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(2005) 11 DEL CK 0109

In the Delhi High Court

Case No : C.S. (OS) No. 1938 of 2001

Hindustan Paper Corporation Limited — APPELLANT

Vs

K.K. Nareda — RESPONDENT

Date of Decision : 09-11-2005

Acts Referred:

Citation : (2006) 1 BC 477

Hon'ble Judges : Om Prakash Dwivedi, J

Bench : Single Bench

Advocate : R.K. Singh and Nikhilesh Krishnan, for the Appellant;

Judgement

O.P. Dwivedi, J.—plaintiff has filed suit for recovery of Rs. 28,87,490.57. It is pleaded in the plaint that the plaintiff had appointed the defendant as their clearing and forwarding agent vide appointment letter dated 23.12.1997, for a period of one year starting from 1.1.1998. Subsequently, vide agreement dated 4.2.1998, the rates for the service rendered by the defendants were revised. The defendant''s were required to deposit a bank guarantee for Rs.5 lakhs. The plaintiff has two manufacturing units both located in Assam. The papers manufactured were sent to different sale depots throughout India through Railways. The plaintiff appoints its Clearing and Forwarding Agents at said stations for clearing, unloading, handling and transporting the stocks. Under the terms of the agreement, it was the obligation of the defendant to unload the goods from the rakes at the railway station immediately after the arrival of the rakes without any delay. In case of any damage or shortage noticed at the time of unloading of the goods, it was obligatory on the part of the defendant to arrange joint inspection and also arrange certificates duly filled up with all material details and particulars from the Railway Authorities. Acceptance of goods by the defendant from the Railway Authorities by signing relevant railway documents without arranging any joint inspection or without bringing any certificate for damage or shortage from the Railway Authorities was a clear and unqualified acceptance of two facts - (i) that the goods were received by the defendant as per the railways receipt and (ii) that there was no shortage or damage to the goods during transit. After unloading, goods were to be transported by the defendant to the godowns of the plaintiff under full care and precaution in such a way that there was no loss due to the pilferage or no damage was inflicted on the paper. The defendant would be accountable for any loss or damage to the paper for any reason whatsoever.

2. It is pleaded that one wagon containing 800 bundles of paper against RR No. 439042 arrived at DKZ on 19.7.1998. The value of the above said 800 bundles of paper was Rs. 14,98,521. The defendant received all the 800 bundles from the railways on 20.7.1998 but same were admittedly not delivered at the godown of the plaintiff. Since there were no shortage and damage to the goods during the railway transit defendant neither arranged any inspection nor arranged and took any damage/shortage certificate from the railway authorities. As the plaintiff did not receive the goods against the above said consignment plaintiff took up the matter with the defendant and wrote various letters including letter dated 5.9.1998, to the defendant. On 5.9.1998, plaintiff also wrote one letter to the COS (DKZ) and railway authorities made following endorsement on the said letter of the plaintiff:

Wagon No.SCBON 13108888883 ex HCJ to DKZ containing 800 bdl paper under invoice No. 164 dated 9.7.1998, unloaded at DKZ goods on dated 19.7.1998, at Goods shed on pole No. 14-16 and delivery was effected on 20.7.1998 vide RR No. 439042 at 7 page 137 and CP No. 3293 dated 20.7.18998. The goods were delivered on dated 20.7.1998 as per record.

3. The defendant in its reply to the plaintiffs above said letters firstly said vide its letter dated 5.9.1998 that goods were received by it from the railway and same were delivered at the godown of the plaintiff but subsequently changed its stand and said that though goods were received from the railway but one of their employee,namely, Mr. Raj Kumar misappropriated the goods after taking delivery. The defendant once again changed its stand and said that goods were never received from the railway and in support of the said plea the defendant cooked up a story and said that though employee of the defendant acknowledged the receipt of the goods from the railway by signing on all the railway records but did not take the physical delivery of the goods which is nothing but an after thought which is also apparent from the above said endorsements by the Railway Authorities. The defendant in order to confuse the issue and with a view to not compensate the plaintiff for the non supply of above said goods also lodged an FIR with the concerned police station on the allegation of theft on 10.9.1998 making allegation of theft against its own employee. Finally confirmation with respect to misappropriation of goods were given by the defendant to the plaintiff around 10.9.1998.

4. The plaintiff now contends that the defendant is liable to compensate the plaintiff for the losses suffered by it because of non-supply of above said papers which were received by the defendants but were not delivered at the godown of

the plaintiff. plaintiff has filed this suit for recovery of value of goods aforesaid and Rs.13,08,1887- as interest thereon for the period from 20.7.1998 onwards. At occasions the shortage certificate supplied by the defendants were found to be defective as a result of which the insurance company settled the claim for much lesser amount than the actual value of the goods. The plaintiff has filed calculation sheet which is annexure A to the plaint appearing at pages 9-10 of the paper book. According to these calculations, the plaintiff claims the following amounts : Rs. 15,79,302.57 as principal amount plus Rs.13,08,188/- as interest thereon along with cost of the suit.

5. The defendant did not appear despite service of the summons.therefore, they were proceeded ex parte vide order dated 15.12.2003.

6. In proof of its case, the plaintiff has filed the affidavit of Mr. Dinkar Prakash Bhardwaj, Senior Accountant at the plaintiffs Delhi Office who has substantiated the plaint averments on oath and has also proved various documents,namely, authorisation letter Ex.PW 1/1 (colly) letter of appointment Ex.PW 1/2, letter dated 4.2.1998, whereby certain changes were made copy Ex.PW 1/3, RR Ex.PW 1/4, letter showing receipt of the RRs by the defendant Ex.PW 1/5, photocopies of the stock transferring invoice dated 29.6.1998 and invoice cum challan dated 29.6.1998 Ex.PW 1/6 and Ex.PW 1/7, copy of delivery challan Ex. PW 1/8 and other connected documents from Exs.PW 1/9 to PW1/26. The details of various payments made to the defendants are in paragraph 19 of the affidavit. After giving adjustments to the amount of bank guarantee and other permissible amounts as mentioned in para 19 of the affidavit, now sum of Rs. 15,79,302.57 is recoverable as per the details given in annexure ''A''. Besides the defendant is also liable to pay interest amount @ Rs.13,08,188/- as mentioned in para 19 of the affidavit.

7. In absence of any version or evidence to the contrary, the plaintiffs version which has been substantiated (sic) oath by PW1 Mr. Dinkar Prakash Bhardwaj and various documents referred to earlier,there appears to be no reason to disbelieve plaintiffs version. In the result of ex parte decree for Rs.28,87,490.57 is passed against defendant with costs and pendente lite and future interest @ 15% per annum till the date of realisation.

8. Let a decree be drawn accordingly.

