

IN THE HIGH COURT OF DELHI

CM(M) No. 830/2006

M/s. Meenakshi Equipments
Pvt. Ltd. Petitioner
! through: Mr. D.S.Chauhan, Advocate
Ms. Ruchi Singh, Advocate

VERSUS

\$ M/s. Asil Industries Pvt. Ltd. Respondent
^ through: Mr. K.K.Bhatia, Advocate
Mr. Y.R.Sharma, Advocate

% DATE OF DECISION: 15.01.2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

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

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Heard for disposal.
2. Petitioner impleaded as a defendant in a summary suit is aggrieved by the order dated 8.10.2003 declining leave to defend.
3. It is urged by learned counsel for the petitioner that in the instant case the issue of grant of leave to defend had to be considered with reference to the claim in the plaint for the

sum due under the various bills raised by the plaintiff and separately with respect to the claim for interest as laid in the suit.

4. A perusal of the plaint (copy at pages 60-67 of the record of the instant petition) shows that respondent filed a suit claiming decree in sum of Rs.8 lacs with pendente lite and future interest @ 24% per annum. The basis of the suit was a written acknowledgement by the defendant.

5. Facts leading to the written acknowledgment by the defendant as stated in the plaint were that the parties had commercial dealings whereunder plaintiff was supplying C.R. Steel strips to the defendant at agreed rates and that a running account was maintained by the parties.

6. In para 4 and 5 of the plaint it was stated that as per statement of accounts maintained by the plaintiff, as of 31.3.2001, a sum of Rs.7,97,540/- was due and payable by the defendant. The said statement of accounts was sent to the defendant for reconciliation and in response defendant informed that payments made to the plaintiff in sum of Rs.80,215/- and Rs.55,466/- by means of cheques had not been accounted for in the statement of account maintained by the plaintiff. Additionally, with respect to credit notes in sum of Rs.1,56,905/- and Rs.9,022/- it was stated that the statement

of accounts furnished by the plaintiff did not give effect to said entries. Accordingly, it was stated in the plaint that after tallying the accounts defendant admitted in writing the liability to pay Rs.5,26,398/-.

7. In para 6 of the plaint it was stated that to clear the aforesaid liability defendant paid Rs.50,000/- on 3.9.2001. Thus, it was stated that amount balance due and payable was in sum of Rs.4,76,398/-.

8. It was further stated in the plaint that having acknowledged liability in sum of Rs.5,26,398/- as per statement of account maintained by the defendant and having paid Rs.50,000/- to partially clear the liability, defendant turned dishonest when it sent a letter dated 10.3.2002 alleging that the plaintiff had been overcharging it. The defendant claimed to have been overcharged in sum of Rs.3,63,774/-. It was further pleaded that the defendant unilaterally reduced the amount payable by deducting Rs.3,63,774/- and sent post dated cheques in the balance sum i.e. Rs.1,12,623/-. According to the plaintiff it refuted the said letter to the defendant. In para 10 of the plaint it was stated that a cheque in sum of Rs.20,000/- which was dated 15.6.2002 had become payable in the meanwhile. That the plaintiff encashed the said cheque. The plaintiff thus reduced the amount due and

payable by further sum of Rs.20,000/-. In para 10 of the plaint it was stated that Rs.4,56,398/- remained due and payable.

9. Stating that interest @ 24% per annum was agreed to be paid by the defendant, plaintiff calculated interest at said rate for the pre suit period. As per averments made in para 11 amount towards interest was stated to Rs.3,43,602/-. In this manner suit amount claim was Rs.8 lacs.

10. The basis of the suit was the written acknowledgment of the defendant in respect to amount shown as payable in the statement of account maintained by the defendant.

11. Seeking leave to defend it was stated by the defendant that the plaintiff had been overcharging it and this fact came to their notice belatedly. For said reason notwithstanding having admitted liability to pay Rs.4,56,398/- when the accounts were reconciled, defendant was entitled to a credit adjustment in sum of Rs.3,63,774/-.

12. Declining leave to defend, learned Trial Judge has held that these being commercial transactions defendant would be presumed to know the market rates. It has been held that having accepted the goods and the bills, defendant could not, after a long period of time, turn around and question the rate charged in the bills.

13. Thus, leave to defend has been declined.

14. In respect of the interest component it may be noted that the learned Trial Judge has not dealt with this issue at all.

15. The suit under Order 37 has to be drafted strictly within the confines of Order 37. A claim for pre suit interest has to be within the confines of Order 37 of the Code of Civil Procedure.

16. In the instant case claim for pre suit interest was based on the following averments in the plaint:-

“11. That as already stated above, the Defendant further agreed and undertook to pay interest @ 25% per annum after the credit period of 30 days as aforesaid and an amount of Rs.3,43,602.00 (Rupees three lacs forty three thousand six hundred two only) is due from the Defendant to the Plaintiff on account of overdue interest, thereby making a total of Rs.8,00,000.00 (Rupees eight lacs only).”

17. Suffice would it be to state that it was not stated in the plaint as to what was the written document on which plaintiff alleged that the defendant agreed to undertake to pay interest @ 24% per annum.

18. Thus, pertaining to the claim for pre suit interest, case was undoubtedly made out for the grant of an unconditional leave to defend.

19. Pertaining to the claim in the suit for Rs.4,56,398/-,

suffice would it be to state that even in the application seeking leave to defend defendant did not join issue with the plaintiff that on reconciliation of the accounts it admitting liability to pay Rs.5,26,398/- and thereafter paid Rs.70,000/- leaving a net balance of Rs.4,56,398/-. But it was stated that thereafter it dawned upon the defendant that the plaintiff was overcharging it. The defence raised was that defendant was entitled to Rs.3,43,602/- as discount.

20. The defence predicated viz-a-viz the sum due and payable under the main bills is prima facie an after thought and probably intended to resile from the acknowledgment.

21. As reasoned in the impugned order, defendant is in business. It is expected that the defendant knew the market rate.

22. Thus, plaintiff has to be secured the said amount. The defendant has to secure the said amount to the plaintiff.

23. The petition accordingly stands disposed of setting aside the impugned order. Defendant's application seeking leave to defend is allowed on the term of deposit of Rs.4,56,398/- with the learned Trial Judge. The deposit could be in cash or by means of a fixed deposit receipt in the name of learned Trial Judge. If in cash the amount would be left in a fixed deposit. If in FDR, same would be kept renewed.

24. Subject to deposit being made as aforesaid directed within 6 weeks from today, defendant's application seeking leave to defend stands allowed.

25. No costs.

January 15, 2008
mm

PRADEEP NANDRAJOG, J.