(2011) 03 DEL CK 0051

In the Delhi High Court

Case No : CS (OS) No. 2223 of 2010

Camco Multi Metal Ltd. APPELLANT

Vs

Sharif Metals International LLC and Others RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Interest Act, 1978 — Section 3
Specific Relief Act, 1963 — Section 14(1)

Citation : (2011) 03 DEL CK 0051

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Kunwar Pal Singh, for the Appellant; None, for the Respondent

Judgement

V.K. Jain, J.—This is a suit for specific performance of the agreement dated 27.01.2009 or in the alternative for recovery of Rs. 21,80,500/- The Plaintiff has also sought an injunction restraining Defendant No. 3 from transferring any amount to Defendants No. 1 & 2 to the extent of Rs. 21,80,500/-. The Plaintiff is an Indian Company, whereas Defendant No. 1 is a company incorporated in UAE. Defendant No. 1 Company is engaged in the business of sale of aluminium scraps and Defendant No. 2 is stated to be its Director. It is alleged in the plaint that Defendant No. 1 offered to sell 100 MT of aluminium scraps as per ISRI Tense to the Plaintiff vide offer dated 27.01.2009. The offer was accepted by the Plaintiff and purchase order dated 28.01.2009 was issued accordingly for supply of 100 MT of aluminium scraps as per ISRI Tense at the rate of US $ 1,025.00 per metric ton. The shipment was to be done by 26.02.2009. A sum of US $ 20,500 was paid as an advance to Defendant No. 1 on 04.02.2009. After several reminders from the Plaintiff, Defendants No. 1 & 2 informed the Plaintiff company that a shipment of two containers containing 20 MT each of material had been released by them and would be received by the Plaintiff. However, the Defendants later diverted shipment to Defendant No. 3 - M/s. Ashirwad Steels. Defendants No. 1 & 2 thereafter demanded increased price for the material. The Plaintiff agreed to increase the price from US$ 1025 per metric ton to US $ 1045 per metric ton and a revised purchase order dated 18.03.2009 was accordingly issued. Initially, the goods were to be supplied or shipped by Defendants No. 1 & 2 by 25.03.2009, but, the date of delivery was later extended to 20.04.2009 on the request of Defendants No. 1 & 2. It is alleged that despite the Plaintiff increasing the price, Defendants No. 1 & 2 failed to supply the goods to the Plaintiff. The Plaintiff has sought a decree for specific performance directing Defendants No. 1 & 2 to perform the contract by supplying 100 MT of aluminium scraps as per ISRI Tense to it, and a decree for recovery of Rs. 21,80,500/- on account of the loss suffered by it. The Plaintiff has sought permanent injunction restraining Defendant No. 3 from transferring any amount to Defendants No. 1 & 2 to the extent of Rs. 21,80,500/-.

2. The Defendants were proceeded ex-parte on 10.01.2011.

3. The Plaintiff has filed the affidavit of one of its Directors Mr. Rajkamal Saraogi by way of ex-parte evidence. In his affidavit, Mr. Saraogi has supported, on oath, the case set up in the plaint and has stated that the offer dated 27.01.2009 sent by Defendants 1 & 2 for supply of 100 MT of aluminium scraps as per ISRI Tense was accepted by the Plaintiff and a purchase contract dated 28.01.2009 was accordingly placed. He has further stated that advance amount of US $ 20,500 was paid by the Plaintiff on 04.02.2009. According to him, Defendants No. 1 & 2, consequent to a number of reminders from them, informed them about shipment of two containers containing 20MT each of the material but later diverted that material to Defendant No. 3 - M/s. Ashirwad Steels. He has further stated that on account of demand of higher price by the Defendants, they had agreed to increase the purchase price from US $ 1025 per metric ton to US $ 1045 per metric ton. According to him, despite efforts made by them, Defendants No. 1 & 2 have failed to perform the agreed contract.

4. Ex.PW-1/2 is a letter sent by Defendant No. 1- M/s. Sharif Metals International LLC to the Plaintiff company on 27.01.2009, agreeing to sell 100MT of aluminium scraps as per ISRI Tense at the rate of US $ 1025 per metric ton. The material was to be loaded from any Middle East Port was to be discharged at CIF Nhava Sheva Port in Mumbai. 20% of the sale consideration was to be paid in advance and the balance was payable in cash against the documents through Axis Bank Ltd., Statesman House, 148 Barakhamba Road, New Delhi. Ex.PW-1/3 is the purchase order dated 28.01.2009 placed by the Plaintiff company on Defendant No. 1 company, for purchase of 100MT of aluminium scraps as per ISRI Tense at the rate of US$ 1025 per metric ton. Ex.PW-1/7 is the revised purchase order issued by the Plaintiff company on 18.03.2009. The purchase price was revised to US $ 1045 per metric ton and the date of shipment was changed to 25.03.2009 vide this document.

5. Ex.PW-1/4 is the document evidencing transfer of US$ 20,500 by Axis Bank Ltd. to JPMORGAN CHASE BANK N.A., New York. The document shows that the money was transferred on its behalf from the Plaintiff company to Defendant No. 1 - M/s. Sharif Metals International LLC.

