
(2010) 04 GAU CK 0003

In the Gauhati High Court

Case No : Regular First Appeal No's. 35 and 36 of 2002

Imprint and Another

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Citation : (2010) 2 GLD 531

Hon'ble Judges : Maibam B.K. Singh, J;Biplab Kumar Sharma, J

Bench : Division Bench

Advocate : A.K. Bhowmik and S. Ghosh, for the Appellant; S. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Both these appeals have arisen out of the common Judgment and order dated 25.6.2002, passed by the Learned Civil Judge (Senior Division) Court No. 2, West Tripura, Agartala. The Judgment in question has been delivered in Money Suit No. 19/1992 and Money Suit No. 181/1992, which was registered and numbered on the basis of the counter-claim of the defendants in the suit, who are the appellants in these appeals.

2. Money Suit No. 19/2002 was filed by the State of Tripura in the Department of Education with the following prayer:

In the premises the plaintiffs seek for the following reliefs:

(i) Decree be passed for Rs. 2,92,057/- being the outstanding dues of royalty to be paid by the defendants to the plaintiffs.

(ii) Decree be passed for Rs. 6,36,790/- against the defendants to be paid to the plaintiffs for illegally realising extra money violating the terms of the agreement.

(iii) Decree be passed for Rs. 51,00,000/- to be paid by the defendants to the plaintiffs being the damages caused by the defendants so far it relates to towering down/impairing of the image, good-name, credibility of the plaintiff No.

1 and

(iv) Other reliefs as the Court may think fit including" interest over the decretal amount and/or with costs.

3. The aforesaid prayer made in the plaint was in the following premises. The State of Tripura pursuing a new policy on education had initiated a project for publishing nationalised text books for the Primary Schools from Class-1 to Class-V from the academic session 1990-91 in a phased manner throughout the State of Tripura. For this purpose, tender was floated and the successful tenderer was to supply one lakh copy of each book for the year 1990-91 and in addition to that 25,000 of each copy were to be kept reserved as reserved stock. The defendant No. 1 represented by its Proprietor (defendant No. 2) became successful in the tender process for 4 (four) numbers of nationalised text book while another agency, namely, M/s. Calcutta Book became the successful tenderer for the remaining four numbers of nationalised text book. Be it stated here that altogether 8 (eight) text books were to be published and supplied with the aforesaid quantity of one lakh each with 25,000 copies each to be reserved as reserved stock.

4. The defendant No. 1 was issued with the work order on 6.4.1990 in the particular rate. In paragraph 7 of the plaint, the settled cost of books for which the work was awarded were indicated. The parties to the contract i.e. the plaintiff and the defendant No. 1 entered into/executed an agreement embodying the detailed terms and conditions of the works. The agreement contained inter alia the following requirements to be complied with and/or undertaken and/or discharged by the respective parties.

(a) Nature, Size and Quality of the papers to be used. Double crown white printed paper 11"6 kg.. Per ream.

(i) Script-English/Bengali (as the case may be)

(ii) Language-English, Bengali, Kakbarak, Lusai.

(ii) Type 14 P.T. for Class-I and II.

(iv) Type 12 P.T. for Class-III-V.

(v) Size-double crown 1/8th.

(vi) Text-approximately (5-10) format, each of 16 pages, printing area of a page will be 36 x 50 sq. cms.

(vii) Binding-Paper Back Sectional Thread Sewing.

(viii) Cover Page to be procured by the tenderers concerned at his own cost.

Cover papers:

Hindusthan Coloured Covered paper of one colour shaft have to be used. Design

will be of bi-colour. Thickness of the paper will be of 27 kgs. Double Crown Size 50 cm x 75 cm. Specimen of the cover paper is to be submitted for approval before printing starts.

