

(2001) 12 DEL CK 0041

In the Delhi High Court

Case No : IA 7307/98 in Suit No. 2304/97

Mahinder Kumar Chaudhary and Another

APPELLANT

Vs

Balsara Hygiene Products Ltd.

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Partnership Act, 1932 — Section 69, 69(2)
Specific Relief Act, 1963 — Section 30

Citation : (2001) 12 DEL CK 0041

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : K. Venkatraman, for the Appellant; Jaya Savia and Reema Bagga, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—Mahinder Kumar Chaudhary and Mrs. Dharam Devi Chaudhary, plaintiffs have filed a suit for declaration and for recovery of Rs. 13,39,088/-. A declaration is prayed to the effect that the bank cheques No. 147524 to 147523 drawn on Syndicate Bank and procured by the defendants and null and void.

2. The facts alleged are that plaintiffs were appointed as stockists on 18th June, 1980 by the defendants vide agreement dated 18th June, 1980. Defendants were a partnership firm. The plaintiff paid Rs. 25,000/- as security deposit. Thereafter the partnership firm of the defendant was converted into accompany incorporated under the Companies Act, 1956. up to September, 1984 defendants were supplying the goods to the plaintiff on documents through bank system. The plaintiffs used to pay the value of the supplies into the bank and obtain the lorry receipts for release of the goods. The defendants from October 1984 stopped the system and adopted the cheque system under which the defendants collected blank cheques in advance from the plaintiffs and the

defendants filled in those cheques for the amount of supplies made by them and they presented the cheques to their bankers for collection. Under this system the plaintiffs from time to time handed over sufficient number of blank cheques to the defendants. The defendants reimbursed to the stockists for the value of the damaged stocks, additional discounts given to the retailers and discrepancies in the invoices etc.

3. It has further been pleaded that defendants had similar disputes over the sales tax rates on its product ODOMOS with Delhi Sales Tax authorities. The revenue claimed that product was taxable at 7% while the defendants disputed that it was taxable at 5%. In order to cover the possible tax liability of 2% the defendants collected the additional 2% from the stockists as security tax. In this process defendants had collected from the plaintiffs Rs. 6,15,000/- from April 1986 to February 1991. The plaintiffs came to know that this issue was decided in favor of the defendants. The plaintiffs requested the defendants for refund of the amount. But it was put off on one pretext or the other. Defendants further collected a sum of Rs. 2,52,000/- by way of octroi, transport and freight charges which they were not entitled to charge. Furthermore, defendants are claimed to be destroying the damaged, soiled stocks lying with the stockists. The stocks collected from the market were to be destroyed by the officials of the defendant. The plaintiffs had accumulated the soiled/damaged stock of Rs. 1,50,000/- and is entitled for reimbursement of the same. In addition to that it has been pleaded that in 1992-93 the defendant appointed sub stockiest in the territory allotted to the plaintiff. The understanding between the parties for the appointment of sub-stockiest was that plaintiffs were to get 2% additional discount. The plaintiffs thus were entitled to Rs. 34,838/-. It has been asserted that it was a usual practice of the defendants to operate various market scheme through their stockists. These scheme include consumer offer, rebate, free issue gifts. The plaintiffs had incurred an expenditure to the tune of Rs. 1 lakh on this count and are entitled to the refund of the same. Lastly it is claimed that defendants introduced scheme called Ex-godown on BABOOL tooth paste. As per this scheme stockists were given additional discount on the sale of BABOOL Toothpaste and plaintiffs are entitled to a discount of Rs. 10,000/-.

4. Plea has been raised that believing the defendants the plaintiffs handed over 10 signed blank cheques and defendants supplied goods worth Rs. 9,83,180 to the plaintiff. The above supplies to the plaintiff were very much in excess of their normal purchase. The plaintiffs received the invoice on 1.11.1994 but to their dismay found that only a small sum of Rs. 59,107.81 had been adjusted against the invoice. Plaintiff wrote to the defendants in this regard. It is claimed that in this process Rs. 13,39,088/- was due to the plaintiff and declaration with respect to cheques referred to above that they were null and void was also claimed.

5. An application under Order 7 Rule 11 has been filed on behalf of the defendant for rejection of the plaint. It has been pleaded that the suite has been filed for recovery of the amount referred to above. The claim has been made by the

plaintiff on behalf of the partnership firm M/s Emkay Agencies. It was this firm which was the sub-stockiest. The claim includes refund of security tax, octroi, transport and freight charges and value of damaged goods. The plaintiff had no independent privity of contract with the defendants except as a partner of the firm. The firm is not registered and Therefore the suit is barred .It is also claimed that it is barred by time and Therefore the plaint should be rejected .

6. The application as such has been opposed. It is denied that the suit is barred by time or that Section 69 of the Indian Partnership Act bars further filing of the suit.

7. Sub-section (2) to Section 69 of the Partnership Act reads as under:-

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing and or have been shown in the Registered firms as partners in the firm.

x x x x x x x x x

8. Perusal of the relevant provision referred to above clearly show that if a person is to enforce a right arising from a contract then if the firm is unregistered as a partnership firm then under Sub-section (2) to Section 69 the firm is debarred and even partners are debarred from suing with respect to the said right.

9. On behalf of the defendant it is pointed that plaintiffs are the partners of the firm and the firm is unregistered and Therefore plaint as such must be rejected .

10. As already pointed above, the claim of the plaintiff is basically is alleging that it was a sub stockiest of the defendant. It relates to the goods supplied by the defendant. The plaintiff claims refund of the security tax, octroi, transport and freight charges and value of the damaged goods. plaintiff claims that defendants were liable to payback the said amount. It is abundantly clear from the facts which have already been enumerated above that claim arises from a contract between the parties. Once the claim arises from a contract between the parties Sub-section (2) to Section 69 will apply withal its rigours.

11. On behalf of the plaintiff reliance was strongly been placed on the decision of the Supreme Court in the case of M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property, Therein too the Supreme Court held that suit based on cause of action ,based on breach of covenant would be barred under Sub-section 2 to Section 69. Learned counsel for the plaintiff urged that the Supreme Court has further held that if there is a cause of action based on breach of statutory obligation then Sub-section (2)to Section 69 will not bar the filing of the suit.

12. Indeed the legal position as argued is not disputed but herein it is not the plaintiff's case that his cause of action is on breach of statutory obligation .As referred to above the plaintiff claims refund and the payments based on a

contract that was between the parties. The plaintiff was the stockist of the defendant and indeed this was the contract and for whatever reasons the plaintiff seek the refund or the payment, it must be stated that it was arising from the contract between the parties. Thus Sub-section (2) to Section 69 would clearly bar the filing of the suit.

13. In that event it was contended that suit for declaration in any case would be maintainable whereby the plaintiff seeks that the cheques purported to be procured by the defendants are null and void. But in this connection Section 30 of the Specific Relief Act clearly provides the answer and negatives the arguments of the plaintiffs learned counsel. No suit for declaration is maintainable where an alternative relief is available. The cheques so given had been encashed and Therefore alternative relief for recovery of the amount would be maintainable, if any. The simple suit for declaration as such consequently keeping in view the facts referred to above, will not be maintainable.

14. In fact of the aforesaid it is patent that in the present form the suit would be barred by law and therefore it is the plaintiff's plaint is rejected under Order 7 Rule 11 CPC. However, by way of abundant caution it is added that nothing said herein should be taken as an expression of opinion on the merits of the matter.