(2015) 09 DEL CK 0356

In the Delhi High Court

Case No : CS(OS) 195/2011 and I.A. 1297/2011, 1298/2011, 2131/2011, 4203/2011, 18307/2011 and 9923 of 2014

Sany Heavy Industry India Pvt. Ltd. APPELLANT

Vs

Tata Capital Limited RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 37 Rule 37, 34
Interest Act, 1978 — Section 3

Citation : (2016) 1 BC 56 : (2015) 234 DLT 677

Hon'ble Judges : Hima Kohli, J.

Bench : Single Bench

Advocate : P.D. Gupta, Abhishek Gupta, Dinesh Sabharwal and Niteen Sinha, Advocates, for the Appellant; Joginder Sukhija and Karuna Chhatwal, Advocates, for the Respondent

Judgement

Hima Kohli, J.—The plaintiff has instituted the present summary suit against the defendant/Tata Capital Limited for recovery of a sum of Rs. 2,35,05,500/-. As per the averments made in the plaint, a company by the name of M/s. Aggcon Equipments International (P) Limited (hereinafter referred to as ''M/s. Aggcon'') based in Faridabad, Haryana had issued a purchase order dated 16.4.2010 in favour of the plaintiff for supply of one unit of Piling Rig on a High Seas Sale basis at the price of Rs. 2,21,75,000/-. As per the terms and conditions of payment mentioned in the purchase order, M/s. Aggcon had agreed that the payment for the Piling Rig (hereinafter referred to as ''the equipment'') shall be released by its financier, Tata Capital Ltd., the defendant herein for 100% value of the equipment. The said payment was to be released within a period of 180 days of the payment of customs duty in respect of the equipment. On 21.4.2010, M/s. Aggcon had issued a release order in favour of the plaintiff undertaking/ assuring that on delivery of the equipment, the payment would be made within 179 days of the payment of the customs duty/customs clearance. The equipment was supplied by the plaintiff to M/s. Aggcon on 28.4.2010 and the credit period of 179 days reckoned from the said date would have expired on 26.10.2010.

2. In terms of the purchase order, the defendant was required to release the payment of Rs. 2,21,75,000/- to the plaintiff on or before 26.10.2010. However, one day prior to the expiry of the 179th day, on 25.10.2010, M/s. Aggcon instituted a suit for declaration and injunction against the plaintiff and the defendant herein in the Court of the Civil Judge, Senior Division, Faridabad and prayed for an interim injunction for restraining the defendant herein from releasing the amount financed by it, in favour of the plaintiff. It is an undisputed position that no interim order was passed in favour of M/s. Aggcon in the aforesaid proceedings and, therefore, there was no legal impediment on the defendant to honour the Release order dated 21.4.2010.

3. Counsel for the plaintiff states that after exchanging some correspondence with the defendant, when the plaintiff gathered an impression that the defendant was wrongfully withholding the amount payable to it only on the ground that it would have to await the decision in the suit instituted by M/s. Aggcon, it was compelled to institute the present suit under Order 37 , CPC for recovery of a sum of Rs. 2,35,05,500/-. Out of the aforesaid amount, the principal amount is to the tune of Rs. 2,21,75,000/- and the interest component is of Rs. 13,30,500/-, calculated by the plaintiff @ 24% per annum from 27.10.2010, the date on which the period of 180 days for making tire payment for the equipment had expired, till the date of institution of the suit.

4. The records reveal that the suit was listed for admission on 28.1.2011, on which date summons were issued and the Counsel for the defendant had entered appearance and accepted notice. Thereafter, memo of appearance was filed by the defendant within the stipulated time, followed by a leave to defend application. On 9.8.2011, at the request of the Counsel for the defendant, permission was granted to the defendant to deposit in Court, the principal amount payable to the plaintiff under the purchase order dated 16.4.2010 and the said amount was directed to be placed in a FDR. On 29.9.2011, it was ordered that subject to the plaintiff furnishing a bank guarantee for the full amount deposited by the defendant, the same shall be released in its favour.

5. On 23.11.2011, Counsel for the plaintiff had submitted that no further adjudication may be required in the present suit in view of the fact that M/s. Aggcon had paid to the defendant, the value of the equipment financed by it. The defendant was directed to clarify as to the extent of money outstanding and payable to it by M/s. Aggcon. On 14.3.2012, Counsel for the defendant had stated on instructions that a sum of Rs. 1,60,00,000/- (approx.) inclusive of the principal amount remained to be recovered from M/s. Aggcon.

6. Finally, on 28.5.2014, Counsel for the defendant had informed the Court that M/s. Aggcon had paid the entire amount to his client. In view of the above, the bank guarantees offered by the plaintiff for seeking release of the amount deposited by the defendant, were permitted to be released/discharged and the

Court had observed that the only remaining dispute was with regard to the interest component and the costs in the suit that the plaintiff was pressing. Counsel for the plaintiff had stated that he would leave it to the Court to assess the rate of interest payable by the defendant. However, Counsel for the defendant had resisted the claim of the plaintiff for payment of interest on the principal amount.

7. Even today, learned Counsel for the defendant asserts that his client is not liable to pay any interest on the principal amount to the plaintiff for the reason that its customer, M/s. Aggcon had instituted a civil suit for cancellation of the purchase order. The said submission is however not borne out from a perusal of the averments made in the plaint and the reliefs prayed for by M/s. Aggcon in the civil suit instituted by it against the plaintiff and the defendant herein.

