

(1977) 10 AHC CK 0001
In the Allahabad High Court
Case No : F.A. No. 163 of 1976

Himalaya Transport and Forwarding Agency	APPELLANT
Vs	
The Almora Magnesite Ltd.	RESPONDENT

Date of Decision : 06-10-1977

Acts Referred:

Specific Relief Act, 1963 — Section 14(1), 41

Citation : (1977) AWC 695

Hon'ble Judges : M.N. Shukla, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : L.P. Naithani, for the Appellant; Rishi Ram, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—This is an appeal by the Appellant, M/s. Himalaya Transport and Forwarding Agency, Haldwani, from the judgment and decree of the learned Civil Judge, Naini Tal, dismissing the suit filed by the Appellant for injunction restraining the Defendant M/s. Almora Magnesite limited from inviting tenders and from entering into any other agreement for the transportation of goods from Haldwani to Nainital.

2. The Plaintiff was a firm registered under the Partnership Act. The said firm was primarily engaged in the transportation of goods from the rail heads at Haldwani, Ramnagar and Tanakpur for carrying goods to various places inside Kumaon, Garhwal, Uttar Kashi and Chamoli or back. The Defendant, which had its office at Almora, was engaged in the production of dead burnt magnesite. For the purpose of transportation of goods for use in construction of buildings as well as dead burnt magnesite, they intended to engage transporters for carrying goods containing materials for constructions from Haldwani to the Factory site. Accordingly, talks with regard to the terms and conditions for transportation of goods to the factory site started between the Plaintiff and the Defendant. At a meeting convened for the said purpose on 3rd October, 1972, the Plaintiff and the Defendant agreed that the Plaintiff would be given the work of

transportation. On 15th March, 1973, the Defendant issued a letter of intent for transport of dead burnt magnesite, loose or packed in bags, by means of motor trucks from the plant site at Kafligarh to its depot at Kathgodam. In this letter the various terms and conditions were also mentioned. On receipt of the aforesaid intent, the Plaintiff returned the same to the Defendant with the signature of the person authorised to do so on behalf of the Plaintiff. This was done as token of acceptance of the offer made by the Defendant. The Plaintiff, thereafter, continued to transport the goods on the basis of the letter of intent. The Plaintiff, however, subsequently learnt that the Defendant had invited tenders for transportation of all kinds of goods, including transport of materials for which the Plaintiff had been engaged by the Defendant, and, therefore, the Plaintiff had no alternative but to file the present suit for the relief of injunction restraining the Defendants from inviting tenders or entering into any other agreement for the transportation of goods for which the Plaintiff had been engaged earlier.

3. The suit was contested by the Defendant on the grounds, inter alia, that the Plaintiff and the Defendant did not enter into any concluded contract and, therefore, the Plaintiff was not entitled to any relief claimed in the present suit, and that the suit of the Plaintiff was barred by Section 41(e) read with Section 14(1) Clauses (a), (b) and (d) of the Specific Relief Act.

4. The trial court dismissed the suit. Aggrieved by the judgment of the trial court, the Plaintiff has filed the present appeal.

5. The first question raised by the learned Counsel for the Plaintiff before us was that the court below committed an error in holding that the Defendant had not entered into a concluded contract with the Plaintiff under which the Plaintiff had acquired a right to transport goods of the Defendant from Haldwani to its factory site. The submission of the learned Counsel was that as the evidence brought by the Plaintiff established that the parties had settled by orally agreeing to give the right of transportation to the Defendant, the court below was wrong in dismissing the suit of the Plaintiff merely because a formal agreement was not drawn up. The submission made by the learned Counsel for the Plaintiff was controverted by the learned Advocate General appearing for the Defendant. He contended that the parties contemplated the execution of a formal document and, therefore, until such a document was executed the Plaintiff did not acquire any right to file the suit for the relief claimed therein.

6. The question raised before us, therefore, is whether the oral agreement was ineffective because the parties contemplated the execution of a formal document. To prove its case of oral agreement, the Plaintiff tiled the record of minutes of the meeting held on 3rd October, 1972, between the representatives of the Plaintiff and the Defendant as well as the copy of the letter of intent for transportation dated 15th March, 1973. Apart from these two documents, the Plaintiff produced its Managing Director Mahesh Chandra as PW 1. There is nothing in the Statement of Mahesh Chandra (PW 1) which could show that any

concluded oral agreement between the Plaintiff and the Defendant had been arrived at. Even according to him, after the meeting dated 3rd of October, 1972, the parties had to enter into a formal contract for the purposes of giving exclusive right of transportation to the Plaintiff. The record of the minutes dated 3-10-1972 although mentioned all the terms and conditions of the contract with the Plaintiff yet also provided that "it was agreed that a proper agreement would be drafted for joint signatures". It would thus be clear even from the minutes of the meeting held on the aforesaid date that the parties contemplated that a formal agreement had to be executed between them.

