(1984) 01 AHC CK 0009

In the Allahabad High Court

Case No : Civil Revision No. 1573 of 1979

Jaipur Udyog Ltd. APPELLANT

Vs

Indian Drugs and Pharmeceuticals Ltd. and Another RESPONDENT

Date of Decision : 31-01-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Sales of Goods Act, 1930 — Section 23(2), 36(1), 39(1)

Citation : (1984) AWC 156 Supp

Hon'ble Judges : V.K. Mehrotra, J

Bench : Single Bench

Advocate : Yatindra Singh and V.K.S. Chaudhary, for the Appellant; Rajesh Tandon, for the Respondent

Final Decision : Allowed

Judgement

V.K. Mehrotra, J.—M/s. Jaipur Udyog Limited, which is the second defendant in a suit filed by the Indian Drugs and Pharmaceuticals Limited (for short the IDPL) principally for recovery of some amount paid in advance for supply of cement to it on account of the failure of Jaipur Udyog Limited to do so, fats assailed in this revision u/s 115,Civil Procedure Code the order passed by the Civil Judge, Dehradun on August 4, 1979 negativing the objection to the jurisdiction of the court at Dehradun to try the suit. M/s. Bharat Overseas (P) Limited, which is the first defendant in the suit, is also impleaded as a opposite party in this revision. It is said that IDPL needed cement for its Antibiotics plant at Virbhadra near Rishikesh in the district of Dehradun. 300 metric tonnes of cement were allotted to it by the Government of India in the Ministry of Industrial Development. M/s. Bharat Overseas (P) Limited, who were the sole selling agents to Jaipur Udyog, were authorised to supply the aforesaid quantity of cement from Sawai Madhopur Cement factory of Jaipur Udyog. This was by letter of January 31, 1974. The controller of (Purchase and Storg of IDPL of its Antibiotics Plant at Virbhadra was designated as the purchaser. In this letter it was also mentioned that cement was required at the Antibiotic Siding on he Railways at Virbhadra.

This letter also expressly mentioned that the order of release was being made under the provisions of the Cement Control Order, 1967 and that the sale will be a direct deal between M/s. Bharat Overseas (P) Limited and the purchaser. On February 4, 1974, the Bharat Overseas (P) Limited describing themselves as sole selling agents to Jaipur Udyog Limited wrote to the Controller of Stores and Purchase of the IDPL at the Virbhadra address requiring the latter to book an order with the necessary advance at the rate of Rs. 6500/- per wagon (24MT) in terms of the authorisation of January 31, 1974. The IDPL deposited a sum of Rs. 72,000/- through a Demand Draft in the State Bank of India at New Delhi in respect of 300 MT of cement and then through a registered letter of April 6, 074 intimated the Bharat Overseas (P) Limited about it. Through the same communication a format supply Order was made to Bharat Overseas mentioning therein, that the consignee was to be the Assistant Stores Officer (Receipts) of the Antibiotics Plants at Virbhadra near Rishikesh to Whom loading intimation was to be sent and the supply was to be made at Railway Station Antibiotics Siding Virbhadra/Rishikesh. The letter referred to the extension of the period during which supply order was to be made under the authorisation by the Government of India. It also required M/s. Bharat Overseas to acknowledge receipt of the order and expedite supplies. The letter also mentioned that railway receipt and despatch advice was to be sent to the Assistant Stores Officer Virbhadra and that credit balance was to be refunded to the IDPL, Virbhadra by demand draft. There is on record a printed communication addressed by the Bharat Overseas (P) Limited to the Jaipur Udyog bearing April 3, 1974 to be the date of its issue. This document contains instruction to despatch 300 MT cement to the Controller of Purchase and Stores, IDPL Unit Antibiotics Plants Post Office Virbhadra and delivery of cement, under it, was to be made at Antibiotics Siding at Virbhadra. Loading advice, despatch advice and the railway receipt under this communication were to be sent to the buyer at its address at Virbhadra. it also mentions that the advance of Rs. 72,000/-had been received through Receipt No. 6078 dated March 30, 1974 and further, that the supply was to be made to the extent of the amount lying to the credit of the party from whom Central Sales Tax was to be charged at full rate. It also mentions that the indentor/consignee was requested to check particulars with reference to the supply order and to intimate within seven days discrepancies, if any, particularly with regard to the order number, date, quantity, name and address of consignee and destination station. On the reverse, the document contains, what is described in it as "terms and conditions of business" of which the last, namely, condition No. 11 says that "the contract shall be subject to the jurisdiction of the court where the company''s sale office accepting payment in respect of the order is situated." Another condition which may be noticed is condition No. 2 which says that "once the consignment is handed to the carrier and a receipt is obtained, the responsibility of the company ceases and that the Company does not accept any liability for any delay, shortage, damages or loss of goods in transit. Claim should ba lodged with the carrier by the buyers directly." There is then a communication dated March 29, 1975 from the Bharat Overseas (P) Limited to the Assistant

