

(2010) 11 DEL CK 0132
In the Delhi High Court
Case No : CS (OS) No. 2055 of 2007

J.J. Trade Links Pvt. Ltd.

APPELLANT

Vs

Linkmark International (HK) Ltd. and Others

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Contract Act, 1872 — Section 230

Citation : (2010) 11 DEL CK 0132

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

Bench : Single Bench

Advocate : Jasbir Singh, for the Appellant;

Final Decision : Allowed

Judgement

V.K. Jain, J.—This is a suit for recovery of Rs. 33 Lacs as damages. The plaintiff is a company incorporated under the Companies Act and the plaint has been signed and verified and the suit has been instituted by Sh. Kesar Singh, who is the Director of the plaintiff company and is stated to have been duly authorized vide resolution dated 29th March 2007 of 22 to sign and verify the pleadings and institute the suit on behalf of the plaintiff company. It is alleged that the defendant approached the plaintiff in the month of April 2006 at Delhi and placed various purchase orders for manufacturing various types of shoes. It is further alleged that defendant No. 1 through defendant No. 2 also opened an irrevocable Letter of Credit in favour of the plaintiff on 20th May 2006 and the defendants also specified the dates by which the goods were to be dispatched. The case of the plaintiff is that against purchase orders No. 21688869 and 21688870, goods worth Rs30 Lac were to be shipped by 27th October 2006 and production of the goods in respect of the aforesaid two purchase orders was started by it on August 22, 2006. It has also been alleged that the defendants were fully aware of the progress in manufacturing of goods and Mr. M.G. Khan of defendant No. 1 had been regularly visiting the factory of the plaintiff. The goods, according to

the plaintiff, were ready for shipment well in time and only price tickets were left to be affixed on the shoes. Those price tickets were to be supplied by the defendant. Despite repeated requests by the plaintiff, the defendant failed to supply the price tickets, as a result of which, the goods of 22 could not be shipped even by the last date stipulated for their shipment. The plaintiff, therefore, was saddled with unsold stock of 24,000 pair of shoes/chappals. It has also been alleged that the plaintiff tried its best to mitigate the loss by selling the aforesaid goods in the open market and contacted various buyers for this purpose. However, the best price offered to the plaintiff for those goods was about Rs. 50,000/-. The plaintiff has now claimed Rs. 30 Lacs towards price of the goods, which could not be shipped on account of failure of the defendants to supply the price tickets and Rs. 3 Lacs towards compensation for losses and demurrage charges, etc.

2. Written statement purporting to be on behalf of both the defendants, though signed by Mr. Abhishek Gupta, Admn. Manager of defendant No. 1, was filed on 10th February 2008. It has been admitted in the written statement that defendant No. 2 is the associate main company of defendant No. 1 company. The defendants have taken a preliminary objection that this Court has no territorial jurisdiction to entertain the suit. On merits, it is alleged that defendant No. 2, which is engaged in the business of facilitating import/export of goods is working as commission agent for buyers and suppliers. It is further alleged that defendant No. 1 is a liaison office of defendant No. 2 and it has no dealing with respect to the payment. It has also been alleged that defendant No. 2 through defendant No. 1, which is its liaison office, had been placing various orders with the plaintiff company for supply of shoes for exporting the same to foreign buyers. It has been stated that the defendant had placed purchase orders No. 21688869 and 21688870 with the plaintiff company for 24,000 pair of shoes of J type style, which were to be exported to EDGARS, a buyer of international repute and for that purpose, defendant No. 2 opened a Letter of Credit on 20th May 2006. It is further alleged that in the month of July, 2006 this style was cancelled by EDGARS after the goods sent to the stores were returned back on account of their poor quality. It is further alleged that in April 2006, the defendant company had received orders from a buyer called JET for the same JJ style and had placed two purchase orders No. 21688869 and 21688870 for 24,000 pair of shoes with the plaintiff company and for that purpose defendant No. 2 opened the aforesaid Letter of Credit on 20th May 2006.

