(2009) 07 DEL CK 0315

In the Delhi High Court

Case No : CS (OS) 1912 of 2000

The Motor and General Finance Limited APPELLANT

Vs

Century Tubes Ltd. RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:
Companies Act, 1956 — Section 446

Citation : (2009) 07 DEL CK 0315

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sunil Magon, for the Appellant; None, for the Respondent

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—This is a summary Suit under provisions of Order-37 of CPC (CPC). The plaintiff claims a decree for the sum of Rs. 76,41,142/ - (Seventy six lakhs forty one thousand one hundred forty two) with interest @ 27% per annum pendente lite as well as future interest.

2. The previous orders disclose that unconditional leave was granted to the Defendant No. 2 on 13.09.2001. In the order made in I.A.-8420/2001 that defendant filed a written statement and the matter proceeded thereafter. During the later stage of the proceedings, plaintiff gave up his claim and abandoned the Suit as against the second defendant.

3. The Punjab and Haryana High Court apparently had directed liquidation of the first defendant company through its orders. The plaintiff, therefore, sought leave under Section-446 of the Companies Act, to proceed with the present Suit. The Punjab and Haryana High Court by its order dated 17.1.2003 granted the leave sought for in Company Petition No. 260-266/2002. The orders of this Court disclose that the Defendant No. 1 was served through the official liquidator sometime in 2005. The order dated 19.4.2006 discloses that the counsel for the defendant No. 1 - through the official liquidator appeared on that date. Thus, it is

evident that the said defendant No. l, although in liquidation, was aware of the Suit, since it had been served with notice. No written statement or any pleading was, however, made on behalf of the said defendant No. 1. By the order dated 16.7.2009, said defendant was set down exparte.

4. The plaintiffs case is that it is a non-banking finance company incorporated in the Company''s Act in Delhi which advances various credit facilities including the facility of bill discounting to clients and customers. The Suit refers to discounting of various bills mentioned to in paragraph-5, by the plaintiff, aggregating to Rs. 34,60,646/ -. It is claimed that these bills were drawn by defendant No. 1 on defendant No. 2, and who received the benefits, as a part of the bill discounting facility. It is claimed that upon the due date of the bills or hundis, as the case may be, the concerned defendant failed to pay the amounts. In these circumstance, a sum of Rs. 34,60,646/ - towards unpaid hundi has been claimed. The plaintiff submits that in addition, an amount of Rs. 41,80,496/ - towards additional bill discounting charges being the sum equivalent to 3% per month on the outstanding of the amount actually received by the first defendant towards each of the seven bills, is also payable. On these basic averments, the plaintiff approached the Court for the reliefs claimed.

5. As noted earlier, the Defendant No. 1, though in liquidation, has not chosen to appear despite leave having been granted unconditionally. The plaintiff has relied upon the documents, which are placed on the record, being Exhibits P-5 to P-36 which are the original hundis along with the invoices-cum-challans. It also alleges in the Suit that cheques tendered by the first defendant were presented by it but were not honoured. The details of these and the reasons why the amounts were not received are set out in paragraph-8 of the Suit and also repeated in paragraph-10 of the affidavit evidence of PW-1 Mr. R.K. Mittal, who has deposed on behalf of the plaintiff. The cheques have been exhibited as Ex-P-37 to P-40. In support of the claim, the plaintiff also relies upon registered AD notice, copies of which along with the registered AD cards are marked as Ex. P-41 - P-44.

6. As is evident from the above narration, the Suit is based upon hundis and negotiable instruments, which the first defendant had furnished to the plaintiff. The plaintiff extended bill discounting facility where by a sum of Rs. 34,60,646/ - was paid through cheques to the first defendant. The first defendant is unable to return the said amount - evidenced by the cheques which could not be honoured but were tendered by it to the plaintiff. In support of the averments, the plaintiff has relied upon the testimony of Mr. R.K. Mittal, its Vice-President. He was even cross-examined in the course of this proceeding on 4.7.2007. However, nothing was elicited during the course of the cross-examination to dislodge the testimony or veracity of what was deposed by him.

7. In the circumstances, it is held that the plaintiff has been able to substantiate its claim to the extent of Rs. 34,60,646/ -. However, no written agreement or contract or any other document in support of the claim towards additional

discounting charges @ 3% per month totaling to Rs. 41,80,496/ - has been placed on record. In the circumstances, the claim to that extent cannot be upheld.

8. The plaintiff has claimed 27% interest per annum on the said amounts. Although the plaintiff relies upon the condition spelt out in hundi, the said rate of interest cannot be granted by the Court in view of express provisions of law. The plaintiff would be entitled to reasonable interest, but on the outstanding amounts which are commercial claims.

9. In the circumstances, Suit is decreed in the sum of Rs. 34,60,646/ - with pendente lite and future interest @ 18 % per annum from the date of the Suit till realization with costs, quantified @ Rs. 50,000/ -.

10. Suit is decreed in the above terms with costs; counsel''s fee is quantified at Rs. 50,000/ -.

