

(2011) 01 DEL CK 0291

In the Delhi High Court

Case No : Regular First Appeal No. 260 of 2000

Hindustand Lever Ltd.

APPELLANT

Vs

Lakshman Pershad Gupta

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0291

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : D.K. Malhotra and Rajesh Kumar Malhotra, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Challenge by means of this first appeal is to the impugned judgment and decree dated 15.1.2000 whereby the suit of the Respondent/Plaintiff has been decreed for goods supplied, being skimmed milk powder, and which were ordered by the Appellant inasmuch as the same was to be used for production of animal feed.

2. It is not in dispute that the goods in question were in fact delivered by the Respondent to the Appellant. The contention of the Appellant was that the goods were defective and therefore the Respondent/Plaintiff was not entitled to payment.

3. The Trial Court has rejected the contentions of the Appellant for two reasons. The first reason is that the report which was relied upon by the Appellant to contend that the goods supplied were defective is Ex.D1 dated 19th June, 1987 and 20th June, 1987 whereas the letters/telegrams of the Appellant stating that the goods are defective on the basis of the analysis report are dated 30th May, 1987 and 10th June, 1987 i.e. before the report Ex.D1 dated 19th June, 1987. I do not find any illegality or perversity with this finding because surely, if the Appellant relies upon an analysis report to show that the goods are defective it

must exist when the letter is sent relying on the said analysis report. In this case, analysis report, Ex.D1 is admittedly of the date subsequent to the dates of the letters issued to the Respondent by the Appellant that the goods are defective.

4. The second ground which was urged before the Trial Court by the Appellant, and is also being urged before me, is that once the goods are defective, the Respondents are not entitled to payment and the Respondent should have lifted back the goods. In this regard, the Trial Court has held that no doubt Section 43 of the Sales of Goods Act, 1930 provides that the buyer is not bound to return the defective goods to the seller, however, the said Section makes it clear that this position is only if it is not otherwise agreed. The Trial Court has referred to the letter of the Appellant itself dated 2.5.1987, Ex.PW1/1, in which it is clearly stated that the material if found to be defective, the same would be returned by the Appellant to the Respondent. I do not also find any illegality or perversity in this finding of the Trial Court. The Trial Court has also noted that the Appellant has used the skimmed milk powder as there is nothing on record to show that the Appellant still has the skimmed milk powder lying with it or is in a position to return the stock.

5. Learned Counsel for the Appellant very strenuously argued before this Court that in the order placed by the Appellant dated 4.5.1987, exhibited as Ex.PW1/3, there is no clause that the Appellant would return the goods. I am unable to agree with the argument raised by the Appellant because the letter dated 2.5.1987 and the order dated 4.5.1987, Ex.PW1/1 and Ex.PW1/3 respectively, form part and parcel of the same contract and transaction and therefore it is not permissible for the Appellant to argue that it should not be held bound by the terms of its own letter, Ex.PW-1/1.

6. In view of the above, there is no merit in the appeal. The appeal is therefore dismissed leaving the parties to bear their own costs.

7. Interim orders are vacated and the decretal amount deposited in this Court be paid to the Respondent on an application being filed.

8. Trial Court Record be sent back.