(2011) 09 DEL CK 0178

In the Delhi High Court

Case No : CS (OS) No. 1803 of 1999 and I.A. No. 1116 of 2011

Walaiti Lal Kohli thru L.Rs. APPELLANT

Vs

Earl Chawla P. Ltd. and Another RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Limitation Act, 1963 — Section 19

Citation : (2011) 09 DEL CK 0178

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Deep Dhamija, for the Appellant; Sangeeta Jain, for the Respondent

Judgement

V.K. Jain, J.—This is a suit for recovery of Rs. 22,36,149/-. The case of the Plaintiff is that Defendant No. 1 entered into a Memorandum of Under (MoU) with M/s Evita Foods Private Limited for purchase of its restaurant. Payment of Rs. 11,00,000/- to Defendant No. 1 was made vide three cheques one cheque dated 18.3.1994 for Rs. 2,48,000/- and two cheques dated 23.3.1994 one for Rs. 8,52,000/- and other for Rs. 3,000/- all drawn in favour of M/s Evita Foods Private Limited. This is also the case of the Plaintiff that the Defendants agreed to secure repayment of aforesaid amount advanced by him along with interest, by executing two lease agreements in respect of purchase of the entire equipment of the restaurant of M/s Evita Foods Private Limited. In terms of the aforesaid arrangements, the Defendants obtained delivery of the equipment from M/s Evita Foods Private Limited as also of the equipment worth Rs. 2,50,000/- which they purchased from the market in the name of the Plaintiff. It is alleged that the aforesaid amount of Rs. 11,02,000/- along with interest amounting to Rs. 3,10,954/- was agreed to be paid in 34 installments. The first installment of Rs. 40,000/- was payable by 1.4.1994, second installment of Rs. 1,20,000/- was payable by 1.6.1994, the third installment of Rs. 21,455/- was payable on 1.8.1994, installments of Rs. 37,183/- each were payable between 1.9.1994 and 1.2.1997 whereas the last installment of Rs. 1,11,549/- was payable on

1.3.1997. The Defendants, according to Plaintiff, also agreed to pay interest @ 36% p.a. on the installments falling in arrears. The Defendants made total payment of Rs. 6,40,414/- to the Plaintiff but did not pay the remaining installments and overdue interest. It is also alleged that the Defendants involved the Plaintiff as a nominee in their agreement with M/s Evita Foods Private Limited and showed purchase of entire equipment worth Rs. 22,00,000/- in his name, showing payment of Rs. 11,00,000/- by the Plaintiff and rest by the Defendants. The Defendants obtained a cheque of Rs. 1,00,000/- and a pay order of Rs. 1,35,040/- in the name of M/s Evita Foods Private Limited and also informed the Plaintiff that they had paid Rs. 8,64,960/- in his account. The Plaintiff has now claimed a sum of Rs. 22,36,149/-being the balance amount due to him as principal sum and interest.

2. The Defendants have contested the suit and taken preliminary objection that the suit is barred by limitation, barred under the provisions of interest Act, this Court has No. territorial jurisdiction to try the present suit and suit claiming interest on interest is barred by law. They have further alleged that MoU dated 18.3.1994 was executed between Defendant No. 1, M/s Evita Foods Private Limited and Shri Vishwant Kumar for purchase of restaurant equipment and premises bearing No. 51 Basant Lok, Vasant Vihar, New Delhi for a total consideration of Rs. 35,00,000/-. As per the MoU, Defendant No. 1 and its nominee was to pay a sum of Rs. 29,20,400/- and return equipment worth Rs. 5,79,600/-. Defendant No. 1 appointed the Plaintiff as its nominee under the MoU for purchase of restaurant equipment of Rs. 22,00,000/- from M/s Evita Foods Private Limited and the Plaintiff, as nominee of Defendant No. 1, made payment of Rs. 2,45,000/- vide cheque No. 634217 dated 18.3.1994 towards purchase of the equipment. It is further alleged that the Plaintiff besides making aforesaid payment of Rs. 2,45,000/- also made payment of Rs. 8,52,000/- vide cheque No. 634221 dated 23.3.1994, Rs. 3,000/-vide cheque No. 634222 dated 23.3,1994, Rs. 1,00,000/- vide cheque No. 032380 dated 22.4.1994 and Rs. 1,35,040/- by pay order No. 090821 dated 1.6.1994 towards purchase of restaurant equipment from M/s Evita Foods Private Limited. The balance amount was paid by Defendant No. 1 on behalf of the Plaintiff. Defendant No. 1 paid Rs. 7,00,000/- in cash on 10.5.1994 and Rs. 1,64,960/-in cash on 16.5.1994. Regarding the equipment valued at Rs. 2,50,000/- from market, the case of the Defendants is that this purchase was also made by the Plaintiff. The execution of the lease agreements dated 30.3.1994 has been admitted by the Defendants but they have claimed that they were entered into in order to avail tax benefits. The Defendants have admitted payment of Rs. 6,40,424/- to the Plaintiff.

