(1988) 11 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : C.P. No. 74 of 1985 in C.P. No. 57 of 1983

Bareja Knipping Fastners Limited (In Liquidation) APPELLANT

Vs

Swastika Trading Company RESPONDENT

Date of Decision : 18-11-1988

Acts Referred:
Companies Act, 1956 — Section 446(2), 468
Sales of Goods Act, 1930 — Section 61(2)

Citation : (1990) 69 CompCas 552

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Judgement

G. R. Majithia, J.—The petitioner-company (in liquidation) has filed this petition u/s 446, read with Section 468 of the Companies Act, for recovery of Rs. 73,695.42 against the respondents.

2. The matrix of the case is as under :

The petitioner company was ordered to be wound up by this court, vide order dated October 27, 1983, passed in Company Petition No, 57 of 1983. The official, liquidator, attached to this court, was appointed its official liquidator. He took possession of the assets and records of the company. The books of account of the petitioner-company were examined and it was found that a sum of Rs. 73,695.42 was due from the respondents as on July 26, 1982, on account of the unpaid price of the goods supplied to the latter. A demand notice dated June 9, 1984, was served upon the respondents which was duly received by it, but no payment was made. The petitioner claimed the principal amount with interest.

3. The respondent-company filed written statement controverting the allegations made in the petition. It, inter alia, pleaded that the petitioner-company appointed the respondents as their stockists for the States of Tamil Nadu and Kerala. The respondents were to book orders for the products of the petitioner-company. The respondent-company deposited a sum of Rs. 10,000 with the petitioner as deposit against their appointment as sole distributors of the

products of the petitioner-company. The petitioner-company supplied various products to the respondents in pursuance of the orders collected by it. The petitioner-company was erratic in the supply of the products. The petitioner-company also supplied sub-standard products which were not in conformity with the samples supplied by it. The consignment of the petitioner-company was thus unmarketable being of sub-standard quality and not in conformity with the samples. It was brought to the notice of the petitioner about the poor quality of their goods. The petitioner-company advised the respondents that the unsold material be despatched to Delhi by Q. T. S. or road transport. The respondent-company, in pursuance of this communication, despatched 52 cases to the petitioner-company through Ashoka Roadways and the documents were sent to the petitioner-company by registered post with acknowledgement due on November 11, 1982. But, the said registered letter came back undelivered to the respondent with the report that the factory of the petitioner-company was closed due to strike. The respondent again wrote a letter dated December 13, 1982, with a request that the petitioner should intimate the respondent as to when the strike will be over so that the documents can be sent by registered post. It was further pleaded that the managing director of the petitioner-company informed the respondents that they had deputed Brij Mohan Sharma to collect G. R. No. M. D. S. 1262 to facilitate delivery of the goods sent by the respondent. The respondents wrote to Ashoka Roadways not to rebook the consignment to the respondent but to deliver the consignment to the petitioner-company. The original was handed over to Brij Mohan Sharma. Goods of the value of Rs. 43,449.42 were returned through this consignment contained in 52 cases.

4. The respondents also pleaded that goods worth Rs. 30,000 were retained by them with the hope that they would be marketed, but they could not succeed. Goods worth Rs. 30,000 are lying with the respondents which are to be retrieved by the petitioner. It was further pleaded that the respondents have sold goods worth Rs. 10,000 only for which they have already paid.

5. From the pleadings of the parties, the following issues were framed : --

1. Whether the goods of the value of Rs. 43,449.42 have been returned by the respondent to the petitioner ?

2. Whether the goods of the value of Rs. 30,000 were sub-standard and defective ? If so, what is its effect ?

3. Whether the property in the goods of the value of Rs. 30,000 had not passed to the respondent ?

4. Whether the petitioner is entitled to interest ? If so, at what rate ?

5. Whether the petition is barred by limitation ? 6. Relief.

Issue No. 1. -- RW-2, Yaswant Rai Desai, is the general attorney of the respondent-company. From his statement it is apparent that goods of the value of Rs. 43,000 were returned by the respondents to the petitioner-company.

Exhibit R-6 read with exhibits R-7 and R-8 indicates that 52 cases of sheet metal screws of the net value of Rs. 43,449.42 were booked through Ashoka Roadways, vide G. R. No. M. D. S. 1262, dated November 10, 1982. The receipt of this invoice is corroborated by a letter dated February 21, 1983, addressed by the respondents to Ashoka Roadways. A copy of this letter was received by Brij Mohan Sharma, representative of the petitioner-company. From the aforesaid documentary evidence coupled with the oral evidence on record, it is apparent that goods of the value of Rs. 43,449.42 were returned to the petitioner-company. Accordingly, issue No. 1 is answered in favour of the respondents and against the petitioners.

Issues Nos. 2 and 3. --There is no dispute that goods of the value of Rs. 30,000 belonging to the petitioners are lying with the respondents. The plea set up by the respondents that the goods were sub-standard and could not be marketed is not supported by any evidence. It is also inconect to say that the title in the goods did not pass to the respondents. If the goods could not be marked as alleged by the respondents, the same ought to have been returned to the petitioner-company but no such steps were taken. Resultantly, I hold that goods of the value of Rs. 30,000 were in fact retained by the respondents. These are either in their custody or had been pilfered. The defence taken by the respondents appears to be devoid of substance. I, accordingly, decide issues Nos. 2 and 3 against the respondents. The petitioners are entitled to recover this amount from the respondents.

Issue No. 4. -- Section 61(2) of the Sale of Goods Act, 1930, reads as under :

"(2) In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price --

(a) to the seller in a suit by him for the amount of the price--from the date of the tender of the goods or from the date on which the price was payable ;

(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller --from the date on which the paymentwas made."

6. The liability on the part of the buyer to suffer interest is a statutory liability arising under Sub-section (2) of Section 61 of the Sale of Goods Act. The respondent-company is liable to pay interest on the unpaid price of the goods supplied to it. In the. circumstances of this case, I hold that the petitioner is entitled to interest at the rate of 9% per annum from the date the decretal amount became due till realisation. Issue No. 4 is decided accordingly.

Issue No. 5. -- No meaningful argument was advanced on behalf of the respondents to prove that the petition is barred by limitation.

Issue No. 6 (Relief). --In view of my findings under issues Nos. 2 and 3, I pass a decree for the recovery of Rs. 30,000 in favour of the petitioners and against the respondents, with interest at the rate of 9% per annum from the date of service of notice of demand on the respondents till realisation. The parties are, however, left to bear their own costs.

