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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: March 05, 2009
Date of Order: March 18, 2009

+ CS(OS) 2029/1999

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M/s Richa And Co.
Through : Mr. Anurag Rawat, Advocates

18.03.2009
...Plaintiff

Versus

TRD Kothai
Through: Mr. Amit Khemka, Advocate

...Defendant

JUSTICE SHIV NARAYAN DHINGRA

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?

JUDGMENT

1. The plaintiff filed this suit for recovery of Rs.38,31,250/- along with pendent-lite and future interest.

2. The case of the plaintiff is that plaintiff deposited a sum of Rs.25 lac with the defendant as the defendant was facing shortage of funds for her business. This amount was given by way of three bank drafts dated 14th August 1996 (details of drafts given in paragraph 3 of the plaint). The plaintiff asked the defendant to refund this amount but despite several demands, the amount was not refunded hence this suit had been filed by the plaintiff after serving a demand notice dated 7th May 1999 claiming an amount of Rs.25 lac with 18% interest. This suit was filed on 12th August 1999. The defendant was proceeded ex parte as defendant failed to appear. However, defendant later

on moved an application under Order 9 Rule 7 CPC wherein defendant informed the Court that the defendant had after filing of the suit entered into an agreement with the plaintiff and paid back the amount of Rs.25 lac vide DD No.186717 dated 26th February 2000. This amount was accepted by the plaintiff as full and final settlement of his claim. The defendant gave details of the demand draft handed over to the plaintiff along with a covering letter. The plaintiff did not deny the receipt of this demand draft. Considering the circumstances, this Court set aside the ex parte order passed against the defendant. In the written statement defendant raised objection about jurisdiction of this Court and also submitted that by payment of Rs.25 lac entire account of plaintiff stood settled.

3. Following issues were framed in this suit on 21st April 2006:

1. Whether this Court has no territorial jurisdiction to entertain the present suit? OPD
2. Whether there was any agreement between the plaintiff and defendant No.1 with respect to payment of interest in terms of letter dated 14.8.1996. If so, whether the plaintiff is entitled to interest?
3. If issue No.2 is decided in affirmative, at what rate?
4. Whether the plaintiff has accepted the DD No.186717 for Rs.25 lac in full and final settlement? OPD
5. Relief.

4. During arguments, counsel for the plaintiff submitted that the plaintiff had received the principal amount, as stated by the defendant. However, the plaintiff was still entitled to interest and costs of the suit. It is argued that

though, there was no written contract qua rate of interest, still this Court should award a reasonable rate of interest. It is also submitted that the amount of Rs.25 lac was returned only after filing of the instant suit and not before that.

5. **Issue No.1:** The onus of proving this issue was on the defendant. The defendant has not led any evidence to substantiate this issue and failed to show as to how this Court had no territorial jurisdiction. The amount was sent to the defendant from Delhi. The bank drafts were prepared at Delhi. This Court, therefore, had jurisdiction to entertain the present suit. The issue is decided accordingly.

6. **Issue No.2 & 3:** The onus of proving these issues was on the plaintiff. The letter by which the amount of Rs.25 lac was sent to the defendant is silent about any contract between the parties about rate of interest. The counsel for the plaintiff during arguments admitted that there was no contract about the rate of interest. It is also not clear from the covering letter written by the plaintiff while depositing money as to why this amount was deposited by a firm with an individual and for what period this money was given. The demand of this money was made by the plaintiff from the defendant vide a notice dated 7th May 1999. Prior to that, no demand was made neither any request was made for payment of interest. If the money had carried an interest, the plaintiff would not have been silent about the interest for this period. It is therefore clear that there was no understanding between the parties of payment of interest over this amount. Therefore, the defendant was not liable to pay any interest till the money remained deposited and was not demanded by the plaintiff. However, once the money

had been demanded by the plaintiff, it ought to have been returned by the defendant. Since it was not returned within a reasonable time, the defendant was liable to pay interest on this amount. The notice of demand was served on 7th May 1999. I consider by end of May 1999, the money should have been returned, since it was laying without earning interest with the defendant. Since the money was not returned in time, the defendant was liable to pay a reasonable rate of interest to the plaintiff from 1st June 1999 onwards. In my view 6% rate of interest would meet the ends of the justice. The plaintiff is, therefore, entitled to 6% interest on Rs.25 lac from 1st June 1999 till 12th February 2000 when the amount was returned.

7. **Issue No.4:** The onus of proving this issue was on the defendant. The defendant has placed on record the letter dated 12th February 2000 whereby the amount of Rs.25 lac was returned to the plaintiff. Vide this letter it was communicated that this was towards full and final settlement. However, by mere writing that this amount was towards full and final settlement, it cannot be said that the plaintiff accepted the demand draft of Rs.25 lac towards full and final settlement or there was an agreement to this effect. The plaintiff had already filed this suit and had also served a notice of demand that the money should be paid back with interest. I consider that the defendant failed to establish that this amount of Rs.25 lac was received as a full and final settlement.

8. **Relief :** Since the principal amount has already been received by the plaintiff, the only relief which can be granted to the plaintiff is regarding interest on the principal amount of Rs.25 lac from 1st June 1999 till 12th February 2000 @ 6% per annum and the costs of the suit, as the amount was

paid by the defendant only after filing of this suit. The suit of the plaintiff is hereby decreed for an interest @ 6% per annum from 1st June 1999 till 12th February 2000 on amount of Rs.25 lac, which comes to Rs.10,500/- plus costs of the suit. Decree sheet be drawn accordingly.

March 18, 2009
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SHIV NARAYAN DHINGRA J.