

Ester Industries Limited Vs Amarsons Commercials Pvt. Ltd.

Court: Delhi High Court

Date of Decision: March 10, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” 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

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.