(2009) 05 DEL CK 0447

In the Delhi High Court

Case No : CS (OS) No. 2977 of 1988

Bharat Aluminium Co. Ltd. APPELLANT

Vs

Maharashtra Aluminium Corporation RESPONDENT

Date of Decision : 01-05-2009

Acts Referred:

Citation : (2009) 159 DLT 489 : (2009) 7 ILR Delhi 260 : (2009) 155 PLR 29 : (2010) 7 RCR(Civil) 250

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Davinder Singh, Jasmeet Singh and Saurabh Tiwari, for the Appellant; K.R.Gupta, Nitin Gupta and Kiran Dharam, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—This is a suit filed by the plaintiff against the defendant for recovery of Rs. 20,19,699/- with pendente lite and future interest @ 24% p.a.

2. Briefly stated, the facts of the case are that the plaintiff is a Government company and the suit has been filed through its Executive Director, Shri P.S. Gupta. The plaintiff appointed the defendant as its consignment agent vide letter dated 27.5.1985 for a period of 11 months starting from 2.5.1985 to 31.3.1986. The defendant, as per the terms of the Consignment Agency Agreement, was required to deposit a sum of Rs. 3 lacs as security with the plaintiff which was to carry interest @ 12% p.a. and the interest so accrued was to be adjusted annually against the supplies made. In further terms of the Consignment Agency Agreement, the defendant was required to raise and make invoices on customers in defendant''s own name on behalf of the plaintiff in respect of the goods sold by the defendant and was made responsible to pay the plaintiff full value of such invoices on due date notwithstanding the realization of the price from its customers.

3. The defendant, during the continuance of Consignment Agency Agreement,

was allowed to make payment for the materials supplied to the defendant within 55 days in case of dispatches made through road and 65 days in case of dispatches made through rail, from the date of dispatch of the material from Korba and/or Bidhan Bagh Unit and the cheques were to be deposited by the defendant in such a manner so as to get credit of the same in the account on due dates.

4. According to the statement of account filed along with the suit, an amount of Rs. 11,67,853/-, after adjusting the security amount of Rs. 3 lacs, was outstanding against the defendant. It is alleged that the defendant was also liable to pay interest @ 24% p.a. and an amount of Rs. 6,43,015/- has been claimed on account of interest upto 30.6.1988. An amount of Rs. 2,08,831/- has also been claimed on account of interest for delay in payment made after the scheduled date. As such, a total sum of Rs. 20,19,699/- has been claimed by the plaintiff against the defendant, which includes interest upto the date of filing of the suit.

5. In response to the summons of the suit, the defendant has filed its written statement. The defendant has disputed the territorial jurisdiction of the Court to entertain the present suit. It is stated that neither any cause of action arose in favour of the plaintiff in the jurisdiction of this Court nor the defendant either resides or works for gain within the territorial limits of this Court. As per the defendant, the contract of agency was concluded at Bombay and the offer of appointment of agency was also made by the plaintiff to the defendant from its office at Bombay. It is, therefore, alleged that this Court lacks territorial jurisdiction to try the present suit.

6. The defendant has also disputed that the suit has been signed, verified or filed by a competent person on behalf of the plaintiff. It is denied that Shri P.S.Gupta, through whom this suit has been filed, is the Executive Director (Commercial) and a senior officer of the plaintiff company. The authority of Mr. P.S.Gupta to sign, verify and institute the suit has been questioned by the defendant.

7. The defendant has denied its liability to pay any interest. It is stated that there was no agreement between the parties that the defendant would be required to pay interest on the delayed payment. The statement of account filed by the plaintiff along with the suit has also been disputed by the defendant. The defendant has denied the entitlement of the plaintiff to claim the alleged principal amount or the interest claimed in the suit. The defendant has filed its statement of account maintained by it in the regular course of business along with its written statement and relying on its statement of account, the defendant has stated that it is the plaintiff who is liable to pay a sum of Rs. 29,092/- to the defendant after settling of the accounts. The defendant has denied the entries contained in the statement of account filed by the plaintiff along with the suit. It is stated that the plaintiff has shown an amount of Rs. 2,11,080/- in the debit side as outstanding although the same was paid by the defendant vide cheque No. 973566 drawn on State Bank of Bikaner and Jaipur, Sikandarabad Branch.

