(2003) 02 DEL CK 0065

In the Delhi High Court

Case No : Suit No. 68-02

Guru Teg Bahadur Sugars Ltd. APPELLANT

Vs

Bhagwati Sales Corpn. Ltd. RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Citation : (2003) 2 AD 481 : (2003) 103 DLT 457 : (2003) 68 DRJ 404

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Shazad Khan, for the Appellant; Nemo, for the Respondent

Judgement

R.C. Jain, J.—The above named plaintiff has filed this suit for the recovery of Rs.11,40,374.53/- paisa under Order xxxvII CPC with the averments and allegations that it is a company incorporated under the Companies Act 1956 and the plaint has been signed and verified and suit instituted by Shri Anurag Sharma, who is authorised to do so by virtue of Resolution dated 15.12.01. plaintiff is a manufacturer of Sugar and had placed orders for supply of Gunny Bags vide order No.130, dated 30.09.99 with the specification; Size: 44"X 26.5", having lubes 2-5/8, had weight 1190 gms, 3 Blue Strips, Union Sewn I/B 400 pcs. (per bale) as per ISI specifications and pursuant to the said order the defendant No.1 supplied to the plaintiff 2,76,000 Gunny Bags from 15.10.99 to 04.12.99 worth Rs. 76,58,554.00/- as per the details given in para 9 of the plaint. The payment of these supplies was made to the defendant from time to time and on account as demanded by defendant No.1 However, defendant No.1 by means of letter dated 8.12.99, 23.12.99, 30.12.99, 01.01.00 and 08.01.00 claimed various amounts from the plaintiff and dishonestly demanded a sum of Rs. 83,97,568.00 from the plaintiff as against the value of the supplied Gunny Bags of Rs. 76,58,554.00 as per the details given in para 11 of the plaint. It is further alleged that during the internal audit it was revealed that an excess payment of Rs. 7,39,014/- had been taken by defendant No.1 from the plaintiff that is a sum of Rs. 6,00,000/- on 25.2.00 and Rs. 1,39,014/- on 10.02.00 and the defendant was asked to refund the said excess payment. Defendant No.2 accepted the version of the plaintiff and issued four cheques i.e. cheque Nos. 228941, dated 22.6.00 for Rs. 1,00,000/-, cheque No. 228944 dated 10.07.00 for Rs. 1,00,000/- and cheque No. 228945 dated 10.08.00 for a sum of Rs. 2,00,000/- drawn on Hong Kong & Shanghai Banking Corpn. Ltd. 28, Kasturba Gandhi Marg, New Delhi, under its letter dated 05.06.00 However, when the said cheques were presented for clearance it was not cleared on account of the remarks " STOP PAYMENT". Accordingly the plaintiff has claimed a sum of Rs. 7,39,014/- as the principal amount and a sum of Rs. 4,01,360.53/ paisa as interest calculated at the rate of 24% per annum.

2. Summons of the suit were issued to the defendants but they failed to appear and answer the suit despite substituted service though publication of a proclamation in their name in the newspaper "The Statesman" on 23.7.02 Accordingly vide order dated 25.10.02, the defendants were proceeded ex parte against. It is pertinent to note that on the failure of the defendant to enter appearance within the stipulated period of ten days with effect from the date of service on 23.7.00, deeming the plaintiff''s averments and allegations made in the plaint as correct, a judgment and decree could follow. However that was not done and the defendants were simply ordered to be proceeded ex parte against which would mean that the court had treated the summary suit of the plaintiff as regular suit and wanted the plaintiff to prove its claim in the suit by leading ex parte evidence.

3. In order to substantiate its claim in the suit, the plaintiff has led its evidence by filing an affidavit of Anurag Sharma, the authorised signatory of the plaintiff who has fully supported the case of the plaintiff by reiterating the facts as averred in the plaint. Besides, the witness has proved various documents i.e. a copy of the Resolution of the Board of Directors of the meeting dated 15.12.01 as exhibit PW1/1, the copy of the supply order No.130 dated 30.9.99 as exhibit PW1/2 and the copies of 23 invoices of different dates between 15.10.99 to 4.12.99 as exhibit PW1/3 to PW1/25 and the correspondence exchanged between the parties as exhibit PW1/26 to PW1/36. The witnesses also filed an proved copy of the statement of account of defendant No.1 maintained by the plaintiff company in the regular course of business as Exhibit PW1/32. He also proved the copy of the Hongkong & Shangahi Banking Corporation Ltd, New Delhi, letter dated 5.6.00 notifying that the payment of the three cheques has been exhibited as PW1/33. The cheques and the dishonored slips have been proved as PW1/34 to PW1/39 and the copies of the notices sent to the defendant u/s 138 of the Negotiable Instruments Act and those for the purpose of the present suit as Exhibit PW1/42. He claimed that a sum of Rs.11,40,374.53 e.g. a sum of Rs. 7,39,014/- as the principal and a sum of Rs. 4,01,360.53 as the interest calculated from the date of excess payment at the rate of 24% is due to the plaintiff from the defendant.

4. The above testimony of the witness has gone unchallenged and unrebutted on

record and, Therefore, the same can be accepted on its face value. It is supported by the documents and the amount of Rs. 7,39,014/- as principal amount is found due to the plaintiff from the defendant. However, the plaintiff has failed to prove on record that there was any agreement between the parties for payment of interest at the rate of 24% per annum on this amount which the plaintiff claims to have paid in excess to the defendant. Learned counsel for the plaintiff has pointed out that invoices issued by the defendant contain a stipulation about the payment of interest at the rate of 24% per annum if the bills are not paid on presentation and the same principle should be applied in regard to the excess payment due to the plaintiff from the defendant. This Court is, however, not inclined to accept this contention. The plaintiff has failed to show that there was any usage for the payment of interest @ 24% on the excess amount paid to the supplier. In any case the plaintiff had also been negligent in making the excess payment and, Therefore, this Court is of the view that plaintiff is at best entitled to a reasonable interest. In the opinion of this Court interest at the rate of 12% per annum may be granted to the plaintiff with effect from 22.6.00, the date when the cheques towards this amount were issued by the defendant.

5. In the result the plaintiff''s suit is hereby decreed for the recovery of sum of Rs. 7,39,014/- with interest at the rate of 12% per annum with effect from 22.6.00 till payment. The plaintiff shall also be entitled to cost of the suit.