

(2005) 06 CAL CK 0008

In the Calcutta High Court

Case No : G.A. No. 768 of 2004 and C.S. No. 194 of 2003

Madura Coats Limited

APPELLANT

Vs

Dunlop India Limited

RESPONDENT

Date of Decision : 21-06-2005

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1)

Citation : AIR 2005 Cal 366

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Judgement

Kalyan Jyoti Sengupta, J.—This summons has been taken out by the plaintiff for recording final judgment under Chapter XIII A of the original Side Rules of this Court. This application is arising out of a suit for recovery of the price of diverse quantities and qualities and specifications of dipped yarn, nylon tyre cord, dipped chafers etc. sold, delivered to the defendant. The sale and supply was made prior to 1996 till 1998 and thereafter from April, 2000 to May, 2001. The bills were raised and accepted. No objection was raised. Time to time part payment was made. After adjusting part payment made by the defendant there is due and owing an aggregate sum of Rs. 3,61,54,627.54p. on account of principal and sum of Rs. 2,48,66,609.75p. on account of interest calculated from respective due dates till 28th February, 1998. However, taking into consideration of the sale and supply made during subsequent period between April, 2000 and May, 2001 the dues of the plaintiff rose up to Rs. 7,51,86,994.27p. The plaintiff initiated winding up proceedings. However, the same could not be proceeded in view of the defendant making reference under the provision of Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), before the Board for Industrial and Financial Reconstruction (BIFR). The reference failed in view of dismissal by the BIFR. The defendant has taken this matter to Appellate Authority for Industrial and Financial Reconstruction (AAIFR). In the appeal the proposal for revival scheme was allowed. The BIFR sanctioned a scheme for revival providing for various packages including the payment of the plaintiff's

dues. The plaintiff, therefore, approached for enforcement of this claim before the appropriate forum or for payment, if possible. In the scheme the defendant has provided for payment Of a sum of Rs. 2.03 crore and the rest of the balance claim viz. 3,61,54,627.54p. was allowed by granting leave to be recovered in accordance with law. Hence, the suit has been filed by the plaintiff for recovery of above portion leaving the balance portion for recovery under the scheme.

2. The plaintiff says that the defendant has no defence as the entire amount of Rs. 6,10,21,237.29p. together with interest at the rate of 19.5% per annum with effect from 1st March, 1995 has been acknowledged by the appropriate officers of the defendant.

3. In the affidavit-in-opposition, in fact, there has been no substantial defence to the claim of the plaintiff. The aforesaid fact of granting leave by the AAIFR for recovery of the amount of Rs. 3 crore and odd is admitted and there is no scope for denial. It is also admitted that a portion of the claim amounting to Rs. 2 crores and odd has been provided for payment in the scheme.

4. Mr. Ajoy Chatterjee, Learned Senior Counsel, appearing in support of the summons submits that the defendant has no defence against the claim of the plaintiff of this portion. The acknowledgment made by the plaintiff is very clear and cogent and duly signed and sealed by the appropriate officer. On obtaining leave of the AAIFR the present suit has been filed. The AAIFR granted leave after affording an opportunity to the defendant to refute or dispute the claim and the defendant in course of hearing before the AAIFR asks for time for reconciliation of the bills and invoices. Time was granted. However, the defendant finally did not appear, nor made any submission with regard to non-receipt of the goods as such the fact of delivery of the goods and receipt thereof is not open for dispute or denial. Moreover, a portion of the claim had been admitted to be paid under the scheme.

5. He contends that the plea raised as to the genuineness and correctness of the acknowledgment of the sum of Rs. 6,10,21,237.29p. is very weak and not to be considered. In the legal jargon this dispute can be termed to be a moonshine one. He further contends that if the affidavit-in-opposition is looked into carefully then it would appear that the defendant has not denied the person acknowledged the dues, not being employee of the defendant. It has only been said that the said person has no authority and further the acknowledgment of the interest portion of the said document is interpolated but the portion of the written acknowledgment of the principal claim has not been denied and disputed. Surprisingly no step has been taken against this officer for allegedly making illegal acknowledgment and/or admission of huge amount. Therefore, this defence should not be believed by this Court.

