

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

Date of Decision : December 02, 2008

RFA 721/1994

Corporation Bank

Appellant

Through: Ms.Sumati Anand, Adv.

versus

M/s.Aircon Electronics

Respondent

Through: Nemo.

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

Hon'ble Mr.Justice J.R. Midha

PRADEEP NANDRAJOG, J. (Oral)

1. Learned counsel for the appellant urges a limited point, being that, there is no reason why interest from 29.12.1985, pre suit, pendente lite and future has not been awarded against defendants No.3 to 5 of the suit being respondents No.3 to 5 in the appeal.
2. We note that vide impugned judgment and decree dated 19.3.1994 suit of the appellant claiming a decree in sum of Rs.84,646.66 has been decreed holding that defendants No.1 and 2 are jointly and severally liable to pay the decretal amount together with pendente lite and future interest @16% per annum. Said sum includes pre suit interest @16% per annum.
3. However, the liability qua defendant No.3 impleaded as respondent No.3 in the appeal has been held limited to Rs.25,000/-. Likewise, liability of defendants No.4 and 5 impleaded as respondents No.4 and 5 in the appeal has been held limited to Rs.24,460.20.
4. We agree with the submission made by learned counsel for the appellant that on the sum held as the liability of defendants No.3 to 5 pendente lite and future interest was required to be granted. We also agree that since appellant demanded the amount due on 29.12.1985 vide notice Ex.PW-1/33 pre suit interest w.e.f. 29.12.1985 @16% per annum was liable to be paid by said defendants.

5. It appears that by mistake the learned Trial Judge has omitted reference to pendente lite and future interest while decreeing the suit against defendants No.3 to 5, who we note, were the guarantors.

6. Limiting liability under the guarantee, certainly, pendente lite and future interest has to be paid. Pre suit interest w.e.f. 29.12.1985 has also to be paid.

7. The contractual rate of interest is admittedly @16% per annum. This is the pre suit interest w.e.f. 29.12.1985, pendente lite and future interest granted by us against the defendants No.3 to 5.

8. We dispose of the appeal and modify the impugned judgment and decree dated 19.3.1994 and modify the same by decreeing the suit of the appellant against defendants No.3 to 5 by holding that said defendants would be liable to pay pre suit interest w.e.f. 29.12.1985, pendente lite and future interest @16% per annum till payment is made on the principal sums held liable to be paid by said defendants.

9. No costs.

Sd./-
PRADEEP NANDRAJOG, J.
Sd./-
J.R. MIDHA, J.

DECEMBER 02, 2008