3. The defendants have further alleged that the buyer JET discovered that problem faced by EDGAR and this was brought to the notice of the plaintiff company, which was informed that the buyers were not willing to take the shoes on account of their bad and substandard quality. It has however been admitted in the written statement that the goods pertaining to purchase orders No. 21688869 and 21688870 were to be shipped by 27th October 2006 and were worth US\$6200 (Rs. 30Lac). The defendants have also alleged that in July 2006 itself they had informed the plaintiff that the buyer intended to cancel the order,

but, the plaintiff did not pay any heed to this communication. They have also claimed that the goods made by the plaintiff in respect of aforesaid purchase orders were not of the ordered quality and could not be exported. The defendants have alleged that the loss, if any, suffered by the plaintiff is due to its own fault and in not meeting the specified quality of goods and manufacturing goods of rather low and dubious quality, which, if exported, would have certainly have been rejected by the buyers and would have brought a bad name to the reputation and goodwill of the defendant company in the trade market.

4. The following issues are framed on the pleading of the parties:

(i) Whether the defendants failed to lift the goods ordered on the plaintiff in spite of the plaintiff having complied with its part of the order? OPP

(ii) Whether the goods not so lifted by the defendants were of no other value and were wasted? OPP

(iii) Whether the plaintiff is entitled to claim any damages, if so, from which of the defendants and in what amount?

(iv) Whether this Court has no territorial jurisdiction to try the suit? OPD (v) Whether the defendants had cancelled the order placed on the plaintiff and if so, to what effect? OPD (vi) Whether the plaintiff is entitled to claim any interest, if so, on what amount, at what rate and for what period?

(vii) Relief.

Issue No. 4

5. The plaintiff has filed affidavit of its director Sh. Kesar Singh by way of evidence. In his affidavit Sh. Kesar Singh has stated that defendant No. 1 is an associate company of defendant No. 2 in India and is having a liaison office at Delhi. He has further stated that defendant No. 2, through defendant No. 1 approached the plaintiff company in April 2006 at Delhi and placed orders for manufacture of various types of shoes and the discussions and negotiations in this regard took place in the office of defendant No. 1 at 38, Okhla Industrial Estate, Phase-III, New Delhi. There is no evidence produced by the defendant in rebuttal. I, therefore, have no hesitation in holding that defendant No. 1 was having an office in Delhi when orders in question were placed with the plaintiff. If defendant No. 1 was having an office in Delhi when the negotiations took place between the parties and the orders were placed with the plaintiff company, that by itself will not confer jurisdiction on this Court to try the present suit, if the office at Delhi had been closed down before this suit was filed. There is no evidence to prove that defendant No. 1 continued to have an office in Delhi till this suit was filed. A perusal of the record shows that the summons issued to defendant No. 1 at Delhi address were received back with the report that the company had shifted from the given address. This clearly indicates that the office which defendant No. 1 was maintaining in Delhi at the time the negotiations took place between the parties had been closed down before this suit was filed.

Therefore Clause (a) of Section 20 of the CPC read with the explanation to the aforesaid Section does not apply. I also find from the deposition of PW-1 Sh. Kesar Singh that the negotiations between the parties took place in the office of defendant No. 1 at New Delhi and the orders were also placed at New Delhi. Thus, the cause of action also partly arose in Delhi as the negotiations were held and the orders were placed at New Delhi. Section 20(c) of the CPC to the extent it is relevant provides that a suit shall be instituted in a Court within whose jurisdiction the cause of action wholly or in part arises. Since the negotiations and discussions took place at New Delhi and the orders for supply of shoes were placed with the plaintiff company at New Delhi, it cannot be disputed that the cause of action arose partly in Delhi. The Delhi Courts, therefore, does have jurisdiction to try the present suit. The issue is decided against the defendant and in favour of the plaintiff.