5. In the plaint, it was stated that the defendants had to appoint selling agents throughout the State of Tripura for marketing the aforesaid books and as per the terms of the agreement, the number of selling agents were not to exceed 10 (ten). According to the agreement, the defendants had to complete the publication and make the books available in the market within two months from the date of the agreement, so "that the students did not suffer for non-availability of books. The defendants had to deposit the royalty on any nationalised banks at Agartala on the proportionate books printed and published during a particular month and the deposit was to be made within the first week of the following month. The defendants were also to submit a monthly statement showing the books printed and published during the month and the royalty deposited by bank draft.

6. The defendants were required to maintain proper books of accounts of all receipts and expenditures in respect of the number of books printed and published and submit a proper account to the plaintiff at the end of 6(six) months after the date of publication. As per the terms of the agreement, depending upon the satisfactory performance of the defendants, the agreement was to be renewed by issuing fresh work order.

7. The defendants printed and published and marketed the four number of nationalised text books entrusted to them on and from 24.6.90 but in doing so, the defendants allegedly violated numerous conditions of the agreement wilfully, negligently and with a motivated purpose of unlawful gain, which resulted in not only loss of Govt. revenue but also lowered down the reputation, image and credibility of the plaintiff, as alleged in the plaint.

8. Apart from the above, according to the plaintiff, the defendants also failed to cause the printed and published books marketed within the stipulated time and the defendants quite illegally and unauthorisedly and in violation of the terms and conditions of the agreement, printed the price of the specified books as under:

(a) Ganit Class-I instead of printing the agreed price of Rs. 9.50 the defendants printed Rs. 11.66.

(b) Ganit Class-III instead of printing the agreed price of Rs. 8.35 the defendants printed Rs. 9.96.

(c) Paribesh Parichiti (Science) Class-III instead of printing the agreed price of Rs. 5.85 defendants printed the price at Rs. 8/-.

(d) Paribesh Parichiti (Social studies) Class-IV instead of printing the agreed price of Rs. 5.85 the defendants printed the price at Rs. 8/-.

9. According to the plaintiffs, the defendants had collected huge amount of money (calculation shown in Annexure-1 to the plaint) unauthorisedly, illegally and in violation of the terms of the agreement. It was claimed in the plaint that the plaintiffs on behalf of the people of Tripura was entitled to realise the additional money unauthorisedly collected by the defendants. It was stated in the plaint that by letter dated 25.7.90, the plaintiff No. 2 had asked the defendants to strictly comply with the conditions relating to settled price. It was also brought to the notice of the defendants that they had printed higher price on the printed books and the plaintiffs were entitled for the royalty as per the terms and conditions of the agreement.

10. It was alleged in the plaint that the defendants did not use the paper as per the agreement and also did not submit the books of accounts as per the stipulations made in the agreement. When the authorised nominee of the plaintiff No. 2 went on 4.6.91 to inspect the stock in the godown maintained by the defendants, the said nominee was prevented by the defendants to do the inspection, which according to the plaintiffs reflected foul play on the part of the defendants.

11. In paragraph 16 of the plaint, the claim of the plaintiffs was for realisation of Rs. 2,82,057/- as outstanding royalty Rs. 6,36,790/- for unlawful collection of money by-fixing unauthorised price on the books. The plaintiffs also claimed Rs. 51 lakhs on account of loss of reputation, goodwill, image and credibility of the plaintiff No. 1.

12. The defendants in their written statement and counter-claim denied the contentions raised in the plaint. It was denied that the defendants had violated conditions of the contract wilfully, negligently and with a motivated purpose. There was also denial of the allegation that the defendants had collected huge amount of money. According to the defendants, it was their expectation that extension of the contract would be automatically granted for the 3rd year after the extension of the 2nd year. However, contrary to such expectation, the plaintiff arbitrarily and in violation of principles of natural justice and also without any written notice had terminated the contract in violation of the provisions of the Copy Right Act, 1957.

13. In the written statement, the defendants also placed reliance on the affidavit of one Shri P.R. Acherjee, Joint Secretary to the Govt. of Tripura in the Education Department dated 6.4.91 filed in the particular writ petition being Civil Rule No. 243/1990. The defendants in their written statement also denied that there was any visit of the appointed nominee of the plaintiffs to their godown and that he was prevented from inspecting the godown. According to the written statement, the defendants had not marketed the books after unlawful termination of the agreement by the plaintiff. While denying any liability to pay any amount to the plaintiffs' claim, an amount of Rs. 1,18,45,613.38 as a counter-claim against the plaintiffs' detailing the particulars as follows was made.

