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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.310/2002

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18th August, 2011

M/S HOME KOMFORTS & ANR.

..... Appellants

Through: Mr. D.S.Narula, Sr. Adv. with Mr.
A.S.Narula, Advocate.

VERSUS

M/S BHOR INDUSTRIES LTD. & ORS.

..... Respondents

Through: Mr. Udit Gupta and
Mr.B.C.Pandey, Advocates for
R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the 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?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC), is to the impugned judgment dated 31.1.2002, which has decreed the suit for recovery filed by the respondent no.1/plaintiff.

2. The facts of the case are that the respondent No.1/plaintiff supplied its goods being Marblex Floor Tiles, PVC Flexible Flooring Sheet etc. to the

defendant no.1/respondent no.2/M/s A.B.C.Incorporated Co. This was a sole proprietary concern of late Mr. Arun Jain. The respondent No.2/defendant no.1 did not make payments with respect to the goods supplied and outstanding against the respondent No.2/defendant no.1 became Rs.2,22,612.00. Thereafter, an additional amount also became due for wall covering and PVC Flooring Sheets for a sum of Rs.41,388/-. The defendant no.1 in spite of requests failed to make the payment. The liability of the defendant no.1 was thereafter taken over by the defendants no.3 and 4, and who are the appellants before this court. An Agreement dated 29.12.1988, Ex.PW 3/19, was entered into between the appellants and respondent No.1/plaintiff whereby the appellants agreed to pay a sum of Rs.2,88,201 to the respondent no.1/plaintiff. These payments in terms of para 2 of the agreement were to be made by demand drafts payable at Delhi. As per para 3 of this agreement on the payment of the amount by the appellants/defendants no.3 and 4, there would be no liability remaining of the defendant no.1. Para 4 of the agreement states that after clearance of the liability of the defendant no.1 by defendants no.3 and 4/appellants, the dealership of the plaintiff's/respondent no.1's products by the appellants/defendant nos. 3 and 4 will continue. In pursuance to this agreement dated 29.12.1988 Ex.PW3/19, the appellant No.1 paid the first installment of Rs.24,201/- but did not make the subsequent payments/installments. The appellants were however appointed as dealers of the products of the plaintiff/respondent no.1 and there were transactions between the parties though, those

transactions are not the subject matter of the present suit as there are no disputes concerning those transactions. On the failure of the appellants to make the payment of Rs.2,64,000/- i.e. Rs.2,88,201/- minus Rs.24,201/-, the respondent no.1/plaintiff claims to have written many letters to the appellants, and one such letter is Ex.PW2/20 dated 30.12.1989. Since the appellants did not pay the dues as claimed by the respondent no.1/plaintiff, the suit came to be filed.

3. The appellants/defendant nos. 3 and 4 contested the suit basically on three grounds. Firstly, it was claimed that the courts at Delhi had no territorial jurisdiction. Secondly, it was argued that the agreement Ex.PW3/19 dated 29.12.1988 was void for lack of consideration. Thirdly and finally, it was pleaded that the respondent no.1/plaintiff had no right to claim interest because the agreement in question specifically provided that the respondent no.1 will not raise or charge interest for the dues. These aspects have also been argued before me on behalf of the appellants.

4. The trial court, after completion of the pleadings framed the following issues.

- “1. Whether the plaintiff has locus to file the present suit against defendant no.1?
2. Whether the suit of the plaintiff is within limitation?
3. Whether the suit has been signed, verified and filed by the duly authorised person?

4. Whether the agreement dated 31.12.88 signed by defendants no.3 and 4 can bind defendant no.2 or the estate of defendant no.1 in respect of the claim of the plaintiff in respect of his dealings with late Sh. Arun Jain?

5. Whether the plaintiff is entitled to the relief as claimed?

One additional issue as issue no.1-A was also framed on 14.1.2002 which is as follows:-

1-A. Whether the court has territorial jurisdiction to try and entertain the Suit? Onus on parties.”

The issues which have been argued before me, and which were the real issues even before the trial court, are issues 1-A pertaining to the territorial jurisdiction and issue no.5 as to whether the respondent no.1/plaintiff was entitled to the suit amount.

