
(2015) 10 DEL CK 0327
In the Delhi High Court
Case No : CS (OS) No. 2025/2013

Chemrow India Pvt. Ltd.

APPELLANT

Vs

Lakhani Footcare Pvt. Ltd.

RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 1, Order 37 Rule 2, 20(c)
Sales of Goods Act, 1930 — Section 23(1), 39, 39(1)

Citation : (2015) 10 DEL CK 0327

Hon'ble Judges : Manmohan Singh, J.

Bench : Single Bench

Advocate : Suhail Dutt, Senior Advocate and Sankalp Goswami, Advocate, for the Appellant

Judgement

Manmohan Singh, J.—The plaintiff originally filed the suit for recovery under Order XXXVII Rule 2 CPC of Rs. 1,58,03,879/- along with pendente lite and future interest @ 18% per annum against the defendant. The said summary suit was later on treated as ordinary suit.

2. The plaintiff is a Company duly incorporated under the provisions of the Companies Act, 1956, having its registered office at B-33 Flatted Factory Complex, Jhandewalan, New Delhi and is engaged in the business of importing polymers and chemicals including Ethylene Vinyl Acetate (EVA) and Dicumyl Peroxide (DCP) (raw material) used by various shoes and slippers manufacturers in India. Mr. Manish Sharma is the Director of the plaintiff and has been duly authorized to sign, verify and institute the present suit on behalf of the plaintiff vide Board Resolution dated 27th August, 2013.

3. The defendant was proceeded ex parte vide order dated 8th January, 2015. Ex parte evidence has been filed by way of affidavit of Manish Sharma which was tendered as Ex.PW-1/X.

4. It is alleged in the plaint that the plaintiff being one of the major importers of

EVA and DCP was contacted by the defendant in the year 2006 through Mr. Ashok Taneja who was the purchase-head of the defendant for long term business relation and specifically for the purchase of EVA and DCP. Mr. Ashok Taneja represented that the defendant is one of the leading footwear brands of India and has continuous requirement of raw materials. It was also represented that the defendant is highly professional company and leading manufacturer and supplier of slippers in India, the plaintiff need not worry about payments as the defendant has a reputation in market and would strictly follow the payment schedule. Mr. Ashok Taneja also arranged a meeting of the plaintiff with Mr.P.D. Lakhani, C.M.D of Lakhani Vardhan Group who also represented that the said business arrangement will benefit both the companies.

5. The plaintiff started supplying the aforesaid raw materials to the defendant on running-account basis. The defendant timely supplied high quality raw material as promised. In the initial period of the aforesaid business, the defendant was not so lax in clearing the payments for the raw materials supplied and even though the payments were not made as per schedule, yet payments were made.

6. The business between the parties grew and the plaintiff also started supplying raw materials to other sister concerns of the defendant as well. But in the end months of 2009 and 2010, the defendant started delaying the payment and the difference between the credit given and the payment made started to grow. The plaintiff- Company had been providing the aforesaid high quality raw materials at the abovementioned places regularly as per mutually agreed terms and conditions, and to the entire satisfaction of the defendant and the defendant never had any occasion for any complaint.

7. The plaintiff used to raise invoices and the goods were sold on ex-godown sale basis i.e. the said goods were sold from the godown of the plaintiff in Pootkalan, Delhi and the same were transported to Indore by the defendant. The same is evidenced by the transport receipts which clearly showed that they were "to be billed". The defendant also issued C-Forms which contained the bill numbers, the dates of the bills and the amount payable by the defendant. The said C-Forms are statutory documents showing clear and unequivocal acknowledgement of the defendant that particular quantities of goods were supplied.

8. The defendant used to make payments in Delhi to the plaintiff. Certain sales were also high seas sales evidenced by bills of entry, exchange control copies etc., however the originals of the same are with the defendant as per practice.

9. The payment was payable at Delhi. Copies of invoice bills of exchange, LC and bills of entry have been exhibited as Ex.PW-1/1. Copies of transport receipts have been exhibited as Ex.PW-1/2. Copies of Form-C have been exhibited as Ex.PW-1/3. As per the plaintiff, the negotiations were also done in Delhi and the goods were also delivered from Delhi.

10. In the middle of 2009, as the defendant failed to make payment, the plaintiff contacted Mr.P.D. Lakhani and expressed its apprehensions and difficulties who

assured that the payments would be made on time in future. He made the excuse that fire had broken out in one of the factories of the defendant and thus, there was a delay in payments. But the situation did not improve and due to the price fluctuation of EVA and DCP in the international market, the plaintiff could not further afford to continue supplying huge quantities of raw material to the defendant without timely payments. Left with no other option, the plaintiff was forced to reduce the quantity of raw material supplied to the defendant.