14. In the aforesaid premises, the defendants had claimed a decree for a sum of Rs. 1,18,45,613.38 and alternatively a decree for a sum to be determined and/or ascertained after investigation into the loss and damage suffered by the defendants.

15. While the suit filed by the plaintiffs was registered and numbered as MS, 19/92, the counter-claim of the defendants was registered and numbered as MS 181/1992 (cross suit). In the written statement filed by the plaintiffs" against the counterclaim of the defendants, the claim of the defendants was denied and the stand in the plaint was reiterated.

16. The learned trial Court on the basis of materials on record formulated the following issues in both the suits.

Issues in M.S. 19/1992 & M.S. 181/1992

(1) Is then suit of the plaintiff and the counter claimant-defendants are maintainable?

(2) Whether the plaintiff are entitled to outstanding dues of royalties? If so, to what extent?

(3) Whether the defendants realised excess amount as cost of the books in violation agreement between the parties? If so, are the plaintiffs entitled to realise the excess amount as prayed for?

(4) Whether the plaintiffs are entitled to get damage from the defendants-counter claimants for loss of lowering down/impairing/image, good names and credibility of the plaintiff No. 1?

(5) Whether the defendant-counter claimant are entitled to realise cost of the price of the stock of unsold books and formats and jackets of books lying in the godown? If so upto what extent?

(6) Whether the defendants-counter claimant are entitled to get damage from the plaintiffs for business loss and loss of good will as prayed for ?

(7) What other relief/reliefs the parties are entitled to in the suit and counterclaim.

17. The plaintiffs" side produced several documents in MS No. 19/92. They are as follows:

Ext.-1 is the NIT.

Ext.-2 is the tender notice.

Ext.-3 is the tender form.

Ext.-4 is the agreement dated 6.4.1990.

Ext.-5 is the work order issued in favour of M/s. Imprint.

Ext.-6 is the letter written by defendant No. 2 Bhupen Ch. Dutta Bhowmik addressing the Director of School Education to take delivery of one lakh books.

Ext.-7 is the Statement of Stock Text Books.

Ext.-8 is the letter written by Bhupen Ch. Dutta Bhowmik to the Director of School Education informing about the visit of the representatives.

Ext.-9 is the letter of the Dy. Director informing the Director School Education that defendant Bhupen Ch. Dutta Bhowmik refused to show the stock position of text books. Ext.-9 also includes the letter written by the Director of School Education to the M/s. Imprint requesting expedite the work of printing and marketing of books fixing the price strictly as per Government approved rate.

Ext.-10 is the letter issued by the Director of School Education addressing defendants to refix the price of Ganit Class-III.

Ext.-11 is the certified copy of the order of the Hon"ble High Court.

Ext.-12 is the letter written by defendant Bhupen Dutta Bhowmik to the Director of School Education informing that the rate of the printing books inclusive of all cost will be 72.5 including 15% trade discount + 15% royalty.

Ext.-13 is copy of printed books.

18. The plaintiffs also examined one witness, namely, Shri Janardhan Chakraborty, Accountant of the Department of Education. He in his deposition stated that the defendants participated in the tender process for publication of four categories of books and on acceptance of their tender, agreement was signed for one year extendable upto three years on satisfactory performance of the contract. He in his deposition stated that the defendants had published and marketed the books after expiry of the stipulated period of contract, which caused difficulties and damage to the students and guardians. According to the witness, plaintiffs' reputation was also damaged and the particular scheme of the Govt. was frustrated.

19. The defendants in case No. MS 181/92 also produced the following documents:

Ext. -A/1 is the certified copy of the Judgment in Writ Appeal No. 29 of 1994.

