

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

CS(OS) No.2608/1998

Date of Decision: March 30, 2009

NATIONAL FERTILIZERS LTD. Plaintiff
Through: Mr. Ram Parkash Gupta, Advocate

VERSUS

HARNEK SINGH AND ORS. Defendants
Through: None

**CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA**

1. Whether the reporters of local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the 'Digest'? No

REKHA SHARMA, J.

This suit by the plaintiff, namely, National Fertilizers Limited is against M/s Harnek Singh, Mr. Harnek Singh and Mr. Harbans Singh defendants No.1, 2 & 3 respectively for the recovery of Rs.1,21,84,870.81paise.

The case set out in the plaint is as under:-

The plaintiff is a Government company duly incorporated under the Companies Act,1956. Defendant No.1 is a proprietorship firm, defendant No.2 is its sole proprietor and defendant No.3 is the agent of defendant No.1. The plaintiff is under the administrative control of Ministry of Chemicals & Fertilizers and is mainly engaged in the manufacture and distribution of urea and Can fertilizers. At the

relevant time urea was an essential commodity as defined under the Essential Commodities Act, 1955. Hence, a person interested in doing the business of selling urea had to get himself registered as a dealer under the Fertilizer Control Order 1985, issued by the Government of India under the Essential Commodities Act, 1955.

On July 04, 1991 defendant No.1 made an application to the plaintiff for dealership under Entrepreneur Development Scheme for Scheduled Castes/ Scheduled Tribes categories, pursuant to which it was granted dealership vide letter dated July 05, 1991 upto March 31, 1992 on the terms and conditions contained therein. All the terms and conditions of dealership as contained in letter dated July 05, 1991 were accepted by defendant No.1. Its dealership was renewed from time to time and the last renewal was done upto March 31, 1996. The plaintiff in terms of the dealership agreement supplied urea to defendant No.1 during the period July, 1991 to December 1995 and raised invoices for the supplies made.

The plaintiff and the defendants had a running and open current account. All the dealings between them were duly entered in the books of account maintained by the plaintiff in the normal course of its business. The 'Statement of Accounts' so maintained showed that the last supply of material was made by the plaintiff to the defendants on December 22, 1995 and last payment of a sum of Rs.10,00,000/- was received by the plaintiff on November 30, 1995. The 'Statement of Accounts' also showed that as on March 31, 1996 a sum of Rs.80,33,980.77paise was due from the defendants to the plaintiff.

It is the case of the plaintiff that despite demands defendants failed to pay the outstanding amount leaving the plaintiff with no

option but to file the present suit for the recovery of the principal amount along with interest aggregating to a sum of Rs.1,21,84,870.81paise.

Despite service of summons upon all the defendants, it was only defendant No.3 who responded to the same but even he attended the proceedings on some dates and thereafter stopped appearing. Hence, he was proceeded ex-parte.

The plaintiff in order to prove the averments made in the plaint filed affidavits by way of evidence of its various functionaries including affidavits of its Area Manager Shri K K Aggarwal, its Supervisor Account Shri Jiwan Aery and its Senior Assistant Manager (Finance & Accounts) Shri S K Jain.

The Area Manager of the plaintiff in his affidavit Ext.PW7/A deposed that defendant No.2 made an application to the plaintiff for dealership under Entrepreneur Development Scheme for Scheduled Castes/ Scheduled Tribes Categories and on the basis of that application defendants No.1 & 2 were granted dealership on adhoc basis upto March 31, 1992 vide its letter dated July 4/5th, 1991 on the terms and conditions mentioned in the said letter. He also deposed that the dealership was renewed from time to time till March 31, 1996. As per him, defendants agreed that the copy of statement of accounts as contained in the plaintiff's books of accounts, signed by M. (F&A) or by any other Officer of Accounts Department shall be conclusive evidence against the dealer of the amount due from him in any action or proceeding brought against him. He further deposed that the defendants purchased from the plaintiff urea and to prove that fact, he placed on record copies of the delivery orders. He also deposed that

the last supply of urea was made on December 22, 1995 while last payment of a sum of Rs.10,00,000/- was made by defendants to the plaintiff on November 30, 1995 and that a sum of Rs.80,33,980.77/- was due from the defendants to the plaintiff on March 31, 1996.

The Supervisor Accounts of the plaintiff, Shri Jiwan Aery in his affidavit Ex.PW3/A deposed that plaintiff and defendants had a running and open current account and that all the dealings between the parties were duly entered in the books of accounts maintained regularly and in normal course of business. He further deposed that the dealings between the parties started on July 05, 1991 when the letter of offer was given and continued till December 22, 1995 when the last supply was made to the defendants. He also deposed that apart from other payments made by the defendants, payment for a sum of Rs.10,00,000/- received by way of a demand draft on November 30, 1995.

The Senior Assistant Manager (Finance & Accounts) of the plaintiff-company, Shri S.K.Jain proved the copy of the statement of accounts of the defendants as maintained by the plaintiff as Ex.P26.

On a perusal of the record and also from what has been noticed above, I find that the averments made in the plaint have been substantially and in material particulars proved through the affidavits of various functionaries of the plaintiff company, particularly, by its Area Manager, Supervisor Accounts and its Senior Assistant Manager (Finance & Accounts). It is evident from the affidavit of Shri Jiwan Aery that the plaintiff and defendants had a running and open current account and the last payment that was received from the defendants was on November 30, 1995 for a sum of Rs.10,00,000/-. The

outstanding amount as shown in the statement of accounts was to the tune of Rs.80,33,980.77paise as on March 31, 1996. There is no rebuttal to the case set up by the plaintiff. I, therefore have no reason to doubt the correctness of the same.

It is laid down in Article 1 of the Limitation Act, 1963 that in the case of an open and current account between the parties, the limitation period for filing a suit for the recovery of balance amount is three years from the close of the year in which the last item admitted or proved is entered in the account. The last entry in so far as the present case is concerned was made on November 30, 1995 and the suit in question was instituted on November 27, 1998. The suit is thus within limitation. Hence, I pass a decree in favour of the plaintiff and against the defendants, jointly and severally, for a sum of Rs.1,21,84,870.81paise including interest as claimed by the plaintiff. The plaintiff shall also be entitled to interest @ 6% per annum from the date of decree till realization. Decree-sheet be drawn.

REKHA SHARMA, J.

MARCH 30, 2009
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