(1988) 07 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : C.P. No. 36 of 1983

Maruti Ltd. (In Liquidation) and Another	APPELLANT
Vs	
M.H. Tractor and Automobiles Corporation and Another	RESPONDENT

Date of Decision : 29-07-1988

Acts Referred:
Companies Act, 1956 — Section 446

Citation : (1990) 69 CompCas 59 : (1988) 94 PLR 312

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : J.S. Narang, for the Appellant; S.P. Jain, for the Respondent

Judgement

G.R. Majithia, J.—The petitioners had filed this petition u/s 446 of the Companies Act, 1956, for the recovery of Rs. 44,021.37.

2. Petitioner No. 1 was acquired by petitioner No. 2 under the Maruti Ltd. (Acquisition and Transfer of Undertakings) Act, 1980, by virtue of Act No. 64 of 1980.

3. Petitioner No. 1 had business transactions with the respondents since 1975. It had numerous transactions with the respondents and a running account was maintained in its books of account the credit balance was struck on March 31, 1977, and it was found that the respondents were indebted to the petitioner to the extent of Rs. 25,743.84. Petitioner No. 1 was ordered to be wound up on March 6, 1978. The official liquidator sent notice to the respondents to pay off the dues failing which the amount will be payable along with interest at the rate of 12% per annum.

4. Respondent No. 1 is a partnership concern. Respondent No. 2 is a partner of respondent No. 1, and a joint written statement was filed by them. In the written statement, it was, inter alia, pleaded that no running account was opened by the respondent. They admitted having business transactions with the petitioner but claimed that the payment of the bills was made by the petitioner within thirty

days of the delivery of goods. It was further pleaded that the amount reflected in the various bills mentioned in annexure R-1 to the written statement has not been accounted for in the books of account.

5. From the pleadings of the parties, the following issues were framed :

"1. Whether the amount of Rs. 25,743.84 is due from the respondents on account of the goods supplied ?

2. Whether the petitioners are entitled to any interest on the said amount ? If so, from which date and at what rate ?

3. If issue No. 1 is proved, whether the price of the goods supplied was duly paid ?"

6. The precise defence taken by the respondents in the written statement is as follows :

"It is to be mentioned here that some bills issued by the petitioner were not credited in the name of the respondents. Some bills are short credited although there is no complaint about any shortage or the goods having been sent back to the respondents. The petitioners have deliberately not attached annexures I and II with the copies of the bills with the letter written by the respondents to the official liquidator annexed as annexure P-7 with the petition. The two annexures of the letter are placed on the record as annexure R-l and annexure R-2 with this reply."

7. In support of the claim petition, the petitioners examined PW-1, Sh. Ashok Gulati, an ex-accounts officer of Maruti Ltd. The accounts were maintained under his directions. He proved the ledger account for the years 1975-76 (exhibit PW-1/1) and 1976-77 (exhibit PW-1/2).

8. In rebuttal, the respondents examined Sh. Manjit Singh, RW-1, and in his examination-in-chief, he stated as under :

"The payment of the price of the goods supplied used to be made after the goods had been inspected and accepted. The first copy of the bill used to be sent initially direct to the company and later on they were sent through the bank along with the lorry receipt. We were never informed that the goods supplied were short of the quantity mentioned in the bills nor were any of our goods ever rejected or delivered back to us.

I have brought the original ledgers pertaining to the years 1975-76, 1976-77 and 1977-78. Entries in these ledgers are in the hand of Mr. Satish Kumar Chenana, our accountant, Entries, exhibit RW-1/1 at pages 200, 201 and 202 pertaining to the year 1975-76 are in the hands of our accountant and were made in the regular course of the business."

9. As per the entries in the ledgers PW-1/2, a sum of Rs. 25,743.84 is due from the respondents. Sh. Ashok Gulati, in his statement, categorically stated that the

entries in the ledgers were made after the bills and the vouchers had been checked and compared. He produced the original ledgers of the company.

10. RW-1, Manjit Singh, proved the ledger entries and claimed that on account of the price of the goods supplied, an amount of Rs. 4,000 is still due from the petitioner-company. He did not refer to any of the bills which were not accounted for in the books of account of the petitioner. In the written statement, a vague defence was taken and no specific reference was made to any bill issued by them through which the goods were supplied but payment was not received. Sh. Ashok Gulati (PW-1), an ex-accounts officer of the petitioner-company, was not cross-examined with respect to any of the bills which are alleged to have been not accounted for in the boo''ks of account of the petitioner. During the course of arguments, Mr. Jain drew my attention to the following bills :

Bill No. and date

Amount Rs.