Ext.-A/2 is the certified copy of the Affidavit given by P.R. Acherjee, Joint Secretary in the Writ Case.

20. The defendants also examined one witness, namely, Mihir Gupta, Officer of the plaintiffs' firm. He in his deposition stated that the firm i.e. the defendant did not violate the terms of the agreement and that binding, stitching, casing charges were not included in the agreement price. According to him, the illegal termination of the contract had caused damage and loss to the defendants firm.

21. On the basis of the evidence on record, the learned trial Court has passed

the following order:

ORDER

In view of my above findings over the issues the case No. M.S. 19/1992 and M.S. 181/1992 are decreed partly.

As per the decree plaintiffs are entitled to get the royalty @ 15% over the total sale of the books amounting to Rs. 2,92,057/-. Plaintiffs are also entitled to get 15% royalty over the amount of Rs. 6,36,790/- which was the excess price collected by the defendants-counter claimant. Plaintiff are also entitled to get compensation for the breach of contract done by the defendant-counter claimant amounting to Rs. 50,000/- and in addition of security amount of Rs. 50,000/-.

On the other hand, defendants-counter claimants are entitled to get the cost of stock books 13,580 in numbers at the rate as given in the agreement after deduction of royalty 15%, less 20% of the published price of the books and trade discount. Defendants-counter claimants are also entitled to get Rs. 25,000/- as rent for keeping the books.

Defendant-counter claimants are directed to hand over the books to the plaintiffs on receipt of the cost of the books and rent.

Set off the counter-claim from the decretal amount of the plaintiffs, and prepare decrees accordingly or prepare two separate decree for claim and counter-claim. Claim and counter-claim amount is to be paid within two months ID both parties will have bear interest 6% till realization.

Parties are to bear cost.

22. Being aggrieved by the aforesaid Judgment and decree, the defendants have preferred the two appeals, one in respect of the Judgment and decree passed in favour of the plaintiffs" and the other in respect of rejection of the counter-claim.

23. We have heard Mr. A.K. Bhowmik, learned senior counsel assisted by Mr. S. Ghosh, learned Counsel for the appellants as well as Mr. S. Chakraborty, learned State counsel representing the State respondents.

24. While Mr. Bhowmik, learned senior counsel representing the defendants-appellants submitted that the findings arrived at by the learned trial Court is perverse and based on no evidence, Mr. Chakraborty, learned State Counsel submitted that the appreciation of facts and evidence by the learned trial Court are not required to be interfered with in these appeals in absence of any cogent materials and/or grounds to do so.

25. We have considered the rival submissions made by the learned Counsel for the parties and the materials on records.

26. The learned trial Court has answered the Issue No. 1 in the affirmative holding that the suit of the plaintiffs and the counter-claim of the defendants are maintainable. The learned Counsel for the parties did not argue on this point.

Considering the claim and the counter-claim, we are also of the considered opinion that the suit of the plaintiffs and the counter-claim of the defendants are maintainable.

27. As regards the issue No. 2, the learned trial Court has answered the same in favour of the plaintiffs. The issue is as to whether the plaintiffs are entitled to outstanding dues of royalties and if so, to what extent. As per the agreement, defendants-appellants were to pay 15% royalty as per the requirement of clause-10 of the tender document. The defendant contractor was to keep proper books of account of all receipts and expenditures. The learned trial Court on the basis of the evidence on record has found that there was failure on the part of the defendants to produce the books of accounts, so as to prove that royalty was paid by the defendants. In para 9 of the agreement, the rate of royalty was indicated. Royalty was to be paid month-wise in the form of bank draft of any nationalised bank in favour of the Director of School Education ensuring payment by the first week of every month. The basis of calculation of the royalty was to be on the number of copies printed in the month. Monthly statement in respect of the copies sold alongwith draft was also to be submitted.

28. The plaintiffs had demanded Rs. 2,92,057/- as the outstanding royalty. As per Clause-3 of the agreement, for the academic session 1990-91, one lakh copies of each category of books were to be printed and published. It is in evidence that the defendants-appellants had printed and published books for 2 (two) academic sessions i.e. 1990-91 and 1991-92 and thus the total number of books came to 2 (two) lakhs. The defendants were to pay royalty against those books sold in the market. There was no evidence adduced by the defendants to prove that the royalty was paid.