Stores Officer of the Antibiotics Plant at Virbhadra intimating despatch of 95.20 MT of cement in 1904 bags and farther that a sum of Rs. 42,155.10 paise was refundable from the advance of Rs. 72,000/-after debiting therefrom the price and the packing freight and sales tax charges on account of the supply made. It refers to the sales order dated April 3, 1974 and to the despatch advice as well as the railway receipt of the same date, namely, March 29, 1975. Thereafter, there is a letter of May 9, 1977 of the Jaipur Udyog addressed to all stockists of Bharat Overseas (P) Limited and their sub-agents which mentions that the Jaipur Udyog Limited accepts in principle the liability of the advances received by M/s. Bharat Udyog (P) Limited for supply of cement from the company''s cement work at Sawai Madhopur.

2. The Plaintiff claimed that when the remaining quantity of cement was not supplied by the Jaipur Udyog it was compelled to serve a registered notice dated July 19, 1977 calling upon it to make the payment of the sum of Rs. 42,155.10 paise which was outstanding against it. This notice was followed by another notice of September 14, 1977 requesting M/s. Jaipur Udyog Ltd. to expedite payment failing which action may have to be taken in the law court at Dehradun. As it also failed to evoke any response, a suit for recovery of the aforesaid amount was filed at Dehradun by the IDPL in which a preliminary objection was taken by M/s. Jaipur Udyog (P) Limited about the jurisdiction of the Court in proceeding in the matter. When the objection was over-ruled by the order impugned in this revision, M/s. Jaipur Udyog (P) Limited came to this Court.

3. Sri V.K.S. Chaudhary has appeared for the applicant, Jaipur Udyog (P) Limited. His submission is that on admitted facts the court at Dehradun had No. jurisdiction to entertain or try the suit and that the learned Civil Judge was in error in holding otherwise. Sri Rajesh Tandon has appeared for the Plaintiff IDPL and has supported the order of the Civil Judge.

4. The admitted facts, according to Sri Chaudhary are that the offices of both the Companies, namely, the IDPL and M/s. Bharat Overseas (P) Limited was at New Delhi and the order had been placed by the former with the latter at New Delhi where it was accepted and further the advance of Rs. 72,000/- had been paid at New Delhi which, coupled with the fact that supply was to be made to the Carrier (the railways) at Sawai Madhopur, through the destination mentioned in the railway receipt was the Railway Siding at Virbhadra near Rishikesh in district Dehradun, showed that No. part of the cause of action could be said to have arisen within the jurisdiction of the Court at Dehradun. As such, it could not entertain or try the suit. In the alternative, it has been urged that by condition No. 11 mentioned In the letter addressed by Bharat Overseas (P) Limited on April 3, 1974 to the Jaipur Udyog Limited on April 3, 1974 to the Jaipur Udyog Limited, with a copy to the IDPL, the contract was made subject to the jurisdiction of the court where Company''s selling office accepting payment of the order was situate. The payment having been made at New Delhi, this condition confined the jurisdiction in the matter to Courts in Delhi.