The plaintiff is stated to have not given credit for this payment. It is further alleged that the defendant had given two drafts in the sum of Rs. 40,000/- each drawn in favour of the plaintiff on the State Bank of Bikaner and Jaipur and these payments also did not find place on the credit side in the statement of account furnished by the plaintiff. It is further stated that the plaintiff has also not given any credit for the interest accrued on the security amount of Rs. 3 lacs furnished by the defendant. As per the defendant, the goods sent by the plaintiff through Jamshedpur Transport Company were not delivered to the defendant and on enquiry, the said Transport Company informed the defendant that the same were returned to the plaintiff but still the plaintiff has shown debit entries of approximately Rs. one lakh in its statement of account. The commission payable to the defendant under the Consignment Agency Agreement dated 27.5.1985 is also not shown correctly in the statement of account filed along with the suit. On these grounds the defendant has denied its liability to pay any amount to the plaintiff and has prayed for the dismissal of the suit.

8. The plaintiff has filed its replication to the written statement of the defendant in which it has denied all the allegations which are inconsistent and contrary to its averments contained in the plaint and has reiterated the facts stated in the plaint to be correct. The plaintiff has re-asserted its prayer for grant of decree for the suit amount against the defendant.

9. Following issues were framed in the suit on 20.7.1998:

1. Whether the suit has been signed, verified and filed by a competent person? OPP.

2. Whether this Court has no territorial jurisdiction to try the suit? OPD

3. To what amount, if any, is the plaintiff entitled on account of principal from the defendant? OPP

4. Whether the plaintiff is entitled to interest? If so, at what rate and in what amount? OPP

5. Whether the plaintiff is estopped to claim interest on the closed transactions on account of its conduct? OPD

6. Relief.

10. In evidence, the plaintiff has examined only one witness, namely, its Regional Manager, Mr. R.P.Junagade as PW-1. The evidence of the plaintiff was closed by the Court vide its order passed on 23.01.2009. The defendant has not examined any witness in the matter.

11. I have heard the arguments of learned Counsel for both the parties and have also perused the entire case file. My findings on the above issues are as follows:

ISSUE No. 1

12. At the time the suit was filed, the plaintiff was a Government Company

incorporated under the Companies Act, 1956. However, during the pendency of the suit, the plaintiff company was privatized. The suit was signed, verified and instituted through Shri P.S.Gupta, then Executive Director of the plaintiff company. Mr. Gupta, through whom this suit has been filed, has not been examined in the case. The resolution by which Mr. Gupta might have been authorized to sign, verify and institute the suit has neither been pleaded in the plaint nor it is tendered in the evidence. The onus of proof to prove that the suit has been signed, verified and instituted by a duly authorized person was upon the plaintiff. However, Mr. Davinder Singh, learned senior counsel appearing on behalf of the plaintiff has relied upon a judgment of the Hon''ble Supreme Court in United Bank of India Vs. Naresh Kumar and others, and on the strength of this judgment, he had argued that the suit on behalf of a company can be filed by any principal officer of the company and according to him the Court cannot dismiss the suit for want of proof of the authority in favour of the person through whom the suit was instituted. In this case, it was held by the Hon''ble Supreme Court as under:

A company like the appellant can sue and be sued in its own name. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the CPC it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and dehors Order 29 Rule 1 CPC, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 CPC. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification may be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

It was further held in the above-mentioned judgment as under:

In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

13. In view of the ratio of law laid down by the Hon''ble Supreme Court in the

above-mentioned case, I disregard the objection regarding the authority of Mr. P.S.Gupta taken by the defendant in its written statement and hold that the present suit has been filed, signed and instituted by a duly authorized person. I take this view in the matter because of the fact that the defendant has not produced any evidence to prove its contention that Mr. P.S.Gupta, through whom this suit was instituted, was not competent to sign, verify and file the present suit. This issue is accordingly decided in favour of the plaintiff and against the defendant.