3. The following issues were framed on the pleadings of the parties:

1. Whether the suit is barred under provision of the Interest Act? - OPD

2. Whether the suit is barred by limitation? - OPD

3. Whether the suit is not maintainable as averred in para 7 of preliminary

objections of Written Statement? - OPD

4. Whether this Court has No. territorial jurisdiction? - OPD

5. Whether the Plaintiff is entitled to recover the suit amount? - OPP

6. Whether the Plaintiff is entitled to any interest in case of answer of issue No. 5 is in the affirmative? If so, at what rate and what period? - OPP

7. If answer of issue No. 5 and 6 is in the affirmative whether both the Defendants are jointly and severally liable? - OPP

8. Relief.

Issue No. 1

4. The Defendants have failed to show how the suit is barred under the Interest Act. No. provision of the Interest Act, 1978, barring a suit of this nature has been brought to my notice and No. arguments on this issue were advanced. The issue is decided against the Defendants and in favour of the Plaintiff.

Issue No. 2

5. It has been alleged in para 14 of the plaint that the Defendants made payment of Rs. 30,000/- on 22.3.1997, Rs. 25,000/- on 5.5.1997, Rs. 10,000/- on 22.7.1997, Rs. 10,000/- on 2.8.1997, Rs. 10,000/- on 1.9.1997, Rs. 10,000/- on 8.9.1997, Rs. 10,000/- on 25.11.1997 and Rs. 10,000/- on 26.3.1997 along with the covering letters dated 22.3.1997, 5.5.1997, 22.7.1997, 2.8.1997 and 1.9.1997. These payments have not been disputed in the Written Statement and otherwise stand proved during trial. In view of the provisions contained in Section 19 of the Limitation Act, 1963, a fresh period of limitation started from each of the dates, on which payments were made. Computed from the dates of these payments, the suit having been filed on 2.8.1999 is well within limitation. The issue is decided against the Defendants and in favour of the Plaintiff.

Issue No. 4

6. Admittedly the office of Defendant No. 1 is situated in Delhi and Defendant No. 2 is also a resident of Delhi. Section 20 of Code of Civil Procedure, to the extent it is relevant, provides that every suit shall be instituted in a Court within the local limit whose jurisdiction each of the Defendants, where there are more than one, at the time of commencement of the suit actually and voluntarily resides or carries on business or personally works for gain or within the local limits of whose jurisdiction the cause of action arose, either wholly or in part. The explanation to Section 20 of CPC provides that a corporation shall be deemed to carry on business at the sole or principal office in India or in respect of any cause of action arising at any place where it also has a subordinate office, at such place. Since Defendant No. 1-company has its principal office in Delhi, this Court has territorial jurisdiction to try the suit against it. Moreover, the payments by the Plaintiff were also made in Delhi and the agreements between the Plaintiff

and Defendant No. 1 were also executed at New Delhi. Therefore, the cause of action also arose within the territorial jurisdiction of this Court. Defendant No. 2 being a resident of Delhi, the suit against him is maintainable within the jurisdiction of this Court. Hence, Delhi Court has jurisdiction to try this suit against both the Defendants. The issue is decided against the Defendants and in favour of the Plaintiff.