Issue No. 1

6. It has been admitted in the written statement that orders No. 21688869 and 21688870 were placed with the plaintiff company for supply of 24000 pairs of shoes. This is not the case of the defendants that the goods for which orders were placed by them with the plaintiff were actually lifted by them. PW-1 Sh. Kesar Singh has specifically stated in his affidavit that the defendants did not lift the goods ordered by them even till November 2006. Thus, it is an undisputed fact that the goods were not lifted by the defendants. The goods of the plaintiff were ready and were also inspected by the defendants vide certificate Ex.PW1/4 and Ex.PW1/5 and the same were to be dispatched from Delhi by 17th October 2006 and shipped from Bombay by 27th October 2006. The price tickets which were required to be affixed on the shoes were not supplied by the defendants despite repeated requests in this regard. Vide E-Mail dated August 26, 2006, September 27, 2006 and September 21, 2006, which are Ex.P-2, a document which was admitted by the defendants on 28th July 2008, Director of the plaintiff company Sh. Kesar Singh requested Sh. M.G. Khan of defendant No. 1 to send the price tickets in respect of purchase orders No. 21688869 and 21688870. This request was repeated vide E-Mail Ex.PW-1/12 and subsequent E-Mails dated October 08, 2006 and October 11, 2006, which are Ex.PW1/4. Similar request was made vide E-Mail sent on October 28, 2006, which is Ex.PW 1/15 and E-Mails sent on November 06, 2006, November 08, 2006 and November 09, 2006, which is Ex.PW1/16. This is not the case of the defendants that the price tickets were not demanded by the plaintiff or were supplied by them to it. Their case is that since the goods, manufactured by the plaintiff, were not as per agreed specifications and similar goods which the plaintiff had supplied to another buyer EDGARS through them were found to be of inferior quality and coming to know of this, the JET, for which the goods were ordered vide purchase orders No. 21688869 and 21688870, cancelled the order. Even in the e-mail dated 15th November, 2006, sent by Mr M.G. Khan to Mr Kesar Singh, Director of the plaintiff-company, which is Ex.PW-4, Mr Kesar Singh, he stated that they could not send the price tickets unless they received it from the buyer. In his affidavit,

PW-1 Mr Kesar Singh has stated, on oath, that the defendants also did not agree to allow them to ship the goods without affixing the price tickets on them. Vide e-mail dated November 13, 2006 which is Ex. PW-1/19, Mr M.G. Khan informed Mr Kesar Singh, Director of the plaintiff-company, that they had not received the price tickets which they normally used to receive from Pipeline service. He also confirmed that the plaintiff wanted them to ship the goods without price tickets, but claimed that they were not authorized to do so without specific approvals from the buyers and when they requested for price tickets, they came to know that the buyer wanted to cancel these styles.

7. Vide e-mail dated 10th November, 2006 sent to Mr M.G. Khan by Mr Kesar Singh, it was specifically conveyed to the plaintiff that the goods were cancelled and they were free to do whatever they wanted. Vide e-mail dated November 13, 2006 sent to Shri Kesar Singh, Mr M.G. Khan reproduced the reply received by them from the buyer. This reply which JET has given to Mr M.G. Khan made it clear that JET had cancelled the order for the reason that the goods supplied by them to EDGARS were of a better quality. Vide this communication Mr M.G. Khan also questioned the plaintiff for producing the goods, despite cancellation of the order. Thus, there can be no dispute that the orders which were placed with the plaintiff for supply of 24000 pair of shoes were cancelled. The issue is therefore decided against the defendants and in favour of the plaintiff.

8. Issue No. 2 and 3 These issues are inter-connected and can be conveniently decided together. As noted earlier, it is an admitted case of the parties that order No. 21688869 and 21688870 were placed with the plaintiff-company for supply of 24000 pair of shoes and the value of the order was Rs. 30 lac. The defence taken by the defendants is two-fold. Their first contention is that the goods which the plaintiff manufactured pursuant to the purchase orders placed with it were not as per the agreed specification and were not of export quality. No evidence, however, has been led by the defendants to prove that the goods manufactured by the plaintiff, pursuant to the order placed on it, were not as per the agreed specification or were of inferior quality. In fact, the written statement does not even indicate in what manner the goods manufactured by the plaintiff were not in consonance with the agreed specifications or were of inferior quality. In the e-mails sent to the plaintiff, nowhere did the defendants claim that the goods manufactured by the plaintiff were of inferior quality or were not as per the specifications agreed between the parties. In the e-mail Ex.PW-1/19 which was sent by Mr M.G. Khan of defendant No. 1-company to Mr Kesar Singh of the plaintiff-company on November 13, 2006, the stand taken by him was that the buyer wanted to cancel these two styles since she had come to know that they had supplied the same style to EDGARS also.

9. The plaintiff-company had nothing to do with the agreement/arrangement between the defendants and JET for which the goods manufactured by the plaintiff were meant. There was no privity of contract between JET and the plaintiff-company. Unless the quality of the goods manufactured by the plaintiff

was inferior or the specification of the goods were below the agreed specifications, defendant No. 2 was bound to accept the goods from the plaintiff-company and pay the price of those goods to it, irrespective of cancellation of order placed with it by JET.