7. Learned Counsel for the Plaintiff, however, laid great emphasis on the letter of intent dated 15th March, 1973, and urged that under the said intent, the work of transportation was given to the Plaintiff with effect from 1st April, 1973, and that the Plaintiff started the work of transportation with effect from the said date. On this basis, the learned Counsel contended that as was provided in this letter of intent that the full fledged agreement would be executed in this regard in due course of time, therefore, the Plaintiff was entitled to an injunction directing the Defendant to execute the same. We however, find ourselves unable to subscribe to the submission made by the learned Counsel for the Plaintiff. It does not appear to be correct that by the letter of intent dated 15th March, 1973, the parties had arrived at any concluded contract with regard to the transportation of goods from Haldwani to the factory site of the Defendant. This letter only shows that the Defendant had asked the Plaintiff to start the work with effect from 1st of April, 1973, on the terms and conditions mentioned therein. It would be wrong to say that the Defendant undertook to give the work of transportation to the Plaintiff for either three years or more. In fact, the very opening paragraph of this letter mentions clearly that a full fledged agreement will be executed in this regard in due course of time. Similarly, in paragraph 8 of this letter, the Defendant made it clear that the Plaintiff will have to enter into three years written formal agreement with the Defendant for the transportation of dead burnt magnesite.

8. Apart from these documents we find from the minutes dated 28th January, 1975, in respect of talks which took place between the Managing partners of the Plaintiff and the Defendant on 19th January, 1975, that in this meeting, the request made on behalf of the Plaintiff was that a full fledged agreement for three years duration be executed as envisaged in the letter of intent. It, however, appears that after discussion between the Managing partner of the Plaintiff and the General Manager of the Defendant, the decision taken was that in case the Plaintiff improved their purpose and rendered satisfactory transport services, the question of executing a written agreement in that event could be considered. This would again show that the case of the Plaintiff that a concluded oral agreement had been arrived at between the Plaintiff and the Defendant was not correct. Rather the intention of the parties was that a formal agreement would be necessary for giving work by the Defendant to the Plaintiff. In other words, the signing or entering into a formal agreement was made a condition or term of

the bargain, and since no formal agreement was arrived at, there was no concluded contract. Merely because the Plaintiff did some work in pursuance of the letter of intent dated 15th March, 1973, that did not confer a right upon the Plaintiff to get the injunction sought for. From what has been said above, it is clear that the parties intended to bind themselves only when a written contract was executed, and since no such contract was executed, the giving of work in pursuance of the letter of intent dated 15th March, 1973, was only a stop-gap arrangement. It did not clothe the Plaintiff with any right to get the written contract by the relief of injunction. Accordingly the first submission of the learned Counsel for the Plaintiff fails.

9. Another aspect of the matter which deserves notice is about the maintainability of the suit for injunction. u/s 41(e) of the Specific Relief Act, an injunction cannot be granted to prevent a breach of contract, the purpose of which would not be specifically enforced. Section 14(1)(a) and (b) of the Specific Relief Act provides that a contract cannot be specifically enforced (i) for the non-performance of which compensation in money is an adequate relief, and (ii) which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties or otherwise from its nature is such that the court cannot enforce specific performance of its material terms. Thus, if in a contract, monetary compensation is an adequate relief or it depends upon minute or numerous details the purpose of which cannot be supervised by the court, the relief for specific performance cannot be granted. It is to be noted that the relief of specific performance is granted by a court because the relief of monetary compensation may not be adequate. But where, as here, the breach of the contract alleged by the Plaintiff can be adequately compensated by payment of money, the question of the grant of injunction does not arise. The object of awarding damages is to put the Plaintiff in as good a position as far as money can do it, as if the contract has been performed. It may be mentioned that the contracts are concerned with the mutual tendering of the benefits. If one party makes default in performing his side of the contract, then the basic loss to the other party is the benefit of which it has been deprived through the breach. Put shortly, the Plaintiff is entitled to compensation for the loss of his bargain. It is on account of this fact that since breach of a contract can be compensated by awarding money equivalent to the breach that the latter has been considered to be a good substitute for the loss due to breach. It is the best that a court can do. We, accordingly, find, in agreement with the view taken by the court below, that the relief of injunction claimed by the Plaintiff in the present case was of a nature to which the provisions of Section 41(e) of the Specific Relief Act applied and, therefore, the suit was not maintainable.

10. For the reasons given above, the appeal fails and is dismissed with costs. The stay order is discharged.