29. The plaintiffs vide Annexure-2 had given calculation of royalty for the academic session 1990-91 showing the total royalty amount as Rs. 2,92,057/-. For the academic session 1991-92, no work order was issued in favour of the defendants but the defendants published the books and also sold out in the market at higher price. On that count also, no royalty was paid, The plaintiffs clearly indicated vide Annexure-1 calculation sheet the excess amount collected by the defendants, which was Rs. 6,36,790/-. It has been rightly held by the learned trial Court that the plaintiffs were also entitled to get 15% of royalty on that amount as per the agreement.

30. In paragraph 5 of the written statement, the defendants had admitted that the tenure of the contract was initially for one year extendable for another two years. It was the expectation of the defendants that the contract would be automatically granted for the 3rd year. It was with that expectation, the defendants had printed and published books and also sold out in the market. Although, the defendants in their written statement (para-9) had denied the outstanding royalty of Rs. 2,92,057/- and also their liabilities for the sale and collection of excess amount but could not produce any evidence to show that any royalty was paid to the plaintiffs. The defendants also did not submit proper

books of accounts, receipts and expenditures in respect of the number of books printed and published. The Learned trial Court has rightly placed reliance on the statement/documents prepared and proved by the plaintiffs about the sale of books and royalty claimed from the sale price. Accordingly, the issue No. 2 has been answered in favour of the plaintiffs and we are no reason to interfere with the same.

31. Issue No. 3 is as to whether the defendants realised excess amount as cost of the books in violation of the agreement between the parties and if so, whether the plaintiffs are entitled to realise the excess amount as prayed for. This issue has been answered partly in favour of the plaintiffs. DW-1 in his deposition stated that binding, stitching and casing of the books were not included in the agreement price. We have noticed Ext. 3 which is the NIT. In para 9(f) and (g) of the NIT, it is clearly stated that paper bags squirrely thread swing, cover paper to be procured by the tenderer at his own cost. In para 2 of the agreement (subclause "f") binding paper bags squirrely thread was mentioned. Cover papers were to be procured by the tenderer at this own cost. In page 3, para 15 of the NIT, the royalty percentage is mentioned. In para 17 of the NIT, the rate of stages of expenditure from printing to distribution to book sellers all over Tripura is also mentioned.

32. The learned trial Court has appreciated the evidence relating to the contractual rates in respect of the books to be printed. The learned trial Court has also taken note of the books produced showing fixation of excess amount in violation of the agreement. The plea of the defendants was that for the escalation of price and for the charge of casing, binding, excess amount was fixed. Although, stitching and binding parts were not included in the agreement but the agreement clearly spelt out that the prices were to be fixed up to sale to the agents of the books. It has been rightly held by the learned trial Court that the plaintiffs were entitled to get only royalty from the sale price and accordingly has declared that from the excess price charged by the defendants, the plaintiffs were entitled to get royalty @ 15% only and get compensation for the violation of the agreement but cannot get the entire excess amount collected by the defendants. We are in full agreement with the finding.

33. So far as the issue No. 4 is concerned which is whether the plaintiffs are entitled to get damage from the defendants/counter claimants for loss of lowering down/impairing/image, good names and credibility of the plaintiff No. 1, the learned trial Court has answered the same in favour of the plaintiffs. Such finding has been arrived at on the basis of the aforesaid findings recorded in respect of other issues. We see no reason to interfere with the said finding of the learned trial Court.

