

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 23.12.2010

+ **CS(OS) No. 1240/2002**

JINDAL PHOTO LTD.

.....Plaintiff

- versus -

JAI MAHAVEER COLOUR LAB & ANR. Defendants

Advocates who appeared in this case:

For the Plaintiff: Mr. Ajay Jain with Ms. Kanchan Yadav

For the Defendant: None.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether 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 Digest? | No. |

V.K. JAIN, J. (ORAL)

1. This is a suit for recovery of Rs.33,09,614/-. The case of the plaintiff is that it supplied two Mini Labs to defendant No.2 on lease for a period of four years commencing from May, 1996 and ending in April, 2000. Defendant No.2 is stated to be carrying business under the name and style of defendant No.1 Jai Mahaveer Colour Lab. The combined lease rent of the two Mini Labs supplied to

the defendants is alleged to be Rs.1,11,987.53p per month. It is further alleged that the defendants were required to pay a sum of Rs.14,15,847/- to the plaintiff towards security deposit and Rs.67,893/- towards lease management fee. The plaintiff has also claimed a sum of Rs.27,482/- from the defendants towards price of the spares supplied to them. The amount of total monthly rent payable by the defendants to the plaintiff is stated to be Rs.53,75,427/-. Adding the amount of security deposit, lease management fee and price of spares, the total amount comes to Rs.69,25,649/-. The case of the plaintiff is that defendants made aggregate payment of Rs.42,53,010.19p. to it on different dates, leaving a balance sum of Rs.26,72,638.81p. The plaintiff has claimed the aforesaid amount from the defendants along with interest on that amount @22% p.a., which comes to Rs.6,36,975/-, making a total sum of Rs.33,09,613.81p, rounded off to Rs.33,09,614/-.

2. The defendants filed written statement contesting the suit. They took preliminary objections (1) that this Court has no territorial jurisdiction to try the suit and (2) that the suit is barred by limitation. On merits, it was admitted that two Mini Lab Machines were supplied to the

defendants on hire purchase-cum-lease. The period of lease, however, is alleged to be 47 months for one machine and 35 months for the other machine. It has, however, been admitted that the total lease rent was fixed at Rs.1,11,987.53p. per month. As regards security deposit, it is alleged in the written statement that the amount of security was already deposited with the plaintiff at the time the machineries were leased. As regards lease management fee, the case case of the defendants is that the plaintiff had agreed to waive that fee at the time of lease. As regards price of spares, it is claimed that the spares worth Rs.24,978/- were supplied to the defendant against which a sum of Rs.24,500/- was paid vide demand draft dated 11th March, 1998.

3. Vide order dated 7th December, 2004, the defendants were proceeded ex-parte and the plaintiff was directed to file affidavit by way of evidence. The defendants thereafter filed two applications one being I.A. No. 2346/2006 (Section 151 CPC for setting aside ex parte order dated 7th December, 2004) and the other being I.A. No.2347/2006 (Section 5 of the Limitation Act). Those two applications were dismissed in default on 19th January,

2007. This was followed by three applications being IA Nos. 4181/2007 (O. IX R. 13 r/w S. 151 CPC), I.A. No.4182/2007 (for exemption) and 4183/2007 (S. 5 of the Limitation Act) for setting aside the ex-parte order dated 7th December, 2004. Those applications were also withdrawn on 17th April, 2007. After recording of ex-parte evidence when the matter was listed for arguments, the defendants filed I.A. Nos. 257/2008 (O.9 R.13 CPC) and 259/2008 (S. 5 of the Limitation Act) for recalling of the order dated 19th January, 2007 and restoration of I.A. No.2346/2006. I.A. 257/2008 was dismissed as withdrawn on 7th January, 2010. Subsequently, an order was passed on 2nd December, 2010 dismissing both I.A. Nos. 257/2008 and 259/2008 in default. Thus, both these applications stand disposed of.

4. The Mini Labs were supplied by the plaintiff to the defendant No.2 in May, 1995. However, the statement of account Exh. PW1/4 shows that payments were made by the defendants to the plaintiff from time to time and the last payment was made on 26th February, 2001. In view of the provisions contained in Section 19 of Limitation Act, a fresh period of limitation commenced from the date on which last payment was made since all the payments are stated to

have been made by way of cheques. The suit having been filed on 30th May, 2002 is, therefore, well within the prescribed period of limitation.