6. Mr. Sudipta Sarkar, Learned Senior Counsel appearing for the defendant submits that the plaintiff's claim is based primarily on this document. This document is extraordinarily suspicious. It will appear from the plain look on the

same that it is an interpolated and forged document. If the claim is based on forged document the same is a strongly triable issue. Moreover, in the writ jurisdiction the plaintiff placed their claim and the Writ Court has decided that the claim and contention of the plaintiff are highly disputed question of fact and the same cannot be decided in the summary manner. According to Mr. Sarkar his client has been able to raise very strong defence for which it should be allowed to contest by filing written statement and bringing witness at the time of the trial of the suit unconditionally. He submits that Law Courts of this country had already settled the principle under which the summary judgment can be recorded. He has relied on the following decisions, AIR 154 SC 321, Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation, , 198 (5) SCC 354 : AIR 1998 SC 2317 and 89 CWN 78 (sic).

7. Having heard the respective contention of the learned Counsel I have gone through the materials placed before me. The only question to be seen is whether the defendant has been able to make out such defence for which it is entitled to defend the suit unconditionally or not.

8. From the materials I find that the plaintiff largely depends upon the written acknowledgment and/or admission of the plaintiff's dues. Therefore, this acknowledgment has to be looked into. If this acknowledgment which is accepted by the Court is lawful and valid without any doubt then recording final judgment will be as a matter of course and there will have no difficulty. This acknowledgment covers two portions of the claim viz. a portion of the principal amount of Rs. 36,154,627.54p. and a portion of overdue interest of Rs. 24,866,609.75p. This acknowledgment is signed by an officer viz. Mr. Somnath Mukherjee and date of acknowledgment is also mentioned. In the affidavit-in-opposition as correctly contended by Mr. Chatterjee that this officer has not been disowned, nor his seal and signature. It is said that the portion of the aforesaid document being the amount of interest is interpolated but there has been no denial and dispute as to the recording of the principal amount.

9. It is an admitted position that Mr. Mukherjee is an officer of the purchase department but the said officer has not been brought in this proceedings to deny and dispute the correctness of the aforesaid document of acknowledgment. It is submitted that the said officer has resigned from the service but no document has been annexed and nothing has been said in the affidavit-in-opposition. Therefore, the attempt to explain away this document is not acceptable by this Court But I find upon plain look of this document that there is a difference in typing of two portions of the acknowledgment. In the affidavit-in-opposition in the real sense there has been no denial of the principal amount.

10. The authorities cited by Mr. Sarkar above have laid down identical principle of law how a proceeding of this nature under summary procedure has to be dealt with. The applicability of this principle depends upon each and every facts and circumstances of this case and this cannot be put into a straight jacket formula. Whether the defendant should be allowed to contest the suit unconditionally or

with a condition or the plaintiff will get final judgment largely depend upon their degree and standard of the defence made out at this stage. It is not enough to disclose the defence but has to establish before the Court of Law that such defence is dependable and acceptable prima facie for proceeding further. Hence I have already indicated the defence made out to challenge the aforesaid acknowledgment is that the same is interpolated document and the person has no authority to acknowledge. It is the defendant's officer who has done it. It is not the document of the plaintiff. It has not been explained in the affidavit who is the authorized person to acknowledge for admitting the claim, nor the said officer has been brought here to deny and dispute the correctness of the document by swearing affidavit. Nothing has been said in the affidavit-in-opposition any action has been taken against the officer.

11. One can effortlessly conveniently disown authority of an officer to evade legitimate dues, if situation so arises. This plea in my view, prima facie, is afterthought.

12. In the premises I hold the defence of the defendant rests on a very thin layer and is not dependable one. Observation of Writ Court as raised by Mr. Sarkar is of no relevance. I think the assessment of Writ Court in public law field about gravamen of a case is, in my view, different from that in the regular Civil Court, which is meant for resolution of all types of disputes in the manner as laid down in the procedure.

13. Therefore, applying the principle laid down in the aforesaid decisions of the Courts I allow the defendant to contest the suit on depositing a sum of Rs. 3,61,54,627p. with the Original Side of this Court within two months from the date of communication of this order. In the event such deposit is made, the Registrar, Original Side shall invest the amount in a short term fixed deposit in the Standard Chartered Bank, Church Lane Branch. In default there will be a final judgment for a sum of Rs. 3,61,54,627.54p. There will be a decree for interim interest and interest on judgment at the rate of 9% per annum.

14. Rest of the claim on account of interest is substantially disputed and this claim cannot be decided on the summary procedure. So, the same stands for trial in the suit for which the defendant is granted leave to contest unconditionally.

Cost costs in the cause.