ISSUE No. 2

14. The suit is based on a Consignment Agency Agreement dated 27.5.1985 (Ex.P-4 at page 62 in Part-III file). By this Agreement the defendant was appointed as a consignment agent by the plaintiff for sale of its aluminium products at Nagpur and Bombay. The objection of the defendant to the territorial jurisdiction of this Court is based on the plea that neither any part of cause of action has arisen in the jurisdiction of this Court nor the defendant resides or works for gain in the territorial limits of this Court. It was contended that all the formalities relating to appointment of the defendant as consignment agent for the plaintiff had taken place at Bombay and the contract of Consignment Agency was also concluded at Bombay by acceptance of terms and conditions of the Agency Agreement by the defendant at Bombay on 27.5.1985. Admittedly, the goods pursuant to Consignment- Agency Agreement in question were not supplied by the plaintiff to the defendant from Delhi. The plaintiff admits that neither goods were supplied in the jurisdiction of this Court nor any payment was made in the jurisdiction of this Court.

15. Mr. Davinder Singh, learned senior counsel appearing on behalf of the plaintiff had based his argument for conferring jurisdiction to this Court only on document Ex.P-4 and relying on the said document, he had argued that since the letter dated 27.5.1985 appointing the defendant as consignment agent was sent by the plaintiff''s Head Office at Delhi, a part of cause of action had arisen in the jurisdiction of this Court and, therefore, according to him this Court is competent to try and entertain the present suit. The learned senior counsel appearing on behalf of the plaintiff has relied upon a judgment of the Hon''ble Supreme Court in M/s. Progressive Constructions Ltd. Vs. Bharat Hydro Power Corporation, to contend that the contract of appointment of the defendant as consignment agent vide letter dated 27.5.1985 was complete when the said letter was posted by the plaintiff''s Head Office from Delhi. According to the learned senior counsel for the plaintiff, the delivery of the said letter to the defendant and its acceptance by him at Bombay is wholly inconsequential for deciding the objection of territorial jurisdiction.

16. On the other hand, Mr. K.R. Gupta, learned Counsel appearing on behalf of the defendant, had taken me through the correspondence that exchanged between the parties prior to issuance of formal letter of appointment of the defendant as consignment agent vide letter dated 27.5.1985 and with the help of

the said correspondence, the learned Counsel has contended that the defendant had no dealing at all with the plaintiff''s Head Office at Delhi and, therefore, according to him, the defendant is not concerned with any correspondence, if any, that might have taken place between the plaintiff''s Branch Office at Bombay and Head Office at Delhi. It was argued that the defendant had completed all formalities relating to its appointment as consignment agent of the plaintiff at Bombay only. It was contended that the defendant neither wrote any letter to the plaintiff at its Head Office in Delhi nor received any communication from the Head Office of the plaintiff. Admittedly, the seat of business of the defendant is at Bombay. A perusal of documents Ex.P-1, Ex.P-2 and Ex.P-3 would clearly show that the entire correspondence that took place between the parties prior to issuance of formal letter of appointment to the defendant appointing it as consignment agent had taken place at Bombay. The decision to appoint the defendant as consignment agent was taken by Mr. A.P.Chopra, the Branch Manager of the plaintiff company at Bombay. Reliance is placed upon the noting at the foot and back of document Ex.P-1 at page 60 of Part-III file. The letter Ex.P-4 seems to have been signed by the Deputy Marketing Manager of the plaintiff company at its Delhi Head Office. The question is whether the signing of the said letter Ex.P-4 by the plaintiff''s Deputy Marketing Manager at Delhi gives rise to a cause of action or part thereof to confer jurisdiction of this Court to try the present suit.

