

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 564/2004**

M/S. JOY CO. INDIA (P) LTD. Appellant
Through: Mr. Sandeep Aggarwal, Advocate

versus

M/S. J.K. TRADERS Respondent
Through: Nemo

% DATE OF DECISION
22.09.2008

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.(Oral)

1. The appellant who was the plaintiff could not manage to obtain a decree even at an ex-parte trial.
2. Vide impugned judgment and decree dated 1.3.2004, the suit filed by the appellant has been dismissed on 2 counts. It has been held that the suit is barred by limitation. It has also

been held that the appellant failed to prove that Mr. Joydeep Deb is the sole proprietor of the respondent M/s. J.K.Traders.

3. It was stated in the plaint that the appellant had appointed J.K.Traders the sole proprietor firm of Joydeep Deb as its distributor on the terms contained in the letter of appointment dated 22.4.2006. It was stated that the goods were delivered to the respondent with a clear term that on overdue payment interest would be payable @ 36% per annum. It was pleaded that business was conducted till 8.2.2000 and that a running account was maintained in which debit and credit entries were made. In para 11 of the plaint it was specifically pleaded that goods were supplied on 12.10.1990, 22.12.1990 and 8.2.2000 for which a sum of Rs.5,85,127/- was due and payable. It was stated that after adjusting Rs.32,142.44, balance amount of Rs.5,52,984.56 was payable. Interest on said amount @ 36% per annum was claimed as the pre-suit amount totaling Rs.3,75,787/-.

4. Suit amount was Rs.5,52,985/- + Rs.3,75,787/- = Rs.9,28,772/-.

5. At the trial the letter dated 2.4.1996 was proved as Ex.CW-1/C. Statement of account maintained by the appellant

was proved as Ex.CW-1/E-1 to E-5. A letter dated 24.5.2001 was proved as Ex.CW-1/H.

6. The invoices raised from time to time were proved as Ex.CW-1/F-1 to Ex.CW-1/F-57.

7. The documents evidence that Mr. Joydeep Deb has been affixing the stamp of M/s. J.K.Traders showing him to be the authorized signatory.

8. Dismissing the suit holding the same to be barred by limitation learned Trial Judge has picked on the language of Ex.CW-1/H admittedly written by the appellant wherein following has been written:-

“Since you were having a running account with us, for simplicity sake we have taken outstanding against the last 3 invoices. Actually the outstandings pertain to the invoices raised during the year 1997. Hence actual outstandings are more than 4 years old. In spite of various efforts from our Regional Manager and other Executives, you have deliberately chosen to ignore their request and have kept the balance outstanding for such a long time.”

9. Learned Trial Judge has held that the same evidences transaction between the parties only in the year 1997. Since the suit was filed on 20.3.2003 the same has been held to be barred by limitation.

10. Additionally it has been held that the appellant has

failed to prove that Joydeep Deb was the sole proprietor of the respondent firm.

11. It has also been held that the appellant would not be entitled to any interest because the letter Ex.CW-1/A was followed by a formal agreement entered into between the parties Ex.CW-1/B on 1.4.1997 which does not contain any clause for payment of interest.

12. Pertaining to the suit being held as barred by limitation, suffice would it be to note that in the particular paragraph of the letter Ex.CW-1/H picked on by the learned Trial Judge an obvious misprint of the year has occurred. This is evident from the fact that in the preceding para the appellant has referred to goods supplied vide invoices dated 12.10.1999, 22.12.1999 and 8.2.2000.

13. Any doubt in the mind of the learned Trial Judge should have been cleared with reference to the Ex.CW-1/E-1 to E-5, being the statement of account which shows debit and credit entries till as late as 31.12.2000.

14. We thus hold that the suit is within limitation.

15. Whether Joydeep Deb was the sole proprietor of J.K.Traders is irrelevant because the documents show that

J.K.Traders was dealing with the appellant as the distributor. The defendant was J.K.Traders.

16. A sole proprietary firm cannot sue as a plaintiff, but a suit can be filed against the sole proprietary firm. Order 30 Rule 10 of the Code of Civil Procedure reads as under:-

“10. Suit against person carrying on business in name other than his own – Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.”

17. That apart, the documents which have been proved show that Joydeep Deb has been affixing the stamp of J.K.Traders and has been signing on behalf of the said firm, though as ‘Authorized Signatory’.

18. As noted above, the respondent chose to remain ex-parte and did not come forward to explain who Joydeep Deb was. The finding returned that the suit could not be decreed against J.K.Traders on said account is accordingly set aside.

19. On the issue of interest, learned counsel for the appellant conceded that interest @ 36% per annum is excessive and could be awarded @ 12% per annum.

20. On the entitlement of interest, Ex.CW-1/1 being the letter appointing respondent as the distributor records that interest would be payable on overdue payment @ 36% per annum.

21. That apart, vide Ex.CW-1/H, a demand for interest has been raised. The letter is dated 24.5.2001.

22. Said letter can thus be treated as a notice demanding interest under the Interest Act 1978.

23. The appeal is accordingly disposed of by setting aside the impugned judgment and decree dated 1.3.2004.

24. Suit filed by the appellant is decreed in sum of Rs.5,52,985/- with interest @ 12% per annum with effect from 1.4.2001 till realization. The appellant shall also be entitled to the cost of the suit as also the cost in the appeal.

PRADEEP NANDRAJOG, J.

J.R.MIDHA, J.

SEPTEMBER 22, 2008
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