11. The plaintiff again contacted Mr.P.D. Lakhani who, that time, assured the plaintiff that he would personally ensure that payments be made timely and that even past dues be also cleared. He requested the plaintiff to continue the supply of raw material and indicated to the plaintiff that in the absence of continued supply of raw materials, it would be difficult for him to clear the outstanding amount. The defendant issued 17 cheques from 22nd December, 2009 to 23rd January, 2010 of Rs. 46,49,040/- but those cheques got bounced. Copies of the said cheques have been exhibited as Ex.PW-1/4. The plaintiff did not take any legal recourse due to the false assurances of the defendant that the outstanding amount under the invoices would be paid.

12. The plaintiff despite being apprehensive about the timely payments again continued supplying the raw material to the defendant in the hope that the defendant as per its assurances would in due course clear all its outstanding dues. The defendant had also started making partial payments on and off which were adjusted against previous outstanding invoices. However, the defendant again contrary to its assurances started delaying the payments.

13. The defendant had last made the payment on 1st September, 2010 for a sum of Rs. 9,73,923/-. Copies of the statements of accounts have been exhibited as Ex.PW-1/5. Copies of bank statements have been exhibited as Ex.PW-1/6.

14. When the payments from the defendant completely stopped, as per the case of the plaintiff, the business relation ended with the defendant in September, 2010 and the defendant was asked to clear the plaintiff's outstanding amounts. On September, 2010, a sum of Rs. 1,58,03,879/- was outstanding on the defendant which is duly acknowledged by it.

15. Thereafter, Mr.P.D. Lakhani approached Mr. Surendra Sharma, father of PW-1 through a common friend and assured him that the defendant would clear all its outstanding dues. In the meanwhile, some payments were made by sister companies of the defendant in other transactions. The plaintiff based on these payments again gave some time to the defendant to pay the said outstanding amount but the defendant has till date failed to make the payment despite its repeated assurances.

16. It is the case of the plaintiff that on September, 2010, a sum of Rs. 1,58,03,879/- was outstanding on the defendant which is duly acknowledged by it. At the time when the accounts were settled, the following payments were due against the following invoices:

17. On the issue of territorial jurisdiction, Mr. Suhail Dutt, learned Senior counsel appearing on behalf of the plaintiff has argued that the part-payments have been made in Delhi. The parties have met in Delhi and discussed the disputes in Delhi and further admittedly, the goods were dispatched from Delhi. He has referred the following decisions in support of his submissions on the issue of jurisdiction:-

(i) Ashok Parshad v. M/s. Mahalaxmi Sugar Mills Co. Ltd., CS (OS) No. 2542/1997 decided on 13th September, 2013, relevant para 6 reads as under:-

"6. There is no dispute that the goods were supplied by the plaintiff to the defendant from time to time on the specific orders of the defendant. There is also no dispute that the orders were received by the plaintiff at Delhi and the goods were supplied from Delhi to the defendant through the transport carriers. The submission of the defendant that since the communication of the acceptance of the order was received at Iqbalpur, the court at Iqbalpur has the jurisdiction and not Delhi, is entirely erroneous. The acceptance of the order at Delhi and the delivery of goods at Delhi to the transport carriers for onward delivery to the consignee i.e. the defendant, would bring into the formation of the contract at Delhi. The delivery to the transport carriers was to be taken as delivery to the consignee as per Section 39 of the Sale of Goods Act, 1930."

(ii) J.C. Enterprises (Regd.) Vs. Ranganatha Enterprises, , relevant para 13 whereof reads as under:-

"13. If the goods are handed over to the carrier for delivery directly to the consignee, the property in the goods passes to the consignee, the moment they are delivered to the carrier/courier for the purpose of delivering them to the consignee, since the consignee thereafter has no control in those goods and the carrier/courier is bound to deliver them only to the consignee. Section 23(1) of the Sale of Goods Act, 1930 provides that where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made. Sub-section 2 of this Section, to the extent it is relevant, provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. Since the goods handed over to the courier at Delhi were deliverable to the Defendant and not to the order of the Plaintiff or his agent, the Plaintiff did not reserve any right of disposal of those goods, while handing them over to the courier. Therefore, the property in the lottery tickets handed over by the Plaintiff to the courier at New Delhi passed to the Defendant, the moment the goods were handed over to the courier for delivery to him and, therefore, the tickets shall be deemed to have been delivered to the Defendant at New Delhi. Section 39(1) of the Sale of Goods Act, to the extent it is relevant, provides that

where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer. Since the lottery tickets for price of which the present suit has been filed were delivered to the Defendant at Delhi through R. South Couriers, the part of cause of action arose in the jurisdiction of this Court and, therefore, in view of the provisions contained in Section 20(c) of the Code of Civil Procedure, Delhi Court has jurisdiction to try the suit."

