

**(2011) 03 DEL CK 0438**

**Delhi High Court**

**Case No:** Regular First Appeal No. 374 of 1998

Ester Industries Limited

APPELLANT

Vs

Amarsons Commercials Pvt. Ltd.

RESPONDENT

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**Date of Decision:** March 10, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 96

**Hon'ble Judges:** Valmiki J Mehta, J

**Bench:** Single Bench

**Advocate:** Paritosh Budhiraja and Neeraj Gupta, for the Appellant; M.C. Dhingra and Gita Dhingra, for the Respondent

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### **Judgement**

Valmiki J Mehta, J.

The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 31.3.1998 whereby the suit of the Respondent/Plaintiff was partially decreed for recovery of damages on account of breach of the Appellant/Defendant to honour its contract to sell to the Respondent/Plaintiff 600 unsecured redeemable Bank of Baroda Bonds of Rs. 5,000/- each.

2. The matter has been heard at length. The main argument on behalf of the learned Counsel for the Appellant is that the damages which should be allowed have to be those on the date of the breach, and which date was in and around 19.11.1996. Learned Counsel for the Appellant argues that however the amount of damages which have been awarded by the trial Court are those on the basis of purchasing of bond at the prevailing market rate much later in March, 1997. In response, learned Counsel for the Respondent/Plaintiff contends that the bonds were not easily available in the market and therefore they were ultimately purchased in March, 1997.

3. I have gone through the evidence led on behalf of the both the parties in the trial Court and counsel for the parties agree that though there is certain evidence on this aspect, however, there is no substantial evidence led as to the lack of availability of bonds in the market for purchase before March, 1997 by the Respondent/Plaintiff. If the Respondent could have purchased the bonds earlier, then, the amount of damages which would be allowed will be on that earlier date and not on later date of March, 1997. Evidence is thus required as to whether the bonds could have been available earlier than March, 1997 and if yes then at what rate.

4. Learned Counsel for the Respondent also states that the trial Court refused to grant the interest claimed in the suit and which the Respondent had claimed, would have accrued to it, had the transaction gone through.

5. In view of the above, the counsel for the parties have agreed that the matter be remanded back to the trial Court for leading evidence with regard to the loss which would be caused to the Respondent/Plaintiff on account of the failure of the Appellant/Defendant to honour the contract i.e. the loss caused to the Respondent/Plaintiff in and around the date of the breach, coupled with the fact of the entitlement of the Respondent/Plaintiff to establish that in spite of its best efforts the subject bonds were not available for purchase prior to March, 1997 or if available earlier than March, 1997 then what was the rate prevailing at that earlier date. Since the case is being remanded in order to determine the loss caused to the Respondent/Plaintiff in and around the date of the breach or earlier when the subject bonds could have been purchased, the trial Court will also decide the issue afresh with respect to the claim of the Respondent/Plaintiff for grant of accrued interest, if any, on the subject bonds for the period from 1.7.1996 to 31.12.1996 less the period of 134 days.

6. Parties to appear before the trial Court on 28th April, 2011. Trial Court to allow the parties to lead the evidence with respect to quantification of the loss and as per the observations made above and also give the judgment thereafter on the entitlement of the Respondent/Plaintiff including the entitlement towards the accrued interest.

With the aforesaid observations, the appeal stands disposed of. Trial Court record be sent back.