10. Though the defendants have not produced any evidence to prove that the goods which the plaintiff had manufactured for EDGARS were rejected on account of their quality being inferior, assuming the same to be true, that by itself not give any right to the defendants to cancel the order which was placed by defendant No. 1 with the plaintiff-company for and on behalf of defendant No. 2. The quality and the specifications of the goods which the plaintiff was to manufacture of JET were required to be in consonance with the quality and specifications agreed between the plaintiff and defendant No. 1 at the time orders were placed with the plaintiff-company and could not have been linked with the quality and specifications of the goods which were supplied to EDGARS and were rejected by that buyer. Moreover, a perusal of the certificates Ex.PW-1/4 and PW-1/5 issued by defendant No. 1 would show that a random checking of the merchandise was carried out by its representative and it was certified that the goods fully complied with the quality and standard of execution required by the order and/or sample shown. Similar certificate was given vide Ex.PW-1/5. Thus, not only the defendants have failed to produce any evidence to prove that the goods manufactured by the plaintiff pursuant to the order placed with it by defendant No. 1 on behalf of defendant No. 2, were inferior or were not as per the agreed specifications, the evidence on record shows that in fact the goods were manufactured as per the agreed specifications and/or the sample which was shown to the defendants.

11. It is an admitted case of the parties that the value of the order placed by defendant No. 1 with the plaintiff-company for or on behalf of defendant No. 2 was for Rs. 30 lac. The case of the plaintiff is that it has not been able to find any buyer for these goods and consequently, despite all efforts made in this regard, he was compelled to dispose them off for Rs. 50,000/- which also have not been paid to him so far. In this regard, PW-1 Mr Kesar Singh has specifically stated in his affidavit that the plaintiff-company tried its best to mitigate the losses by calling upon the defendant to lift the goods and there was no domestic market for those shoes as the name of the foreign buyer JET was engrossed on the upper sole. According to him, the goods, therefore, became a complete waste and the plaintiff-company suffered additional loss of Rs. 6 lac on account of demurrage and loss of business due to crunch of funds in the absence of availability of Rs. 30 lac which the defendants were to pay for those goods. According to him, they also tried to approach the domestic market, but could not find buyer for this particular type of shoes and ultimately one Mr Lavi Kumar, a small retail shoe dealer agreed to lift the entire stock at Rs. 50,000/- in the month of April, 2007 on the condition that he would make payment only when he was able to sell the goods in the market through hawker or petty retailers. He further stated that on receipt of the offer of Rs. 50,000/-, they again informed

defendant No. 1 on telephone as well as vide letter dated 10th April, 2007 that if they failed to lift the stock, they would sell the same in the market for Rs. 50,000/- and that sum would be adjusted from the claim of damages. He further stated that since the defendant failed to respond to their letter, they had no option, but to beg Mr Lavi Kumar to have a mercy on them, lift the stock and pay for the same as and when he received money from the market. The purpose was to avoid further demurrage charges. A perusal of the e-mail dated February 27, 2007 sent by Shri Kesar Singh of the plaintiff-company to Maarten M. Company, which is Ex.PW-1/33 shows that the aforesaid goods were offered by them to that company. Similar offer was made by the plaintiff-company to GIANNIS FLOURIS, as is evident from the e-mail dated October 13, 2006 which is Ex.PW-1/34. Thus, it cannot be said that the plaintiff-company did not make any effort to mitigate the losses by trying to sell the goods which it had manufactured for defendant No. 2, to other buyers. The letter dated 10th April, 2007 referred in the affidavit to Mr Kesar Sing is Ex.PW-1/35 and it shows that the defendants were informed that if the ordered goods were not taken by them within seven days, the same will be disposed of at US\$ 1200 to a local clearance person. Thus, all possible efforts were made by the plaintiff-company to dispose of these goods, but it was able to sell them only for Rs. 50,000/-. The defendants could have, if they so wanted, paid the plaintiff, lifted those shoes, sell them at the best price offered to them. But, they did not adopt that course, despite repeated requests from the plaintiff and on being informed that the plaintiff was getting only Rs. 50,000/- for them. The defendants, therefore, are not entitled to adjustment of any amount exceeding Rs. 50,000/-

12. Since the plaintiff-company was to receive Rs. 30 lac from the defendants towards price of the shoes which it had manufactured for defendant No. 2 and had to later dispose them off for a paltry sum of Rs. 50,000/-, it is entitled to recover the balance of Rs. 29,50,000/- from defendant No. 2.

