by him and incorporated in the Court order, or (ii) by a clear and express oral undertaking given by him and incorporated in the Court order. But for the statement of the respondents, the Court may have passed the decree on that date. May be cause of this reason the respondents agreed to make the payment. It would have assumed the nature of undertaking only if there was an acceptance thereof by the Court and the Court would have recorded that he would be bound by the same. Even otherwise, it is explained that the

said statement was given that respondents were expecting some payments and, therefore, could not make the payment as the payments were not received.

8. By judgment and decree passed in main suit [CS(OS) No. 1903/1999], I have decreed the suit itself. Therefore, I am off the view that having regard to the entirety of circumstances, it is not necessary to take any further cognizance of this contempt petition which is disposed of accordingly.