(iii) Indian Tarpaulins Industries by Partner C.N. Mohan Rao v. G.Krishnamurthi & Parties and V.Prakash Rao, A.S. No. 839/1988 decided on 5th March, 2003, relevant para 13 reads as under:-

"13. The lower Court on an erroneous view has found that the said Court had no jurisdiction to entertain the suit. It is true that the plaintiff is carrying on its business at Madras, and the first defendant buyer was carrying on its business at Kakinada. It is also true that the first defendant offered to purchase the 25 tarpaulins as found under Ex.A1 order at Kakinada, but the said order was accepted by the plaintiff at Madras. Apart from that the said consignment was placed in the hands of the common carrier M.G. Brothers, Kakinada, as found under Ex.A1. Ex.A3 invoice reads thus:

"Our responsibility ceases as soon as the goods entrusted to the carriers/ Railways in good condition."

It is not in dispute that the said consignment was entrusted to the common carrier M.G. Brothers as agreed between the parties under Ex.A1. Section 39(1) of the Sale of Goods Act, 1930 reads as follows:

"39. Delivery to carrier or wharfinger

(1) Where, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer."

A reading of the said provision would make it abundantly clear that when the seller is authorised to deliver the goods to a carrier, whether named by the buyer or not, for the purposes of transmission to the buyer, a prima facie delivery of the goods to the buyer has to be deemed. In the instant case, the name of the common carrier for transmission of the goods to the buyer was clearly set out under Ex.A1 purchase order, and pursuant thereto, the plaintiff has entrusted the goods to the common carrier at Madras. It has to be noted that the place of purchase is Madras, where the goods were delivered to the common carrier. Under such circumstances, it is needless to state that a part of the cause of action has arisen at Madras, which would enable the plaintiff to institute the suit

in the City of Madras. Thus, the suit filed by the plaintiff was well within the territorial jurisdiction of the Civil Court at Madras. For the foregoing reasons, the judgment and decree of the lower Court have got to be necessarily set aside."

18. Thus, I am of the considered view that the plaintiff has been able to satisfy the Court about the territorial jurisdiction. Even, there is no contrary evidence on record in the absence of cross of PW-1.

19. The present suit is also within limitation, as the defendant had been assuring for the payments of the outstanding amount and further it had acknowledged its liability from time to time and the last shipment of raw materials as supplied was on 23rd August, 2010.

20. The claim/suit of the plaintiff is based on invoices, Form-C and delivery challans etc. attached in the list of documents, which clearly constitute a written contract wherein the defendant has acknowledged the price of goods, quantity of goods and delivery of goods at the agreed price and thus, there is also an acknowledgement to pay.

21. In the case of Lohmann Rausher GmbH Vs. Medisphere Marketing Pvt. Ltd., decided by this Court speaking through Mr. Justice Pradeep Nandrajog it has been held in para 15 and 18 that invoices are a complete contract, required by law, where the contract pertains to sale of goods. Para 15 and 18 reads as under:-

"15. It is apparent that a suit which seeks to recover a debt or a liquidated demand in money payable by the defendant arising out of a written contract is maintainable under Order XXXVII Rule 1 as a summary suit. It is no longer res-integra that invoices/bills are "written contracts" within the contemplation of Order XXXVII Rule 2 . Reference could conveniently be made to decisions of this court reported as M/s. Punjab Pen House Vs. M/s. Samrat Bicycle Ltd., ; Corporate Voice (P) Ltd. Vs. Uniroll Leather India Ltd., ; Beacon Electronics Vs. M/s. Sylvania and Laxman Ltd., ; and M/s KLG Systel Ltd. Vs. M/s Fujitsu ICIM Ltd., .

18. It is not the case of the defendant that the invoices do not conform to the purchase order. As noted, the invoices raised contain the description of the goods, quantity and price. As noted, conditions of payment stand reflected in the invoice. Additionally, delivery address also finds mentioned in the invoice. All features pertaining to a contract of sale of goods are to be reflected in the two invoices. The invoices are a complete contract, required by law, where the contract pertains to sale of goods."

22. In the light of the facts and the evidence which is established on record, I am of the view that the plaintiff-Company is entitled to recover a sum of Rs. 1,58,03,879/- from the defendant along with interest @ 12% per annum, which is as per market usage and practice, instead of 18% as claimed by the plaintiff. The suit of the plaintiff is accordingly decreed.

23. The plaintiff is also entitled for costs.

24. A decree be drawn accordingly.