(2003) 11 RAJ CK 0001

In the Rajasthan High Court

Case No : Company Suit No. 4 of 1996

Jaipur Spg. and Wvg. Mills Ltd. APPELLANT

Vs

N.M. Trading Co. RESPONDENT

Date of Decision : 28-11-2003

Acts Referred:
Sales of Goods Act, 1930 — Section 55

Citation : (2004) 53 SCL 195

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : G.K. Garg, for the Appellant; B.C. Menna, Official Liquidator, for the Respondent

Final Decision : Allowed

Judgement

S.K. Keshote, J.—Heard learned counsel for the plaintiff, perused the entire record of the suit.

2. In compliance of the order of this Court dated 10th March, 1995 in S.B. Company Application No. 20/94 this suit bearing No. 552/1982 entitled Jaipur Spg & Wvg. Mills Ltd. v. N.M. Trading Co., has been transferred from Bombay High Court to this Court. After receipt of the papers of the said suit, the court has ordered for its registration.

3. The suit was placed before the Court on 5th of April, 1996. The Court has been pleased to issue summons to the defendants. However, in spite of efforts made by the plaintiff, the service of the summons of the suit could not be affected on the defendants.

4. On 22nd of February, 2001 the court permitted the plaintiff to serve the summons of the suit by the defendant by publication thereof in the Indian Express, Bombay Edition. This order has been complied with by the plaintiff.

5. The summons of the suit for settlement of the issues, were published in the

Indian Express, Bombay, Saturday October 12, 2002. Despite of publication of the summons of the suit for settlement of the issues, none put appearance on behalf of the defendants and thus on 12th of September, 2003 the Court ordered to proceed ex parte against the defendant.

6. The Original plaintiff company was ordered to be wound up by the order dated 2nd of December, 1983 of this Court in S.B. Company Petition No. 10/1980. The Official Liquidator attached to this Court has been substituted in the suit as the plaintiff.

7. The plaintiff''s case is that the defendant is a firm carrying on the business in textile yarn and cloth of which one Mr. Narottamdas Mulji Shah is the sole proprietor. Between 22nd March, 1979 and 6th of November, 1979, the plaintiff sold and delivered to the defendant diverse goods of the aggregate value of Rs. 5,62,422.84p. The said goods consisted of synthetic yarn and were described in the original plaintiff''s invoices bearing Nos. 201, 374, 375, 396, 397, 519, 526, 540, 541, 542, 586, 623, 624, 625, 807, 808, 809, 883, 884, 887, 1376 and 1394. In respect of the goods sold and delivered by the original plaintiff to the defendant the defendant has signed the corresponding challans and accepted the goods without demur. The details of invoices and delivery challans signed by the defendant are there on the record of the suit in Ex. A enclosed to the plaint.

8. The plaintiff in respect of each one of the invoices drew usance bills on the defendant in favour of its bankers, the State Bank of India for discounting. The State Bank of India presented the said bills to the defendant for payment on the due dates but the same were dishonoured by non payment. The State Bank of India, who made advance payment to the plaintiff of the amounts in respect of the said bills to be collected, accordingly debited in the account of the plaintiff with it in respect of the amounts of the said bills and the plaintiff is, thus, entitled to recover from the defendant the price of the goods sold and delivered by it. The plaintiff submitted that there is now due and owing by the defendant to the plaintiff in respect of the particulars of goods sold and delivered, an aggregate sum of Rs. 5,62,422.84p. The plaintiff has also claimed interest on the unpaid price at the rate of 15% per annum from the due date under the provisions of Section 61 of the Sale of Goods Act. The amount of interest claimed in the suit is to the tune of Rs. 95,812.20p.

9. It is next averred by the plaintiff that in respect of certain goods sold and delivered by it to the defendant, the plaintiff, due to inadvertence, did not charge sales tax initially. Thereafter the plaintiff raised on the defendant on 27th April, 1978 and 6th June, 1978 6 debit notes of the aggregate sum of Rs. 24,345.56p. being 3% sales tax in respect of the invoices mentioned therein. Copies of the said debit notes are annexed and marked Ex.B1 to B6 hereto. Towards the said dues the defendant paid to the plaintiff a sum of Rs. 7,701.77p. on 30th December, 1979 and a sum of Rs. 11,807.91p. On 30th December, 1979 leaving a balance of Rs. 4,835.88p. The plaintiff stated that it is also entitled to recover from the defendant the sum of Rs. 4835.88p.

10. The plaintiff before approaching to the court by filing this suit, sent a legal notice through the Advocate dated 6th of February, 1982 and after setting out the aforesaid facts, called upon the defendant to pay to it the said sum of Rs. 5,62,422.84p. and Rs. 4835.88p. being the balance in respect of sales tax together with interest thereon at the rate of 15% per annum from the due date till payment.

11. In para No. 8 of the plaint it is stated that as the defendant has made part payment towards the sales tax on 30th of December, 1979, no part of the amount is barred by the law of limitation. For the purpose of court fees and jurisdiction, the suit is valued at Rs. 6,63,070.92p.

12. In para No. 10 of the plaint it is stated that the whole cause of action had arisen in the Bombay. The defendant is carrying on its business at Bombay. The suit has been filed in the Bombay High Court and, as said earlier, as the plaintiff company has been wound up by this Court, it has been ordered to be transferred to this Court and thus it is before me.

13. One Mr. Balkrishna.........Ramdas Joshi has signed the plaint and verified the same as one of the Principal Officer of the plaintiff and being aware of the facts of the case and able to depose the same. The plaintiff has made following prayers in the suit.

"(a) that the Defendants be ordered and decreed to pay to the plaintiffs a sum of Rs. 6,63,070.92 as per particulars annexed hereto and marked Exhibit C with further interest at the rate of 15% p.a., on the said sum of Rs. 5,67,258.72 from the date of the suit till payment.

(b) that the Defendants be ordered and decreed to pay the costs of the suit and

(c) for such further and other reliefs as the nature and the circumstances of the case may require."

The defendant has not put appearance. It has not filed written statements. Thus, the claim of the plaintiff made in the suit stands uncontroverted.

14. The fact that the plaintiff has not filed the written statements, goes to show that it has no say whatsoever in the matter and it amounts to admission of the claim of the plaintiff.

15. As a result of the aforesaid discussion, this suit succeeds and the same is allowed. A decree in favour of the plaintiff Jaipur Spinning & Weaving Mills Limited (in liquidation) is passed against defendant M/s. N.M. Trading, a sole proprietor firm carrying on business at 462, Chandra Chowk, 4th Lane, Mulji Jetha Market, Bombay - 400 002, for a sum of Rs. 6,63,070.92p. with interest at the rate of 6% per annum on the principal amount of Rs. 5,67,258.72p. from the date of the suit till the payment thereof. The defendant is directed to pay the cost of the suit to the plaintiff. The registry is directed to draw a decree in favour of the plaintiff in terms aforesaid.