5. Taking the second question first:

It is urged that in the letter of April 3, 1974 which admittedly was received by IDPL, since it was mentioned expressly that the contract shall be subject to the jurisdiction of the court where the Company''s sale office accepting payment in respect of this order is situate and it being undisputed that the payment was accepted at Delhi, the courts at Delhi alone had jurisdiction, Counsel for the parties were at issue on the question whether the order sent by IDPL through its letter of April 6, 1974 had been placed after receipt by it of the letter of April 3, 1974 or not. While Sri Chaudhari emphasised that in the absence of any thing to the contrary on the record it has to be assumed that the letter of April 3, 1974 had been received by IDPL before it proceeded to place the order on April 6, 1974, the stand taken by Sri Tandon was that further evidence was necessary before any such assumption could be made. His submission was that unless it was established by evidence on record that the IDPL were cognizant of this condition about the jurisdiction of Delhi courts before placing the order, it could not be held bound by any such condition merely because it found place in a communication which was proved to have been received by it earlier to the placing of the order. Reliance upon some decided cases was also placed by the learned Counsel in support of their respective contentions. However, it is not necessary to pursue this matter any further for the reasons that even on assumption that the letter of April 3, 1974 was received by the IDPL prior to the placing by it of its order of April 6, 1974, the plea that only Delhi courts had the necessary jurisdiction due to the aforesaid condition is not worthy of acceptance.

6. A look at the letter dated April 3, 1974 (paper No. 26-Ga-1) shows that it is in the nature of an instruction given by M/s. Bharat Overseas (P) Ltd. to the Jaipur Udyog Ltd. for despatching 300 metric tonnes cement in 6000 bags to the Controller, Purchase and Stores, IDPL at its Antibiotics Plant (P.O. Virbhadra) at the Antibiotics Siding Virbhadra to which the supply was to be made to the extent of the amount lying at the credit of the applicant and from whom Central Sales Tax at full rate was to be charged. Copies of these letters were endorsed to the Sawai Madhopur office (obviously of M/s. Bharat Overseas (P) Ltd.), the buyer/indentor and consignee. This communication cannot be treated to be an offer for the sale of cement to the IDPL or as an acceptance of any offer made by the IDPL to the Bharat Overseas or Jaipur Udyog Ltd. for purchase of cement by them. In fact, it was the communication of February 4, 1974 (paper No. 24-Ka-1) from the Bharat Overseas to the Controller of Stores and Purchase, IDPL which contained the request of the latter for booking the order along with the necessary advance which resulted in the order being placed by the IDPL. The conditions printed at the reverse of the communication of April 3, 1974 (26-Ga-1) cannot legitimately be treated to be those under which the Jaipur Uydog Ltd., to whom that communication was addressed by the Bharat Overseas, undertook to supply the cement to the IDPL. The mere fact that a copy of this communication was also endorsed to the IDPL would not make these conditions binding upon it unless they were accepted by IDPL about which there is No.

evidence on the record yet.

7. The Note at the foot of the communication requiring the Indentor/consignee to check particulars with their supply order and intimate within seven days about discrepancy, if any, to the Bharat Overseas particularly with regard to the order no, date, quantity, name and address of consignee and destination station, makes it clear beyond doubt that what was contained in the communication of April 3, 1974 was nothing but instructions, subsequent to the supply order having been placed by the indentor (buyer) to the Jaipur Udyog about the cement to be supplied by it. In these circumstances, it cannot be accepted that there was a term between the Jaipur Udyog Ltd. and the IDPL that any dispute about the supply between them would be amenable to the jurisdiction only of the Delhi courts.