Issues No. 3, 5, 6, 7 & 8

7. The case of the Plaintiff is that the equipment from M/s Evita Foods Private Limited as well as from the market was purchased by Defendant No. 1 though the invoices were issued in his name whereas the case of the Defendants is that the equipment from M/s Evita Foods Private Limited was purchased by the Plaintiff as the nominee of Defendant No. 1. Exhibit P-11 is the certificate issued by Defendant No. 1 to the Plaintiff on 30.3.1994 certifying receipt of the equipment of Rs. 22,00,000/- specified in the lease agreement dated 30.3.1994. Exh. P-12 is a letter issued by Defendant No. 1 on 30.3.1994 informing that entire machinery with reference to the lease agreement dated 30.3.1994 had been received and had been put to use on 30.3.1994. It would thus, be seen that the equipment which was purchased from M/s Evita Foods Private Limited was received and put to use by Defendant No. 1. Though, the invoices were issued in the name of the Plaintiff, I need not go into the question as to whether who was the actual purchaser of the equipment, the Plaintiff Shri Walaiti Lal Kohli or Defendant No. 1 M/s Earl Chawla Private Limited, since it is an admitted fact that the Plaintiff made payment of Rs. 11,00,000/- towards purchase of the aforesaid equipment which was received and utilized by Defendant No. 1. As noted earlier, payment of Rs. 11,00,000/- by the Plaintiff is not disputed in the Written Statement. Therefore, if the equipment was purchased by the Plaintiff as nominee of Defendant No. 1 and then leased out to Defendant No. 1 vide lease agreement dated 30.3.1994 (Exh. P-2), Defendant No. 1 is liable to make payment in terms of the lease agreement with the Plaintiff. If the purchase was made by Defendant No. 1 and the Plaintiff only financed the purchase to the extent of Rs. 11,00,000/-, the Plaintiff is entitled to recover that amount, along with the agreed interest, after giving adjustment for the payments already made by Defendant No. 1. Once Defendants admit payment of Rs. 11,00,000/- by the Plaintiff to M/s Evita Foods Private Limited as also receipt and use of that equipments, being beneficiary and user of the equipments, they are required to pay the amount which the Plaintiff had paid to M/s Evita Food Private Limited and had paid in the market for purchase of that equipment. This is not the case of the Defendants that Plaintiff was acting gratuitously in making payment of the equipment received and utilized by them. Therefore, they are duty bound to return that amount to the Plaintiff along with the interest.

8. This is also not the case of the Defendants that No. interest was payable to the Plaintiff for the amount spent by him towards purchase of the restaurant equipment. According to the Plaintiff, the interest agreed to be paid by the

Defendants was Rs. 3,10,954/- provided all the installments were paid on the dates stipulated in the lease agreement.

During the course of arguments, the learned Counsel for the Plaintiff stated that the interest agreed between the parties came to 12% p.a. and it is only in the event of default in payment of agreed installments that interest was agreed to be paid @ 36% p.a. He, however, very fairly stated that the Plaintiff is agreeable to accept interest calculated on reducing balance @ 12% p.a., till the date of filing of this suit. The Defendants have not pleaded any particular rate of interest I therefore, see No. reason for not allowing rate of interest to the Plaintiff on reducing balance @ 12% p.a. After adjusting the payments made by the Defendants, the principal sum which remain payable to the Plaintiff on the date of filing of this suit comes to Rs. 4,59,576/-. Interest calculated on reducing balance @ 12% p.a. till the date of filing of the suit comes to about Rs. 4,21,624/-. The total of these two sums comes to Rs. 8,81,200/-, which sum, the Plaintiff is entitled to recover.

Though the equipments were received and used by Defendant No. 1 company, a perusal of the letter dated 30.3.1994 (Ex. P-13) would show that both the Defendants had jointly and severally promised to pay the sum of Rs. 14,12,954/- to the Plaintiff. Therefore, both the Defendants are liable to pay the decreetal amount to the Plaintiff. The issues are decided accordingly.

In view of my findings on the issues, a decree of Rs. 8,81,200/- with proportionate costs and pendent lite and future interest @ 6% p.a. is hereby passed in favour of the Plaintiff and against the Defendants.

Decree sheet be drawn accordingly.