6. The deposition of Mr. Rajkamal Saraogi coupled with the documents filed by the Plaintiff company shows that the Plaintiff had accepted the offer made by Defendant No. 1 for sale of 100MT of aluminium scraps to it on US $ 201045 per metric ton and a sum of Rs. 20,500/- was transferred by the Plaintiff company to Defendant No. 1 towards advance money. The documents produced by the Plaintiff also show that Defendant No. 1 failed to supply the goods to the Plaintiff despite receipt of the advance money.

7. Since this was a contract for supply of material and the Plaintiff company can be adequately compensated in terms of money on account of the non-performance of the contract, specific performance of the contract cannot be directed in view of the prohibition contained in Section 14(1)(a) of Specific Relief Act, 1963 and the only remedy available to the Plaintiff is to seek damages along with refund of the advance money paid by it to Defendant No. 1.

8. The advance payment amounting to US$ 20,500 was paid by the Plaintiff to Defendant No. 1. As regards quantum of damages, the additional affidavit of Mr. Rajkamal Saraogi shows that in the third week of April, 2009, the rate of the goods in question was US$ 1220 per MT. A copy of another purchase order which the Plaintiff placed on record with M/s.DUNN BROSS(U.K.) for purchase of the same material on 17.04.2009 has been referred as Ex.PW-1/10 in the additional affidavit though the Joint Registrar did not mark it as exhibited document. The document is being read in the additional affidavit as Ex.PW-1/10. The sale contract between the Plaintiff and M/s. Dunn Bross(U.K.) shows that the Plaintiff company agreed to purchase two containers of aluminium scraps from M/s. DUNN BROSS(U.K.) at the rate of US $ 1220 per MT.

I see no reason to disbelieve the additional affidavit filed by Mr. Rajkamal Saraogi coupled with the document evidencing the purchase contract between the Plaintiff company and M/s. Dunn Bross(U.K.) and, therefore, hold that the price of the material which Defendant No. 1 had agreed to sell to the Plaintiff company was US$ 1220 per MT, on the date Defendant No. 1 committed breach of the contract with the Plaintiff company by not supplying the contracted material. The amount of damages, therefore, comes to US $ 17500/-. The Plaintiff is entitled to recover US $ 20,500/- being the advance paid by it to Defendant No. 1 and US $ 17,500 towards damages making a total sum of US $ 38,000/-. The additional affidavit of Mr. Rajkamal Saraoji also shows that the rate of US $ on 17.04.2009 was Rs. 50.180. The amount which the Plaintiff can recover from Defendant No. 1 as principal sum therefore comes to Rs. 19,06,840/-.

9. The Plaintiff has also claimed a sum of Rs. 2,51,000/- as interest for the pre-suit period at the rate of 15% per annum. Admittedly, there is no agreement between the parties for payment of interest. No usage of trade for payment of interest has been either pleaded or proved. However, u/s 3 of Interest Act, 1978, the Court can award interest at a rate not exceeding the current rate of interest from the date mentioned in the written notice given by the Plaintiff to Defendant No. 1 provided, claim for the interest has been made in the notice. A perusal of

the legal notice sent by the Plaintiff to Defendant No. 1 on June 2, 2010 which is Ex.PW-1/9 would show that the Plaintiff had claimed amount of US$ 20,500 which it had paid as to Defendant No. 1 along with interest thereon at the rate of 15% per annum, from the date of the payment. Though the Plaintiff also claimed US$ 70,000 towards damages, there was no demand of interest on the damages. I, therefore, hold that the Plaintiff can be awarded interest only on the amount of US$ 20,500 which it had paid as advance money to Defendant No. 1. The amount of advance money in Indian currency comes to Rs. 10,28,690/-. Under the facts and circumstances of the case, I award interest to the Plaintiff at the rate of 12% per annum from the date of payment, on the aforesaid amount. The interest on the aforesaid amount till the date of filing of this suit comes to Rs. 205053/-. The Plaintiff is entitled to recover that amount from Defendant No. 1 as interest.

10. For the reasons given in the preceding paragraph, the decree for Rs. 21,11,893/- with proportionate cost, and pendente lite and future interest at the rate of 10% per annum is hereby passed against Defendant No. 1.

11. Defendant No. 2 who is director of Defendant No. 1 is not personally liable for the amount which Defendant No. 1 company is required to pay to the Plaintiff company and is in fact an unnecessary party to the suit. The name of Defendant No. 2 is, therefore, struck off from the array of Defendants. As against Defendant No. 3, the case of the Plaintiff is that this company is to make payment to Defendant No. 1 for the material which Defendant No. 1 has supplied to it. The Plaintiff wants an injunction restraining Defendant No. 3 from making any payment to Defendant No. 1, to the extent of the decretal amount. However, there being no privity of contract between the Plaintiff and Defendant No. 3 and the Plaintiff company having no legal right to claim any amount from Defendant No. 3, the decree sought by it against Defendant No. 3 cannot be passed. The appropriate remedy for the Plaintiff company is to seek execution of the decree which is being passed against Defendant No. 1 and in the execution of that decree, it would be open to Plaintiff company to seek attachment of the amount, if any, payable by Defendant No. 3 to Defendant No. 1. Decree sheet be drawn accordingly.