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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 901/2000

17th October, 2012

M/S MONNET FINANCE LTD.

.... Plaintiff

Through: Mr. S.P.Kalra, Sr. Adv. with Mr. Rajiv
Kapoor, Adv. and Mr. Avinash Kumar,
Advocates.

VERSUS

RATTAN LAL GARERA & ANR.

..... Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The subject suit has been filed by the plaintiff for recovery of ₹3,02,70,732/- against the two defendants, and who are the guarantors. Only the guarantors are sued inasmuch as the liability of the guarantors/defendants is averred to be joint and several with the principal borrower. The principal borrower M/s H-Lon Hosiery Ltd-company has not been sued inasmuch as it has already gone into liquidation.

2. The facts of the case are that the plaintiff granted to the company- M/s H-Lon Hosiery Ltd lease of equipments under the lease agreement dated 7.12.1995 (Ex.PW1/3). The equipment which was leased was for a total amount of ₹1,42,41,700/-, and which amount was to be repaid with interest in instalments with machinery being security against repayment. The defendants executed the guarantee letters dated 7.12.1995, Ex.PW1/6 and Ex.PW1/7, agreeing to make the payment in case of a demand being raised upon the guarantors on the default in repayment committed by the principal borrower. The maximum amount payable under each of the guarantee agreement was ₹1,94,00,000/-.

3. The schedule of repayment is contained in the lease agreement exhibited as Ex.PW1/3, and which is as under:-

“SCHEDULE ANNEXED TO THE LEASE AGREEMENT DATED 7th DECEMBER, 1995
MADE BETWEEN THE PARTIES:

DESCRIPTION OF THE EQUIPMENT:

55 Nos. Automatic Socks Knitting Machines, Colour Motif, Colour-in-Colour, Floating Pattern, Mesh Pattern, Plating Horizontal & Vertical Stripes etc.

LEASE RENT:

SL. NO.	PERIOD FOR WHICH LEASE RENT PAYABLE	DUE DATE OF PAYEMNT	AMOUNT OF LEASE RENT PAYABLE
1.	7.12.95 to 6.03.96	7.12.95	13,17,358.00
2.	7.03.96 to 6.06.96	7.03.96	13,17,358.00

3.	7.06.95 to 6.09.96	7.06.96	13,17,358.00
4.	7.09.96 to 6.12.96	7.09.96	13,17,358.00
5.	7.12.96 to 6.03.97	7.12.96	13,17,358.00
6.	7.03.97 to 6.06.97	7.03.97	13,17,358.00
7.	7.06.97 to 6.09.97	7.06.97	13,17,358.00
8.	7.09.97 to 6.12.97	7.09.97	13,17,358.00
9.	7.12.97 to 6.03.98	7.12.97	13,17,358.00
10.	7.03.98 to 6.06.98	7.03.98	13,17,358.00
11.	7.06.98 to 6.09.98	7.06.98	13,17,358.00
12.	7.09.98 to 6.12.98	7.09.98	13,17,358.00
13.	7.12.98 to 6.03.99	7.12.98	13,17,358.00
14.	7.03.99 to 6.06.99	7.03.99	13,17,358.00
15.	7.06.99 to 6.09.99	7.06.99	9,25,709.00

4. The principal borrower M/s H-Lon Hosiery Ltd. failed to pay even a single instalment, and therefore, the subject suit came to be filed. During the pendency of the suit, on account of compromise with the defendants, the defendants on different dates paid amounts totalling to ₹ 13,00,000/-. Since, the balance amount is not paid, the plaintiff seeks the decree for recovery of balance moneys.

5. Plaintiff has filed its affidavit by way of evidence. Two affidavits have been filed. One of Sh. N.K.Jain, PW-1 and another of handwriting expert Sh. B.N.Srivastava, PW-2.

6. Plaintiff has through the affidavits by way of evidence proved on record the Board of Resolution dated 5.10.1998 Ex.PW1/1 showing due filing of the suit, Certificate of Incorporation of the plaintiff has been proved and exhibited as Ex.PW 1/2, the lease agreement and the supplemental agreement have been proved and exhibited as Ex.PW1/3 and Ex.PW1/4 respectively, guarantees executed by defendant nos. 1 and 2 proved and exhibited as Ex.PW1/6 and Ex.PW1/7, notice of demand upon the defendants to make payment of the suit amount is notice dated 10.4.2000 which has been exhibited as PW1/35 and the postal receipts have been proved and exhibited as Ex.PW1/36 to Ex.PW1/41.

7. Learned senior counsel appearing for the plaintiff with reference to the guarantee agreements Ex.PW1/6 and Ex.PW1/7 contends that in the present case, liability against the guarantor commences after the default of the principal borrower, only when the notice of demand is served upon the defendants/guarantors, and which is argued to be clear from the expression “in the event you advise me that the Lessee has not paid the lease rent....” in the guarantee agreement. It is argued that in such cases, the Article applicable for limitation will be Article 113 of the Limitation Act, 1963 and the cause of action or the right to sue will arise on sending of the demand notice dated 10.4.2000. It is argued that the suit is therefore within limitation as the same has been filed on 2.5.2000.

8. Learned senior counsel for the plaintiff also confines his relief to the refund of the principal amount of ₹1,42,41,700/- less the amount of ₹ 13,00,000/- i.e. the amount of ₹ 1,29,41,700/- and interest payable thereon.

9. I may state that though as per the lease agreement Ex.PW1/3, interest at 4% per month is the contractual rate of interest, however, this rate of interest cannot be granted in view of the Usurious Loans Act, 1918 as amended qua Delhi by the Punjab Relief of Indebtedness Act, 1934. As per this amendment of the Usurious Loans Act, as applicable to Delhi, the rates of interest which can be charged by a lender are at two different rates. One rate is when the debt is a secured debt and another is when the debt is unsecured. For a secured debt, interest at 7 ½% per annum simple will be payable whereas for an unsecured debt interest at 12 ½% per annum simple is payable-vide Section 3 (i)(e) of the Act. Of course, the Usurious Loans Act will not apply to any loan by the bank or any other notified company as per the proviso to the aforesaid Section, however, the plaintiff is not a notified company exempted from application of the Usurious Loans Act inasmuch as that is not the case as set up by the plaintiff.

10. In view of the above, the plaintiff has proved the entitlement to claim ₹ 1,29,41,700/- against the defendants and for which amount a decree is passed in favour of the plaintiff and against the defendant. Plaintiff will also be entitled to

pendente lite and future interest till payment at 7 ½ % per annum simple. Plaintiff is also entitled to costs in terms of Rules of this Court. Decree sheet be prepared.

OCTOBER 17, 2012
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VALMIKI J. MEHTA, J.