5. As regards territorial jurisdiction of the Court, an additional affidavit has been filed today by the plaintiff which has been taken on record. It shows that the defendant No.2 had approached the plaintiff company at its registered office at 56/2, Hanuman Road, New Delhi – 110001 and placed orders for supply of two Mini Lab Machines. The lease agreement between the parties is also stated to have been signed at the office of the plaintiff company at New Delhi. It is also stated in the additional affidavit filed by the plaintiff that the defendants used to make payment to the plaintiff company at its registered office at 56/2, Hanuman Road, New Delhi-110001. Since the order for supply of Mini Lab Machines was placed at New Delhi, lease agreement between the parties was executed at New Delhi and the payment was also to be made at New Delhi, the part of cause of action arose in the jurisdiction of this Court. Hence, Delhi Court has jurisdiction to try the present suit.

6. It has been admitted in the written statement that

the lease rent was fixed at Rs.1,11,987.53p with respect to both the Mini Lab Machines. The case of the defendants was that the period of lease was 47 months in respect of one Mini Lab Machine and 35 months in respect of other Mini Lab Machine. The plaintiff on the other hand has filed an affidavit of one Mr. S.P. Sharma, Manager (Technical) of the plaintiff company, who has stated on oath that the plaintiff had supplied two Mini Lab Machines to defendant No.2 on lease for a period of four years. Since the deposition of Mr. S.P. Sharma remains unrebutted, I hold that the lease period was fixed at 48 months with respect to both the Mini Lab Machines, as claimed by the plaintiff.

7. There is no dispute with regard to the payments made by the defendants to the plaintiff towards lease rental. They have made a total payment of rs.5242,53,010.19p. on different dates, leaving a balance of Rs.26,72,638.81p. The plaintiff has also claimed a sum of Rs.14,15,847/- towards security deposit. A perusal of the written statement shows that this is not the case of the defendants that they were not liable to pay the security deposit to the plaintiff company. Their case is that the amount of the security deposit was already lying with the plaintiff company at the time the Mini

Lab Machines were leased. The defendants, however, have not produced any evidence to prove the claim made by them in this regard. I, therefore, hold that the plaintiff is also entitled to a sum of Rs.14,15,847/- towards security deposit.

8. As regards price of the spares, the case of the plaintiff is that it had supplied spares worth Rs.27,282/- whereas the case of the defendant is that they were spares worth Rs.24,500/- and the price of those spares was paid by them vide demand draft dated 11th March, 1998. I find that in the replication filed by the plaintiff, there is no denial of payment of Rs.24,500/- from the defendant vide demand draft dated 11th March, 1998. Thus, the pleadings of the parties contained an admission of the plaintiff regarding receipt of Rs.24,500/- from the defendants towards price of the spares supplied to them. Moreover, in the statement of account filed by the plaintiff, there is no credit entry of Rs.24,500/-. In this regard, I also noticed that in the affidavit filed by the plaintiff, there is no averment that it had supplied spares worth Rs.27,482/- to the defendants.

In the circumstances, I hold that the plaintiff is not entitled to any amount from the defendants towards price of

the spares supplied to the defendants.

9. Coming to the interest part, I find that the plaintiff has claimed interest @ 22% p.a. Exh.PW1/5 is the notice sent by the plaintiff to the defendants on 28th February, 2002 demanding the principal amount of Rs.26,72,638.81/- , within 15 days. It was also stated in the notice that if the defendants failed to pay the dues within 15 days, they would be liable to pay interest on the dues at the rate of 22% p.a. and such interest will be calculable from the respective dates of defaults in payment of installments and/or other dues till the date of payments of the dues outstanding on reducing balance.

10. Section 3 of the Interest Act, 1978, to the extent it is relevant, provides that in any in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the

person liable that interest will be claimed, to the date of institution of the proceedings.

11. Since the defendants did not pay the principal amount demanded by the plaintiff, they are liable to pay interest from the date indicated in the demand notice. Hence, the defendant would be liable to pay interest on the outstanding amount with effect from 1st April, 2001, the date from which interest has been claimed by the plaintiff. Taking into consideration of the facts and circumstances of the case including the nature of transaction between the parties and the current rates of interest, I am of the considered view that interest should be awarded to the plaintiff at the rate of 12% p.a. The principal amount payable to the plaintiff comes to Rs.2645156.81/- (Rs.26,72,638 – Rs.27,482/-). The amount of interest calculated on the amount of Rs.26,45,156.81/- for the period from 14th January, 2001 to 30th April, 2002 comes to Rs.3,43,870.19/-.

12. For the reasons given in the preceding paragraphs, the plaintiff is entitled to recovery of principal amount of Rs.26,45,156.81/- along with Rs.3,43,870.19/- towards interest, from defendant No.2. Since defendant No.1 is only

a tradename adopted by the defendant No.2 and is not a legal entity, no decree can be passed against it. A decree for Rs.29,89,027/- with proportionate cost and pendente lite and future interest at the rate of 12% p.a. is hereby passed in favour of the plaintiff and against defendant No.2. The decree sheet be prepared accordingly.

13 The suit stands disposed of.

(V.K. JAIN)
JUDGE

December 23, 2010
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