17. I am of the view that mere signing of appointment letter at Delhi would not confer jurisdiction on this Court to try the present suit. The jurisdiction can be conferred only on a Court where the contract is concluded. The plaintiff has not produced any evidence on record to prove how letter Ex.P-4 was sent to the defendant for its acceptance. The defendant has taken a specific stand that he had accepted the terms and conditions of his appointment as consignment agent of the plaintiff contained in letter Ex.P-4 dated 27.5.1985 in the plaintiff''s Branch Office at Bombay. The plaintiff''s witness PW-1 Mr. R.P.Junagade has testified in his evidence-in-chief that after the decision to appoint a consignment agent is taken at the Head Office of the plaintiff company at Delhi, the defendant was required to sign an agreement with the plaintiff company. He has deposed that two copies of the agreement, after they were signed by the plaintiff company, were sent to the consignment agent who is appointed by the company. The consignment agent returned one copy of the agreement duly signed by him to the company and retained the other copy with him. He stated that he has no personal knowledge of the dealings between the parties and the knowledge derived by him was from the records of the company. He stated that he does not know how document Ex.P-4 was sent to the defendant because he was not at Bombay at the relevant time. He further stated that he does not have any record to show that the agreement Ex.P-4 was sent by Delhi Office to the defendant. From this testimony of the plaintiff''s witness on record, it cannot be said that document Ex.P-4 was sent by the plaintiff from Delhi to Bombay. One thing which is admitted even by the plaintiff is that the agreement Ex.P-4 was sent by the

defendant to the plaintiff''s office in Bombay in token of its accepting the terms of appointment contained in the said letter.

18. In my view, the contract of appointment of the defendant as consignment agent of the plaintiff was concluded at Bombay when the defendant had accepted the terms and conditions of the Agency Agreement which admittedly were accepted by him at Bombay. I had put it to the learned senior counsel during arguments whether the plaintiff would have supplied goods to the defendant on the basis of document Ex.P-4, had the terms contained therein were not accepted by the defendant, the learned senior counsel responded to the said query by saying that in the event of defendant not accepting the terms and conditions of appointment contained in the letter Ex.P-4 dated 27.5.1985, the plaintiff would not have supplied goods to the defendant under the Consignment Agency Agreement. This response by the learned senior counsel supports my conclusion that the contract of Consignment Agency Agreement between the parties was concluded at Bombay when it was accepted by the defendant at Bombay. In this view of the matter, the judgment of the Hon''ble Supreme Court in Progressive Constructions Ltd. Case (Supra) is not applicable to the facts of this case.

19. Having regard to the above, I have no hesitation in holding that this Court has no territorial jurisdiction to try and entertain the present suit. This issue is decided accordingly in favour of the defendant and against the plaintiff.

ISSUE No. 3

20. The plaintiff has filed this suit on the basis of statement of account maintained by it in the regular course of business. The entries contained in the statement of account filed along with the suit have been disputed by the defendant. The plaintiff has not proved its statement of account in its evidence. Section 34 of the Indian Evidence Act, 1872 is relevant and is extracted below:

34. [Entries in books of account including those maintained in an electronic form] when relevant.-

[Entries in the books of accounts including those maintained in an electronic form], regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

21. Since the plaintiff has failed to prove its statement of account by leading any evidence much less cogent evidence in regard to the same, it cannot be said that the plaintiff has proved its claim against the defendant. However, the learned senior counsel appearing on behalf of the plaintiff has relied upon the admission of the defendant contained in letters Ex.P-6 dated 15.4.1986 and Ex.P-7 dated 18.3.1986. The alleged admission by the defendant in these letters Ex.P-6 and Ex.P-7 is of no legal consequence because the present suit was filed by the plaintiff on 28.11.1988 after more than 2 1/2 years of the alleged admission and

it is not the case of the plaintiff that no dealings at all had taken place between the parties after these alleged admissions. In fact, the plaintiff was required to prove its statement of account before the defendant could be burdened with the liability for payment in this suit.

22. I am of the view that the pleadings contained in the plaint is no evidence, far less, proof. In terms of Section 102 of the Evidence Act, 1872 the initial onus to prove its claim was always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

23. In the present case, the plaintiff has not led any evidence much less cogent evidence to substantiate its claim against the defendant. I, therefore, hold that the plaintiff is not entitled to any recovery from the defendant in the present suit. This issue is also decided against the plaintiff.

ISSUES No. 4 & 5

24. Findings on these issues are not called for because of the failure of the plaintiff to prove its claim even on account of the principal outstanding amount against the defendant.

RELIEF

25. In view of my findings on the above issues, the present suit is hereby dismissed, but in the peculiar facts of this case, with no order as to costs. Decree sheet be drawn accordingly.