

(2011) 04 DEL CK 0304

Delhi High Court

Case No: Regular Second Appeal No. 83 of 2007

National Small Industries Corp.
Ltd

APPELLANT

Vs

Metalloid Trading Co. and Others

RESPONDENT

Date of Decision: April 26, 2011

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Sanat Kumar and Poonam Solanki, for the Appellant; Chetan Sharma and Sunil Mani, for the Respondent

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 4.9.2006 which had endorsed the finding of the trial judge dated 24.5.2003 whereby the suit filed by the Plaintiff National Small Industries Corporation Ltd. had been dismissed.

2. The parties had entered into a hire purchase agreement dated 26.8.1986. The Plaintiff had agreed to supply machines fixed at the rate of Rs. 1,91,432/- to the Defendants. After adjusting the earnest money of Rs. 14,897/- Defendants were required to pay the balance amount in 13 half yearly installments; Rs. 13587/- was the first installment payable on or before 01.5.1988 and thereafter the balance 12 installments were payable at the rate of Rs. 13579/-. Contention of the Plaintiff is that the Defendant had availed all the facilities under the said agreement he but did not adhere to the financial discipline; he did not pay the installments in time. This was in spite of reminders. Suit was accordingly filed.

3. In the written statement, the defence of the Defendant was that the suit is barred by limitation; besides the other defences which may not be relevant for the disposal of this appeal.

4. Trial judge had framed various issues; issue No. 3 related to the question of limitation. Trial judge held that the suit of the Plaintiff filed on 22.11.2994 is barred

by limitation; he could not claim the amounts as detailed by him in terms of the hire purchase agreement dated 26.8.1986.

5. This was endorsed in the first appeal.

6. This is a second appeal. It had been admitted and on 16.3.2007 the following substantial question of law was formulated:

Whether the suit filed by the Appellant is barred by time.?

7. On behalf of the Appellant, it is pointed out that the judgment of the trial court suffers from a perversity. Reliance has been placed upon 2005 6 AD (Delhi) 106 National Small Industrial Corporation Ltd v. Sh. Takdir Singh to support a submission that cause of action would accrue separately with regard to each and every installment as and when a particular installment fell due.

8. This argument has been rebutted. It is pointed out that the cause of action has to read in terms of the specific averments made in the plaint. The impugned judgment has correctly endorsed the finding of the trial judge dismissing the suit on account of limitation.

9. Be that as it may, the perusal of the impugned judgment shows that the judge has adopted a cursory approach. The finding on limitation is contained in the last three lines only which reads as under:

However, I agree with the learned trial court that suit filed by the Appellant was clearly barred by period of limitation because the Appellant totally failed to place on record any documents which extended the period of limitation by way of acknowledgment made on behalf of the Defendants. I have gone through the evidence and the impugned order which does not suffer from any infirmity or perversity.

10. There is no other discussion. To state that this approach is cursory is in fact an understatement; it is more than cursory; such an approach is deprecated. The first appellate court is the last court of fact and law. While disposing of a first appeal it is the bounden duty of the first appellate court to deal with all issues raised before it and given detailed findings on each of them. This duty has been faulted with. This is a fit case for remand. Counsel for the Respondent has also conceded to this position.

11. In view thereof the matter is remanded back to the learned District and Sessions Judge (Central) who shall assign the case to the concerned first appellate court to given its finding on the question of limitation after hearing the respective parties and if need be after scrutiny of the facts as also the law. For the said purpose parties are directed to appear before District and Sessions Judge (Central) on 10.5.2011 at 10.30 AM.

12. The first appellate court shall endeavour to dispose the case within the outer limit of four months of receipt of this order. Substantial question of law is answered accordingly.

13. Appeal is disposed of in the above terms.