34. Issue No. 5 and 6 have been answered collectively, which are whether the defendants-counter claimants are entitled to realise cost of the price of the stock of unsold books and formats and jackets of books lying in the godown and if so, upto what extent and whether the defendants-counter claimant are entitled to

get damage from the plaintiffs for business loss and loss of goodwill as prayed for. The learned trial Court has answered both the issues partly in favour of the defendants-claimants. Upon a reference to the evidence on record that the defendants continued to print the books and sale without giving royalty to the plaintiffs, the learned trial Court has held that the defendants cannot get compensation for non-extension of the contractual period. As per the agreement, the defendants were under obligation to keep total one lakh books but as per the Ext. 11, they had kept only 13,580 books as per the inventory prepared by the Deputy Registrar of this Court, who was directed to prepare such inventory by this Court in the aforesaid writ petition.

35. The learned trial Court after noticing the aforesaid inventory (Ext. 11) prepared by the Deputy Registrar of this Court has also found that after the report was prepared in 1993, no action was taken by the Director of School Education to take over the books which according to the learned trial Court was a fault attributable to the plaintiffs, it is on that count, the learned trial Court has held that the defendants are entitled to get cost of those books after deduction of royalty, trade discount, less 20% of the published price of the books. As regard the claim of the defendants that they had to pay rent of the godown for keeping the books from 1990 to 1992, the learned trial Court has held that the defendants are entitled to get rent Rs. 25,000/- and the cost of the, books after deduction of 15% royalty, less 20% of the published price of the books and trade discount.

36. As regards the issue No. 7 i.e. what other relief/reliefs the parties are entitled to in the suit and counter-claim, the trial Court has held as follows:

From the discussions of above issues, it is established that plaintiffs are entitled to get royalty @ 15% over the total sale of books amounting to Rs. 2,92,057/-. Plaintiffs are also entitled to get 15% royalty over the amount of Rs. 6,36,790/- which was the excess price collected by the defendants and compensation for the breach of contract done by the defendants Rs. 50,000/- and also security deposit 50,000/-.

On the other hand, defendants are entitled to get the cost price of the 13,580 books at the rate as given in the agreement after deduction of royalty 15%, less 20% of the published price of the books and trade discount and they are also entitled to get the amount of Rs. 25,000/- as rent for keeping the books. Defendants are directed to hand over the books to the plaintiffs on receipt of the cost of the books and rent immediately.

Plaintiffs and defendants are not entitled to get any other relief. Thus issue Nos. 7 is decided accordingly.

37. Mr. Bhowmik, learned Counsel for the appellants referring to the order dated 27.4.1995 passed by this Court in writ appeal No. 29/94 [(Ext. A(1) in MS No, 19/92] submitted that the learned trial Court having not taken note of the direction as contained in the said order and so also the counter affidavit filed in

the writ petition being Civil Rule No. 243/1990, the findings arrived at in respect of the claim of the plaintiffs are liable to be interfered with. So far as the order dated 27.4.95 passed in writ appeal No. 29/94 is concerned, on perusal of the same, what has transpired is that this Court duly took note of the aforesaid two suits covering the subject-matter raised in the writ proceeding and held that the issue raised in the writ proceeding would be dealt with by the competent Civil Court after hearing the parties in dispute. However, it was observed that in terms of the order passed in the writ proceeding, the inventory (Ext. 11) prepared by the Commissioner appointed by this Court i.e. the Deputy Registrar should be filed in the Court in which the two suits were pending, if not already filed. It was also observed that the inventory of the Commissioner will be subject to the objection to be raised by the parties. The learned trial Court has duly taken note of the aforesaid inventory and recorded its finding about which discussions have been made above.

38. Ext. A(2) counter-affidavit on which Mr. Bhowmik, leaned counsel for the appellant has placed reliance is of no consequence. The aforesaid counter-affidavit was filed in the pending writ petition but the suits were to be decided independent of any other proceeding. The suits have been decided by the learned trial Court on the basis of the evidence on record. We have also scrutinised the entire materials on records and we see no reason to come to a different conclusion than the one which has been arrived at by the learned trial Court.

39. For all the aforesaid reasons, we are of the considered opinion that both the appeals merit dismissal which we accordingly do.

40. Both the appeals are dismissed. Registry shall take necessary follow-up action and thereafter shall send down the case records to the learned trial Court alongwith a copy of this order.