

* **HIGH COURT OF DELHI : NEW DELHI**

RFA No.486 of 2001

% Judgment reserved on: 22nd May, 2009

Judgment delivered on: 3rd July, 2009

National Small Industries Corp. Ltd.

(A Government of India Enterprise)

Having its Registered office at:

‘NSIC Bhawan’

Okhla Industrial Estate,

New Delhi-110 020

....Appellant

Through: Mr. Sanat Kumar, Adv.

Versus

Sh. Balwinder Singh

S/o. Sh. Puran Singh,

Sole Proprietor of M/s. Dashmesh Oil Mills,

Village & P.O. Wadala Viram,

District Amritsar,

Punjab.

...Respondent.

Through: None.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

This appeal has been filed against the judgment and decree dated 17th March, 2001 passed by Additional District Judge, Delhi, vide which the suit of the appellant for recovery and possession of the machines, was partly decreed.

2. Brief facts are that, appellant supplied certain machines to defendant on Hire Purchase basis. Respondent agreed to pay the total Hire Purchase value of machines fixed under the agreement at Rs. 1,73,477/-. Respondent deposited a sum of Rs.13,500/- as earnest money and agreed to pay the balance amount of Rs.1,59,977/- by way of thirteen half-yearly installments. However, respondent did not keep his commitment. When appellant deputed a team to visit the premises of the respondent, it was found that respondent had disposed of machines in breach of Hire Purchase agreement. Appellant lodged an F.I.R. against respondent. However, respondent acknowledged his liability from time to time and the last acknowledgment was made by him on 25th June, 1995. As per the books of accounts maintained by the appellant, a

sum of Rs.2,33,988/- became due and payable as on 28th February, 1997. In addition, the appellant is also entitled to interest @ 17% p.a. w.e.f. 28th February, 1997. The appellant is also entitled to the custody and possession of the machines which are the subject matter of the agreement. It was also prayed that respondent be directed to restore the machines or in the alternative pay a sum of Rs.43,370/ being the residual values of said machines.

3. Respondent was duly served by publication but did not appear and as such vide order dated 27th September, 1999 passed by the trial court, he was proceeded ex-parte.

4. Vide impugned judgment, suit of the appellant was partly decreed for a sum of Rs.58,000/- with proportionate costs and respondent was also held liable to pay interest on this amount @ 17% per annum w.e.f 25th June, 1995 till date.

5. It is contended by learned counsel for the appellant that the hire purchase period was to be over on 1st July, 1995, when the last installment of hire money was payable by the respondent. During the continuation of the hire purchase period, respondent vide his letter dated 5th

March, 1994 (Exb-PW 1/15) acknowledged and accepted his liability towards the appellant and assured to pay a sum of Rs.85,000/- in three installments, within the period of six months. Thereafter, respondent vide letter dated 22nd February, 1995 (Exb.- PW 1/16) again acknowledged and accepted his liability. Thereafter, respondent once again vide his letter dated 25th June, 1995 (Exb.-PW 1/17) promised to pay a sum of Rs.58,000/- within a period of two months.

6. It is contended that all these letters were written by the respondent during the continuation of hire purchase period, as the hire purchase period was to be over on 1st July, 1995. The appellant filed the suit on 5th June, 1998 and thus the suit of the appellant could not have been held to be barred by limitation and the entire suit ought to have been decreed.

7. It is also contended that in terms of the hire purchase agreement (Exb-PW 1/2), the appellant is entitled to the custody and possession of the machines which are the subject matter of the above said agreement. The machines in question are the property of appellant and respondent

cannot get any right on the same until and unless he has paid all the installments due under the agreement.

8. Taking the appellant's case as it is, admittedly, appellant filed suit for recovery of Rs. 2,33,988/- and for possession of machines on 5th June, 1998. According to the Limitation Act 1963, period of limitation for filing suit for recovery is three years. Thus, appellant should have filed the suit within a period of three years from the date money was lend to respondent.

9. According to appellant, the hire purchase period was to over on 1st July, 1995 when the last installment of hire money was payable by the respondent. In the hire purchase agreement Exb-PW 1/2, nowhere date of 1st July, 1995 as payment for the last installment, has been mentioned.

10. Hire Purchase agreement Exb-PW 1/2 was executed on 6th October, 1987 and as per clause 2(x) of this agreement, the hirer is supposed to pay all sorts of dues in full recoverable from him within 7½ years. As per this agreement, period of 7½ years is to be over by 6th April, 1995. Taking this date of 6th April, 1995, as date of

payment of last installment, even then the suit of appellant is barred by limitation.

11. Now, coming to the acknowledgment made by the respondent. The first acknowledgment is purported to have been made by letter dated 5th March, 1994 (Exb-PW 1/15). According to this acknowledgment, the suit could have been filed by 5th March, 1997. Similarly, second acknowledgment (Exb-PW 1/16) dated 22nd February, 1995 purported to have been made by the respondent. According to this acknowledgment, suit could have been filed by 22nd February, 1998. As far as third acknowledgment (Exb-PW 1/17) is concerned, which is dated 25th June, 1995, the suit on the basis of this acknowledgment ought to have been filed within the prescribed period of limitation, i.e. within three years, which has been done in this case, as the suit for recovery was filed on 5th June, 1998.

12. This acknowledgment dated 25th June, 1995 is in Gurmukhi script and its English translation reads as under;

“It is submitted that I have to pay the outstanding amount of Rs.58,000/- to you. My business has failed and closed as a result of

which I am living in difficulty. I am trying to dispose of my property. I am trying to arrange money at the earliest. I will pay the outstanding amount within two months. I will make payment in September, 1995. Kindly grant me two months' time so that I may pay the outstanding balance of Rs.58,000/-. It shall be very kind of you."

13. Letter (Exb-PW 1/17) dated 25th June, 1995 contains an express promise made by the respondent to pay a sum of Rs. 58,000/- being the outstanding balance. This promise is in writing and has been signed by respondent. The present suit has been filed on 5th June, 1998 i.e. within three years from the date of promise. Thus, the suit for recovery of Rs.58,000/-, which has been filed within three years from the date of acknowledgment made by respondent is within period of limitation and respondent is liable to pay only Rs.58,000/- on the basis of his acknowledgment (Exb-PW 1/17) dated 25th June, 1995.

14. Accordingly, there is no ambiguity or infirmity in the impugned judgment. The appellant is entitled only to Rs.58,000/- along with proportionate costs with interest @ 17% p.a. as awarded by the trial court.

15. As far as plea regarding the possession of machines in question are concerned, since the machines were delivered by the appellant to the respondent on 21st December, 1987 and the present suit was filed only on 5th June, 1998, so, the suit for recovery of possession of machines, is hopelessly time barred.

16. The present appeal is, thus, not maintainable and same is hereby dismissed.

17. Trial court record be sent back.

July 03, 2009
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V.B.GUPTA, J.