Now the First submission:

8. The basic question is whether any part of the cause of action arose within the jurisdiction of the courts at Debradun and the answer to it naturally depends upon the undisputed facts, The first of these facts is that the suit is one for recovery of the amount paid in advance towards price of cement to the extent that supply was not made to the IDPL. It is not a suit for damages for breach of contract by failure to make the supply. The second admitted fact is that the amount of advance was paid at Delhi. By these two acts No. part of the cause of action could be said to arise within the territorial jurisdiction of the courts at Dehradun when the suit is for refund of the price of goods paid in advance; Normally, the suit would lie at the place where the advance had been paid except when there is a stipulation otherwise between the parties. The next fact which deserves to be noticed in this context is the fact about the supply of cement. According to IDPL, supply to it was to be made at the Antibiotics Railway siding at Virbhadra in district Dehradun. The Jaipur Udyog Ltd., however, say it was to be made and was actually made at Sawai Madhopur when cement bags were entrusted to the Carrier, the Railways, though the destination of the goods was Virbhadra.

9. The Sale of Goods Act provides in Section 36(1) that the question whether it is for the buyer to take possession of the goods or for the seller to send them, to the buyer, depends in each case on the contract, express or implied, between the parties and apart from any such contract, the goods sold are to be delivered at the place at which they are at the time of sale or if not then in existence, at the place at which they are manufactured or produced. In Section 39(1) it further provides that where under the contract of sale, the seller is required to send the goods to the buyer, delivery of the, goods to the carrier whether named by the buyer or hot, for the purpose of transmission to the buyer, is prima facie deemed to be delivery of goods to the buyer. And. where, in pursuance of the contract, the seller delivers the goods to a carrier for the purpose of transmission to the buyer and does not reserve the right of disposal be is deemed to have unconditionally appropriated the goods to the contract u/s 23(2).

10. In the present case, the IDPL required M/s. Bharat Overseas (P) Ltd. through their supply order of April 6, 1974, to consign the cement to the Asstt. Stores Officer (Receipts), Antibiotics Plant, Virbhadra at Railway Station Antibiotics Siding Virbhadra near Rishikesh (in district Dehradun). Loading intimation, the railway receipt and the despatch advice was to be sent to the Asstt. Stores Officer (Receipts) of the Antibiotics Plant at Virbhadra. It is obvious that the seller was required to send the good9 to the buyer through a Carrier, namely, the Railways, so that the delivery or cement to the railways for being carried to Virbhadra was contemplated as delivery thereof to the IDPL. The Jaipur Udyog Ltd. were asked by their sole-selling agent, Bharat Overseas (P) Ltd., with whom the order was placed by the IDPL, to despatch the cement to Virbhadra through the Railways. Sawai Madhopur being the place where the cement was to be entrusted to the Railways became the place where, by entrusting the cement to the Railways, for being carried to Virbhadra, supply was to be and was, in fact, partly made to the IDPL. The seller is not shown to have reserved unto himself the right of disposal over the goods which were delivered to the Railways as a carrier, Can, in these circumstances, it be said that delivery of cement was to be made at Virbhadra so as to clothe the courts at Dehradun with jurisdiction in the matter on the footing that part of the contract was be performed within it. The answer, in the circumstances of the present case, seems to be an obvious ''no''.

11. In Dadabhai Dajlbhati v. Diogo Saldanha ILR XVIII Bombay 43 a Division Bench of the Bombay High Court ruled and in my opinion, rightly, that where the goods were to be consigned to Karwar by, shipping them at Bombay, where the money was paid to the seller, that the contract was intended to be performed at Bombay and the court at Karwar had No. jurisdiction to try the case on the footing that any part of the cause of action arose with in its jurisdiction.

12. The principle that the court of the place where the contract of sale of goods is to be performed by delivery of the goods will have jurisdiction to entertain a suit in respect of non-delivery in accordance with the contract is well accepted, See-G. Venkatesha Bhat v. Kamlapat Motilal AIR 1957 Mad 201 and Hindustan Malleables and Forgings Ltd. Vs. Indian Furnace Co. Ltd., .

