
(2005) 02 DEL CK 0158

In the Delhi High Court

Case No : IA No.4016 of 2003 in CS (OS) No. 2191 of 1998

Steel Authority of India Ltd.

APPELLANT

Vs

Century Tubes Ltd. and Others

RESPONDENT

Date of Decision : 11-02-2005

Acts Referred:

Citation : (2005) 117 DLT 655 : (2005) 80 DRJ 689

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Dipak Bhattacharya and Aman Bhattacharya, for the Appellant;
Sidharth Ray, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—This is defendant No. 3's application under Order xxxvII Rule 3(5) seeking leave to defend the suit filed by the plaintiff.

2. It is stated in the application that defendant No. 3 neither stood as guarantor nor executed any document to secure any amount to the plaintiff. It is stated in the application that defendant No. 3 never signed any cheque forming, basis of the plaint. It is stated that defendant No. 3 resigned as a Director of defendant No. 1 on 2.11.95, much prior to the date when transactions took place between the plaintiff and defendant No. 1.

3. Matter had been listed before me on 4.2.2005. Since the suit pertains to the year 1998 and request was made for adjournment, I had declined and required parties to file written submissions within three days. Unfortunately, till date, neither party has filed any written submissions.

4. Suit is for recovery of Rs. 2,36,02,600/- (Rupees two crores, thirty six lacs, two thousand and six hundred only). Pendente lite and future interest has been claimed @ 27% per annum.

5. Suit is based on the averment that defendant No. 1, a company registered

under the Companies Act purchased steel from the plaintiff. Negotiations were held by defendant No. 2 and 3. It is stated that defendants No. 2 and 3 claimed to be the Managing Director and Director respectively of defendant No. 1. They issued 22 post dated cheques totalling Rs. 2,07,95,253/-. Cheques were issued under signatures of defendants No. 2 and 3 from the account of defendant No. 1. It is averred that all the cheques were returned unpaid by the banker of defendant No. 1.

6. As per the plaint, total amount under the 22 cheques is Rs. 2,07,95,253/-. Thus, principal amount claimed is Rs. 2,07,95,253/-. Interest calculated @ 27% p.a. has been stated to be Rs. 28,07,347/-. In this manner, suit seeks a decree in sum of Rs. 2,36,02,600/-.

7. I do not find any averment in the plaint that defendant No. 3 stood as guarantor. Merely because it is alleged in the plaint that defendant No. 3 was a Director of defendant No. 1 would not make him liable for any amount due from defendant No. 1 to the plaintiff. Even the allegation that defendant No. 3 signed some of the cheques drawn on the account of defendant No. 1 would not make him liable in a civil action for recovery of amounts due from defendant No. 1 to the plaintiff.

8. A company is an entity distinct from its Directors and Shareholders. In the absence of an instrument fastening liability, liability can be fastened on Directors of a company only when malfeasance or misfeasance is established. Be that as it may, a suit is maintainable under Order xxxvII as a summary suit, if it falls within any one of the clauses specified under sub Rule (2) of Rule (1) of Order xxxvII CPC. The same reads as under:-

"(a) suits upon bills of exchange, hundies and promissory notes;

(b) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest arising-

(i) on a written contract; or

(ii) on an enactment, where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(iii) On a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only."

9. Another factor may be noted. Pre-suit interest has been claimed @ 27% p.a. This is more than the statutory rate of interest prescribed under the Negotiable Instruments Act in respect of an unpaid cheque. In a suit under Order xxxvII, it is a requirement that the plaintiff has to aver and prima-facie establish that no claim has been made in the suit which is outside the purview of the clauses specified in sub Rule (2) of Rule (1) of Order xxxvII.

10. is is allowed. Defendant No. 3 is granted unconditional leave to defend.