13. Though the plaintiff-company has also claimed Rs. 3 lac towards demurrage charges and compensation, no evidence has been produced by it to prove the demurrage charges alleged to have been incurred by it. The plaintiff, therefore, has failed to make out a case for payment of any demurrage charges. The plaintiff has also not produced any evidence to prove any other loss to it on account of failure of defendants to lift the goods which the plaintiff-company had manufactured for defendant No. 2. The plaintiff-company would rather have earned some profit, had the goods been actually lifted by the defendants. Therefore, I hold that the plaintiff is not entitled to any compensation or demurrage charges. The issues are decided accordingly.

14. Issue No. 6 The plaintiff has not claimed any interest for the pre-suit period. The pendente lite and future interest, however, is in the discretion of the court. Since the transaction between the parties was of a commercial nature, there is no reason why the plaintiff-company should not get pendente lite and future interest at a reasonable rate which I feel should be 12% per annum. The issue is

decided accordingly.

15. Issue No. 7 In view of my findings on the other issues, the plaintiff is entitled to recover a sum of Rs. 29,50,000/- alongwith pendente lite and future interest at the rate of 12% per annum on the amount of Rs. 29,50,000/-.

The case of the plaintiff before this Court is that defendant No. 1 was an agent of defendant No. 2 and had placed order with the plaintiff-company for and on behalf of defendant No. 2. Defendant Nos. 1 and 2 are two separate companies and, therefore, two separate legal entities. The Letter of Credit in favour of the plaintiff-company was issued by defendant No. 2 Linkmark Development (BVI) Limited as is evident from the L.C. which is Ex.PW-1/3. Thus, plaintiff-company was the seller, whereas defendant No. 2 was the buyer of the goods which was manufactured by the plaintiff-company, pursuant to the order placed with it by defendant No. 1 on behalf of defendant No. 2. Defendant No. 1 does not become liable to pay to the plaintiff merely because it was the agent of defendant No. 2 and had placed order with the plaintiff-company on its behalf. Section 230 of Contract Act provides that in the absence of any contract to that effect, an agent cannot personally enforce contract entered in by him on behalf of his principal nor is he personally bound by them. Since, unless he agrees to the contrary, the agent is not personally bound by the contract, the plaintiff cannot recover the price of the goods from him. This proposition of law is well-settled and has consistently been recognized by our Courts. In Prem Nath Motors Ltd. Vs. Anurag Mittal, Supreme Court held that Section 230 of the Contract Act categorically makes it clear that an agent is not liable for the acts of a disclosed principal to a contract to the contrary. In Khushi Ram-Behari Lal v. Mathra Das and Anr. AIR 1917 Lah 404, it was held that since the defendants were merely the agents and had not admitted their personal liability, they were not liable for the price of the goods which the plaintiffs had purchased at the request of a certain Ludhiana firm and had sent to them. In Hamid Hasan and Anr. v. Shahzad Khan and Anr. AIR 1919 Pat 143 (1) the Court reiterated that an agent cannot personally enforce a contract entered into by him on behalf of his principal nor is he personally bound by such contract.

16. The learned Counsel for the plaintiff has, however, referred to Babulal and Ors. v. Jagat Narain and Ors. AIR 1952 VP 51, it was held that in the aforesaid case that every agent, who undertakes personal responsibility for payment is personally liable and can be sued in his own name on the contract unless the other contracting party elects to give exclusive credit to the principal. There is no quarrel with the proposition of law which is otherwise evident from a bare perusal of Section 230 of Contract Act. The agent will be personally liable if he has undertaken a personal liability under the contract entered into by him on behalf of the principal and in the case before this Court, there is no evidence or even an allegation that defendant No. 1 had undertaken to be liable for payment of the price of the goods which the plaintiff-company was to manufacture for defendant No. 2. The case of the plaintiff-company is that defendant No. 1 was

acting as an agent of defendant No. 2 and had placed the order on behalf of defendant No. 2. The Letter of Credit in favour of the plaintiff-company was opened by defendant No. 2. Since no personal liability was agreed by defendant No. 1, the plaintiff cannot recover the suit amount from it.

17. In view of my findings on the issue, a decree for recovery of Rs. 29,50,000/- with proportionate cost and pendente lite and future interest at the rate of 12% per annum on the amount of Rs. 29,50,000/- is passed in favour of the plaintiff and against defendant No. 2. The suit against defendant No. 1 is dismissed, without any order as to costs.

18. Decree sheet be prepared accordingly.