(1999) 11 DEL CK 0035

In the Delhi High Court

Case No : Suit No. 2168/97

Om Prakash APPELLANT

Vs

Chaman Industries and Others RESPONDENT

Date of Decision : 05-11-1999

Acts Referred:

Citation : (2000) 2 AD 168

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Vijay Kishan and Mr. Vikram Jetly, for the Appellant;

Judgement

Mukul Mudgal, J.—This is a suit on behalf of the plaintiff praying for passing a decree of Rs. 34,16,552.35/- with costs and future interest at the rate of 21 and a half percent per annum from the date of the suit till realization.

2. The plaintiff, Shri Om Prakash is the Sole Proprietor of M/s Om Prakash Suresh Kumar. The defendant No. 1 is a partnership firm and defendants 2-4 are its partners.

3. The plaintiff carried on business as a Commission Agent in grain market Narela Mandi, Delhi and was allotted a shop in the said market by the Agriculture Produce Market Committee, Narela, Delhi.

4. It is the plaintiff''s case that he was also granted the requisite license by the appropriate authority for the purpose of purchase and sale of notified agriculture produce within the notified market. Though defendant No. 1 does the business of rice hushing but it did not have or possesses any such shop or license for purchase or sale of notified agricultural produce within the notified market.

5. It is stated in the plaint on behalf of the plaintiff that defendant No. 1 would purchase paddy in Narela Mandi through plaintiff and plaintiff would discharge payments/pay price for the said paddy, purchased by and at the instance of defendant No. 1 and then put the bulk of said paddy purchased into bags and

send the same to defendant No. 1 and the said bills would include the price paid by the plaintiff for the said paddy and Commission thereon at the rate of 1.25% and the charges incurred and borne by the plaintiff in sending the said consignments to defendant No. 1. In fact a bill was prepared for every lot purchased by defendant No. 1 through plaintiff and separate builties were prepared for every truck load sent to defendant No. 1. The defendant No. 1 would receipt the consignment by means of challans prepared by defendant No. 1 in token of receipt of the said consignment. It is further stated that a sum of Rs. 14,90,682.33 P. as principal amount, that is balance unpaid amount of price towards the aforesaid goods in question is due and payable by the defendants to the plaintiff and a sum of Rs. 19,26,870.02 P., is due from and payable by the defendants to the plaintiff towards interest on the amounts of the price of goods in question which remained unpaid by the defendants within 6 days from the date of the bills in respect of the aforesaid goods in question.

6. Despite the service of the summons of this suit, the defendants did not appear before this Court. The defendants were proceeded ex-parte as per this Court''s Order dated 2nd September, 1998. Thereafter the evidence by way of affidavit was filed on 30.11.1998 by Shri Om Prakash, the plaintiff to prove his case. The averments made in the plaint have thus been supported by the said evidence on affidavit.

7. In Para 11 of the affidavit dated 30.11.1998, the plaintiff has averred that a sum of Rs. 14,90,682.33 P. is due to him from the defendants towards the balance price of the goods supplied and in connection therewith and a sum of Rs. 19,26,870.02 P. is due and payable as interest by the defendants for the period ending with 30th September, 1997. All the photocopies of bills mentioned in Para 11 of the said affidavit have been collectively exhibited as P-1. The details regarding supply of the quantities of goods sent in bags and kattas Along with the weight of said bags kattas and number of builties accompanying the said supply in bags and kattas and receipt numbers issued by defendant No. 1 in token of the receipt of the said goods in bags and kattas are given in Para 11-C of the said affidavit dated 30.11.1998. All the receipts and original builties Along with endorsement of receipt on the back, issued by defendant No. 1, acknowledging the receipt of the goods are collectively exhibited as P.4.

8. It is the plaintiff''s case that before filing the present suit, he sent a notice dated 3.9.1997 (Ex. P-5) through his Advocates to the defendants , claiming 21 and half per cent per annum interest on the suit amount of Rs. 34,16,552.35 P. This assertion of the plaintiff is not denied by the defendants in their reply dated 4.10.1997 (Ex. P-6) to the plaintiff''s notice dated 3.9.1997 (Ex. P-5).

9. Accordingly, the plaintiff is entitled to a decree as prayed. The suit is decreed. A decree is passed for a sum of Rs. 3416552.35/- in favor of the plaintiff and against the defendants. The defendants jointly & severally are also directed to pay pendente lite interest from the date of the filing of the suit to the date of decree @ 21 and a half per cent per annum on the suit amount of Rs

34,16,552.35/-. The plaintiff is also entitled for interest at 12% per annum from the date of the decree till realization as the transaction is commercial in nature.

10. Decree sheet be drawn up accordingly.

11. In view of the above, the suit stands disposed of with no order as to costs.