8. The prayer made by M/s. Aggcon in the aforesaid suit was for a decree of declaration that the termination of the subsequent purchase order for 10 Rigs by the plaintiff herein vide letter dated 26.8.2010, is illegal and not binding. As an interim measure, M/s. Aggcon had requested the Court to restrain the defendant herein from releasing the amount financed by it for purchasing the equipments from the plaintiff herein, vide Release orders dated 21.4.2010 and 11.5.2010 respectively. Thus there was no dispute that the equipment in question was duly supplied by the plaintiff to M/s. Aggcon vide purchase order dated 16.4.2010 and under the said purchase order, the defendant was under an obligation to release the payment to the plaintiff within 180 days. The said fact is substantiated from the conditions recorded in the Release order dated 21.4.2010 issued by the defendant in favour of the plaintiff. The only condition imposed by the defendant in the said Release order was that in the event the customer cancels the order, full payment along with interest should be released to it.

9. It is no one''s case that the purchase order dated 16.4.2010 was ever cancelled by M/s. Aggcon. The relief sought by M/s. Aggcon in the civil suit instituted by it was to declare as null and void, the termination by the plaintiff of the subsequent purchase order dated 26.8.2010 placed by M/s. Aggcon, in respect of 10 other Rigs. It is also a matter of record that ultimately, M/s. Aggcon had paid the entire value of the equipment supplied by the plaintiff to the defendant and in view of the said development, the amount deposited by the defendant in Court was permitted to be released in favour of the plaintiff. Resultantly, the bank guarantees offered by the plaintiff were permitted to be discharged. This leaves the interest on the principal amount claimed by the plaintiff against the defendant and the costs of the suit.

10. Counsel for the plaintiff submits that once the price of the equipment has been released in favour of the plaintiff in terms of the purchaser order dated 16.4.2010 issued by M/s. Aggcon, there can be no justification for denying interest to the plaintiff at the market rate or at a reasonable rate, from the date when the amount had become due and payable, till the date the defendant had deposited the said amount in Court. In support of the said submission, he relies

on the decision of the Supreme Court in the case of Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, .

11. Per contra, Counsel for the defendant states that the delay in releasing the amount to the plaintiff was only on account of the pendency of the civil suit instituted by M/s. Aggcon against the defendant and the plaintiff herein. He states that the defendant had demonstrated its bona fides, by volunteering to deposit the principal amount, as recorded in the order dated 9.8.2011, which amount was duly deposited on 24.8.2011. He contends that the aspect of payment of interest, if any, to the plaintiff is a triable issue and it ought to be taken to trial.

12. The Court has considered the rival submissions of the Counsel for the parties in respect of the interest claimed by the plaintiff on the principal amount.

13. It has been consistently held by Courts that payment of interest is only a consequence of passing a money decree. Normally, when a money decree is passed, it is essential that interest be granted for the period during which the money had remained due but could not be utilised by the person in whose favour the order of recovery of money was passed. As a matter of fact, interest is only a form of restituting a party who has been denied the right to utilise the money due on account of the fact that the said amount has been utilised by the person in whose hands the money had remained.

14. Though there is no provision for payment of interest on the awarded sum, Section 3 of the Interest Act, 1978 confers powers on the Court to allow interest and further, Section 34 of the CPC also empowers the Court to award interest on a money decree. As held by the Supreme Court in the case of Thazhathe Purayil Sarabi (supra), while passing a decree for payment of money, the Court is entitled to grant interest at the current rate of interest or the contractual rate, as it deems reasonable to be paid on the principal sum adjudged to be payable from the date of the claim or from the date of the order or passing of the decree for recovery of the outstanding dues. This is not a triable issue as claimed by the Counsel for the defendant and can be decided on the facts of the case.

15. In the facts of the present case, though the principal amount was deposited by the defendant in the Court on 24.8.2011, the money had passed into the hands of the plaintiff only on 19.12.2011. There is no dispute about the period for which interest can be claimed by the plaintiff for the reason that the purchase order dated 16.4.2010 issued by M/s. Aggcon had stipulated that 100% value of the equipment will be released by the defendant in favour of the plaintiff on the 180th day, reckoned from the date of the customs clearance. Since the equipment in question was delivered to M/s. Aggcon on 28.4.2010, the period of 179 days reckoned from the said date would have expired on 26.10.2010. Therefore, 27.10.2010 can safely be stated to be the date from which the defendant became liable to release the price of the equipment in favour of the plaintiff, which amount was finally received by the plaintiff only on 19.12.2011.

However, the Court is inclined to restrict the period for which interest is payable to the plaintiff, from 27.10.2010, i.e., the 180th day from the day of custom clearance, to 24.8.2011, the date on which the defendant had deposited the money in the Registry. It is a different matter that the procedural formalities for the amount to be actually released by the Registry in favour of the plaintiff, had taken some time.

16. Coming to the interest factor, the plaintiff has prayed for pendente lite and future interest @ 24% per annum. However, this Court is of the opinion that it would meet the ends of justice if the interest is calculated @ 10% per annum on the principal amount deposited by the defendant in Court, so as to recompense the plaintiff for being denied the right to utilise the money for the period between 27.10.2010 to 24.8.2011.

17. Accordingly, the defendant is held liable to pay interest to the plaintiff @ 10% per annum on the principal amount of Rs. 2,21,75,000/-, for the period from 26.10.2010 to 24.8.2011, within one month from today. If the said amount is not paid within the timeline stipulated hereinabove, then the interest component shall be enhanced from 10% per annum, to 12% per annum from 18.10.2015, till the date of realization.

18. The suit is decreed in favour of the plaintiff on the lines noted above, along with costs and litigation fees quantified as Rs. 30,000/-. Decree sheet be drawn accordingly. The suit is disposed of alongwith the pending applications.

