
(2006) 03 DEL CK 0102
In the Delhi High Court
Case No : CS (OS) No. 462 of 2004

Swift Freight Moovers

APPELLANT

Vs

Laso Exports Pvt. Ltd.

RESPONDENT

Date of Decision : 14-03-2006

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2006) 03 DEL CK 0102

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : A.P. Vinod, for the Appellant; None, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This is a suit for recovery of Rs. 33,40,946.00. The defendant did not appear despite service of summons and consequently this Court by an order dated 15.7.2004 directed that the defendant be proceeded with ex parte. The plaintiff was directed to lead its evidence. The plaintiff consequently filed an affidavit by way of evidence as well as various original documents. The documents have been marked as Exhibits PW1 to PW295. Certain photo-states of the documents were also filed and they have marked 1 to 107.

2. The allegations contained in the plaint indicate that the plaintiff had been providing the service of freight, forwarding and handling of cargo to the defendant company for export for several years. Against the services rendered from time to time, the plaintiff had been raising bills and the payments were being made by the defendant on account from time to time. In terms of the bills raised by the plaintiff, the defendant was allowed one month's time from the date of the Air Waybills to make the payments and, in case, the payments were not made within the said period of one month then the defendant was liable to pay interest on the unpaid amounts @ 24% per annum. The plaintiff has been maintaining an account of the various payments made by the defendant over the years and, according to the statement of account so maintained in the ordinary

course of the business by the plaintiff, it is alleged in the plaint that the defendant owes to the plaintiff a sum of Rs. 16,54,070/- by way of principal amount and a further amount of Rs. 16,86,876/- by way of interest @ 24% as on 29.1.2004 amounting to a total sum of Rs. 33,40,946/-. The statement of account has been marked as annexure "A" to the plaint. It is further pleaded that the plaintiff has been requesting and reminding the defendant to make the payment in respect of the outstanding balance since 2001. Certain correspondence has also been filed by the plaintiff. The defendant apparently expressed its inability to make the payment of the outstanding dues on account of financial difficulties but promised to make the payment some time in the first week of January 2003 which also it neglected and failed to do. Some cheques were also issued as indicated in paragraph 9 of the plaint but these cheques were returned to the plaintiff dishonoured by the bank for the reason - "Insufficient funds". The plaintiff also took proceedings u/s 138 of the Negotiable Instruments Act, 1881. That, of course, is a separate cause of action which is available to the plaintiff.

3. These averments have gone uncontroverted inasmuch as the defendant has not entered appearance and has been proceeded with ex parte. The various statements of account and the Air Waybills as well as the bills raised by the plaintiff on the defendant establish the case put forth by the plaintiff. Accordingly, I find that the plaintiff is entitled to the recovery of the said sum of Rs. 33,40,946.00. A decree is passed for the said sum in favor of the plaintiff and against the defendant along with pendente lite and future interest @ 12% per annum till realisation. The suit is decreed as above with costs. The decree sheet be prepared.

The suit stands disposed of.