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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.606/2005

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Date of decision: 02nd December, 2008

M/S PVR LTD

..... Appellant

Through : Mr. Harish Malhotra, Sr. Adv.

with Mr. Vipul Gupta, Adv.

versus

KEDAR NATH GUPTA

..... Respondent

Through : Mr. Y.P. Sharma, Adv.

CORAM :-

THE HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

THE 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 the judgment should be reported in the Digest?

Pradeep Nandrajog, J. (Oral)

1. Heard learned counsel for the parties.
2. The issue is short and hence we shall pen down a brief judgment more so for the reasons we are concurring with the view taken by the Learned Trial Judge except on question of interest.
3. Mr. Kedar Nath Gupta, the plaintiff filed a suit for recovery of Rs.3,07,200/- together with pendent lite and future interest @ 24% per annum.
4. Undisputed position was that Mr. Kedar Nath Gupta had supplied refined coconut oil to the appellant and in respect

thereof had raised 14 bills between 29.07.2000 to 21.10.2000. Receipt of the goods under the bills and raising of the bill was not a matter in issue. The total value of the bills, i.e., price of the goods supplied as reflected in the bills was Rs.1,84,350/-.

5. Alleging that the appellant had failed to make payment under the bills and had appropriated the goods which were supplied under the goods, recovery of Rs.1,84,350/- + Rs.1,20,650/- being pre-suit interest calculated @ 24% per annum and Rs.2,200/- as the notice charges were the amount claimed, totaling Rs.3,07,200/-.

6. Defence of the appellant was that as per the agreement, the refine coconut oil to be supplied was of the brand "Kamani" and that the goods supplied were not of the said brand. That batch number/lot number, maximum retail price, manufacturing details was not mentioned on the container in which the refined coconut oil was packed. It was stated that the billing price was exclusive being Rs.930/- per tin whereas market price was between Rs.575/- to Rs.640/- per tin during the relevant time.

7. Bills being admitted. Receipt thereof be admitted. Goods listed in the bills being received being admitted, only issue which required adjudication was whether the bills were correctly raised.

8. Noting that there was no written order wherefrom price of the goods could be gathered, Learned Trial Judge has

pronounced the judgment on the conduct of the parties.

9. Learned Trial Judge has noted that the goods were supplied on various dates between 29.07.2000 till 21.10.2000 and bills raised and that for the first time an issue pertaining to the price was raised when the appellant wrote a letter on 15.02.2001 and that too after the respondent had pestered the appellant for release of payment. Learned Trial Judge has held that the contemporaneous conducted evidenced appropriation of the goods without demur requiring an inference to be drawn that the appellant had no grievance qua the price at which the bills were raised since the issue of the price was raised after nearly 6 months of the receipt of the first lot of goods.

10. The result is that the suit has been decreed.

11. Conceding that there is no written contract evidencing the price which was agreed between the parties, only submission urged by learned counsel for the appellant is that the newspaper cutting being extracts from the Economic Times listing price of refined coconut oil was good evidence to determine the price thereof.

12. Suffice would it be to state that for the same product, depending upon the quality and purity; and pertaining to oil, whether the same is double refined or single refined, price variation do occur.

13. We take guidance from Section 42 of the Sale of Goods

Act, 1930 which stipulates that a buyer is deemed to have accept the goods if within a reasonable time he does not intimate the rejection of the goods.

14. Pertaining to refined coconut oil, a reasonable time for rejecting the good on price being not acceptable or quality being not acceptable or packaging being not acceptable certainly is not 6 months. What is reasonable time to reject goods is a question of fact to be inferred from the surrounding circumstances and the nature of the goods.

15. For example, banana which is highly perishable, would require rejection within 2 – 3 days and for apples which have a long shelf life, reasonable rejection time may be little more.

16. In the instant case, it has to be noted that the coconut oil, which was supplied to the appellant, was used by the appellant for manufacturing pop-corn at two of its PVR outlets. The goods were consumed in house, meaning thereby, that if there was any deficiency in the quality of the goods or there was an issue on the price the same required intimation within a reasonable period; which to our estimation should not ordinarily exceeds 7 to 10 days.

17. A bill pertaining to a price needs to be questioned forthwith and on the issue of price a reasonable time to question the same should ordinarily not exceeds a week. It is not in dispute that till 15.02.2001 appellant never raised any issue on the price of the goods.

18. On the issue of interest, learned counsel for the appellant argues that there is no evidence that under any contract the rate of interest was agreed @ 24% per annum. Learned counsel for the respondent states that interest was demanded as per the market price.

19. We have gone through the plaint. There are no averments in the plaint as to on what basis interest has been demanded @ 24% per annum.

20. Interest is governed by the Interest Act, 1978 which stipulates three conditions on which interest can be awarded. The first is the contractual agreed rate; second, on proof of market custom or practice; lastly on proof of notice demanding interest being served, @ offered by scheduled bank on fixed deposits.

21. We find no evidence of market rate of interest being led by the respondent. Admittedly, there is no contractual agreed rate. Thus, the respondent has to fall back on the third alternative, namely, interest offered by scheduled bank after notice of demand claiming interest was served. The notices of demand claiming interest is dated 11.03.2003. The respondent would thus be entitled to interest with effect from said date. Noting that banks offered interest on fixed deposit at rates between 6.5% to 10% after 11.03.2003, we hold that a reasonable interest to be granted would be @ 9% per annum.

22. The appeal stands disposed of by modifying the impugned judgment and decree dated 13th May, 2005. Suit filed by the respondent is decreed in sum of Rs.1,84,350/- with interest @ 9% per annum w.e.f. 11.03.2003 till realization.

23. The respondent would be entitled to proportionate cost in the suit. There is no order as to costs in the appeal.

24. We note that the respondent has withdrawn the sum of Rs.3 lakhs deposited by the appellant. We further note that as per the judgment and decree passed by us today the appellant would be entitled to refund. We note that the respondent undertook to refund the amount, if liable to be refunded, with interest @ 9% per annum. We thus hold that the appellant would be entitled to restitution for the differential amount with interest @ 9% per annum.

PRADEEP NANDRAJOG, J

J.R. MIDHA, J

DECEMBER 02, 2008

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