13. The circumstance that the Assistant Purchase Officer of the Antibiotics Plant of the lDPL at Virbhadra sent an order through communication dated April 6 1974 from a place within the jurisdiction of Dehradun courts would not be enough to take the view that part of the cause of action arose within the jurisdiction of Dehradun courts, This would the on the principle that the order was in the nature of an offer made by the lDPL which did not become a proposal in the eye of law till it came to the knowledge of the M/s. Bharat Overseas (P) Ltd. at Delhi. Undoubtedly the order of April 6,1974 was posted from within the jurisdiction of Dehradun courts but such posting of the letter, by itself, would not become part of the cause of action. This is the principle accepted by a Division Bench of this Court in Raton Lal Gattani v. Harcharan Lal AIR 1947 All. 337 and also by a Division Bench of the Bombay High Court in Baroda Oil Cakes Traders Vs.

Parshottam Narayandas Bagulia and Another, .

14. The decision in C. P. Timber Works Kanpur v. Commissioner of Sales Tax M.P. 1964 Madhya Pradesh Law Journal 620 is on a different set of facts. There the timber was to be kept ready for inspection at Mandla fort and after inspection the seller was to despatch it by train to Chowki. The railway receipt was to be sent to the consignee by post and despatch was to be communicated telegraphically or by express letter. The consignee had the right to reject the timber at the place of destination. On proof of despatch, 90 percent of the price was to be payable and the balance on the receipt of the consignment. The place of delivery specified in the acceptance of Tender Form was "F.O.R. Mandla Fort". In these circumstances, it was held that the property in timber passed to the purchaser at Mandla and that Section 39(1) of the Sale of Goods Act did not come into play when in the contract there was an express stipulation that the goods shall be delivered "F.O.R. the place of despatch". Moreover, this decision clearly recognises that the mere fact that the goods are to be despatched to a place, other than the one where they are to be delivered to the carrier, does not necessarily lead to the conclusion that the delivery was not to be made at a place where they were to be entrusted to the carrier.

15. In Abdul Rashid v. Sizing Material Co. Ltd. AIR 1920 All. 142(2) the facts were that the Plaintiff who was the dealer in chemicals and scientific instruments at Cawnpore, went to Bombay where he ordered the goods to be sent to him (at Cawnpore) and made an advance of Rs. 300/-. The invoice of the goods and the railway receipt were to be sent by the defendant to the Punjab National Bank at Cawnpore and the Plaintiff was to pay the Bank and take delivery. This Court took the view that the jurisdiction to entertain and try the suit was with the Cawnpore court and the order of the Judge, Small Cause Court, Cawnpore returning the plaint for presentation before the courts at Bombay was incorrect. Banerji, J. who decided the case observed as follows:

It is true that the charges were to be paid by the Plaintiff for the despatch of the goods to Cawnpore, but the goods were agreed to be delivered to him at Cawnpore upon payment of the price to the Punjab National Bank at Cawnpore. The Plaintiff could not get delivery unless be made that payment. As payment had to be made at Cawnpore delivery of the goods was to be obtained at Cawnpore and as all the goods according to the Plaintiff were not delivered at Cawnpore his cause of action for the present suit accrued within the jurisdiction of the Cawnpore court. The court below should in my opinion have entertained the suit and tried it on the merits.

Quite clearly the decision was rendered on an entirely different facts than the one in the present case.

16. The court below was in error when it felt that the goods were to be delivered at Virbhadra near Rishikesh and the contract was to be performed there. On this erroneous view it incorrectly thought that a suit for breach of contract for non-

delivery of cement and for refund of price paid in advance would lie at Dehradun where the contract was to be performed. The error, naturally, led it to an untenable conclusion on the question of jurisdiction. The conclusion cannot be upheld and must be set aside.

17. The revision succeeds and is allowed. The order of the court below is set aside. The court below shall direct the return of the plaint for presentation to the proper court. Parties shall bear their own costs.