5. So far as the issue as to whether the courts at Delhi had territorial jurisdiction, I agree with the findings in this regard of the trial court that the courts at Delhi had territorial jurisdiction. The trial court held that the courts at Delhi had territorial jurisdiction because part of the cause of action accrued at Delhi as the original liability was with respect to goods for which orders were placed upon the plaintiff/respondent no.1 by the defendant no.1 at Delhi and payment with respect to which were also to be made at Delhi. To fasten liability upon the appellants/defendant nos. 3 and 4, this was very much a part of the cause of action which was required to be proved and therefore if part of the cause of action accrued at Delhi, the courts at Delhi would have territorial jurisdiction. In any case, no doubt remains as to the courts at Delhi having territorial

jurisdiction because as per para 2 of the agreement dated 29.12.1988 Ex.PW3/19, the appellants agreed to take over the liability of the defendant no.1 and agreed to make the payments by means of bank drafts payable at Delhi. Once payment shall be made at Delhi, the courts at Delhi would have territorial jurisdiction in view of the judgment of the Supreme Court in ***A.B.C. Laminart Pvt. Ltd & Anr. Vs A.P.Agencies, Salem AIR 1989 SC 1239.***

6. The main issue which has been argued by learned senior counsel for the appellant was that the agreement Ex.PW3/19 is void on account of lack of consideration. The trial court has dealt with this aspect by holding that an agreement for payment as time barred dues by virtue of Section 25 of the Contract Act, 1872 cannot be said to be void for lack of consideration. I completely agree. In fact, the agreement itself in para 3 makes it clear that consideration for entering into the agreement was that on payment of the liability of the defendant no.1 by the appellants/defendant no.3 and 4, the liability of the defendant no.1 would stand extinguished. I therefore find no merit in the argument on behalf of the appellants that the agreement Ex.PW3/19 was void for lack of consideration and therefore could not be looked into.

7. So far as the third argument of the learned senior counsel for the appellant is concerned, I find merits in the same. Para 3 of the agreement Ex.PW3/19, specifically provided that the respondent no.1/plaintiff was not entitled to claim interest on the amounts due. Thus no interest would be

payable as the admitted contract. However, it cannot be said that no interest at any point of time will ever become payable because the object of not claiming interest by the respondent no.1/plaintiff was assuming the installments of payments were made in terms of the agreement Ex.PW3/19 i.e., by 1.12.1990, and the agreement cannot be interpreted to mean that even if the various instalments ending with the last installment on 1.12.1990 are not paid and though the respondent no.1 was forced to file a suit even then, interest will not be payable pendente lite and future till payment. Grant of pre suit interest is governed by the Interest Act, 1978 (in short 'the said Act'), and as per which, it is necessary that a notice claiming interest is required to be given under the provision of Section 3 of the said Act, and admittedly, there is no notice has been given by the respondent no.1/plaintiff for claiming interest. The respondent no.1/plaintiff, therefore, cannot be entitled to pre-suit interest and therefore the amount due on the date of the suit would not be a sum of Rs.3,83,200/- but only a sum of Rs.2,64,000/-. I however cannot agree with the submission of the learned senior counsel for the appellant that this court cannot even grant pendente lite and future interest. Once a suit is filed, a civil court has the necessary powers under Section 34 CPC to grant pendente lite and future interest. The trial court in the present case has granted pendente lite and future interest at 15% per annum. In my opinion and in today's scenario, this rate of interest is unusually high. In the facts and circumstances of the case, I deem it fit considering the recent trend of the decisions of the Supreme Court in **Rajendra**

Construction Co. v. Maharashtra Housing & Area Development Authority and others, 2005 (6) SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and others, 2006 (11) SCC 181, Rajasthan State Road Transport Corporation v. Indag Rubber Ltd., (2006) 7 SCC 700, Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra, 2007 (2) SCC 720 & State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd (2009) 3 Arb. LR 140 (SC)

mandating the grant of lower rates of interest, that, interest at the rate of 9% per annum simple pendente lite and future be awarded in favour of respondent no.1/plaintiff and against the appellants. I make it clear that interest will run only till the complete decretal amount is deposited in this court or paid to the respondent no.1. If certain balance amount is not yet deposited then interest will be payable as per the present judgment on the balance proportionate amount at 9% per annum simple till this balance amount is deposited in this court or paid to the respondent no.1/plaintiff.

8. With the aforesaid observations, the appeal is partly allowed to the extent of refusal of pre-suit interest and also reducing the pendente lite and future interest from 15% per annum simple to 9% per annum simple. Decree sheet be prepared. Trial court record be sent back.

AUGUST 18, 2011
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VALMIKI J. MEHTA, J.