559

21-2-1976

10,045.60

654

3-5-1976

271.10

627

19-4-1976

1,874.75

803

9-10-1976

7,280.00

and argued that these bills have not been accounted for in the ledger account of the petitioner.

11. I checked up the statements of account exhibit PW-1/1 and PW-1/2 and found that all the four bills were duly mentioned in the ledger account and the payment was debited to the account of the respondents. Thus, the respondents had received the price of the goods supplied through these four bills. It cannot be said that the goods sent through these four bills were not accounted for.

12. The principal submission of counsel for the respondents is that the aforesaid four bills evidence the supply of the goods and the payments made by the

petitioner-company but the receipt of goods is not accounted for in the books of account. The submission is not well-founded. PW-1, Sh. Ashok Gulati, stated on oath that the entries in the ledgers were made on the basis of the bills and the vouchers and they were correctly made. No question was put to him in cross-examination that the goods received vide these four bills were not accounted for in the books of account. A vague question was put to him that 23 bills were not adjusted properly in the books of account which was denied. No specific question was put to him asking whether the goods received, vide said bills were not accounted for in the books of account, as is being argued by learned counsel for the respondents. I find that the defence raised has not been substantiated. The plea taken in the written statement is not substantiated by any evidence. Sh. Gulati was not confronted with the bills which are now alleged to be not accounted for in the books of account. If no such question was put to him, the court would presume that the witness''s account has been accepted and I rely upon the following observations in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd. "It is a well-established rule of evidence that a party should put to each of his opponent''s witnesses so much of his case as concerns that particular witness. If no such questions are put, the courts presume that the witness''s account has been accepted. If it is intended to suggest that a witness was not speaking the truth upon a particular point, his attention must first be directed to the fact by cross-examination so that he may have an opportunity of giving an explanation."

13. Thus, looking from any angle, I find that the defence taken by the respondents could not be substantiated.

14. Now, the question arises whether the respondent can be fastened with the liability merely on the basis Of the entries in the books of the petitioner-company. In the present case, the transactions in dispute are numerous and extend over a large number of years. It is not necessary to prove each and every item in the account books. If the account books are regularly kept and are genuine and the petitioner had made a definite statement that the account books were regularly kept, and he was not cross-examined with regard to the genuineness of the account books, his own statement on oath, in support of the entries in the account books, is sufficient to fix the respondent with liability. In the present case, the petitioner produced the original entries the correctness of which was proved by PW-1, Sh. Ashok Gulati. He made a definite statement that the account books were regularly kept. No question was put to him with regard to the genuineness of otherwise of the account books. In the circumstances, therefore, the petitioner''s own statement on oath in support of the entries in the account books is sufficient to fix the respondent with the liability.

15. It was held in Firm Jodha Mal Budhu Mal v. Ditta that the plaintiffs own statement on oath in support of the entries could be sufficient to support the entries in the plaintiff''s account books to fix the defendant with liability.

16. A similar view was taken by a Division Bench of the Allahabad High Court in

Suraj Prasad v. Makhna Devi. It was held :

"No doubt, the entries in the account books maintained by a creditor are not by themselves evidence to attach a liability to the debtor but they can be used to corroborate the evidence given by a creditor that payment had been made and a decree can be passed on the basis of such corroborated evidence."

17. The above view was reiterated in Kaka Ram Sohanlal v. Firm Thakar Das Mathra Das where the Bench observed in the following terms (headnote) :

"Even the plaintiff''s own testimony on oath in support of the entries in his books could be sufficient to fix defendant with liability."

18. In view of the above discussion, I find that the petitioners had discharged the onus of issue No. 1 placed on them, and they have successfully proved than an amount of Rs. 25,743.84 is due from the respondent.

19. Issue No. 2 : Section 61(2)(a) of the Sale of Goods Act, 1930, reads as under :--

"61(2). In the absence of a contract to the contrary, the court may award interest at such rate as it thinks fit on the amount of the price --

(a) to the seller in a suit by him for the amount of the price--from the date of the tender of the goods or from the date on which the price was payable."

20. The section gives a wide discretion to the court to award interest at such rates as it thinks fit on the price of goods supplied. The seller of the goods is entitled to interest from the date of delivery of goods. The petitioners are entitled to interest by way of damages. Accordingly, I allow them interest at 9 per cent per annum from the date the amount fell due till the date of its payment

21. Issue No. 3 : No evidence worth the name has been led by the respondent. The petitioners have successfully proved that a sum of Rs. 25,743.84 is due to them from the respondent, issue No. 3, is thus, decided against the respondent. For the reasons aforesaid, I pass a decree with costs for the recovery of Rs. 25,743.84 along with interest at 9 per cent. per annum from the date the amount fell due till payment of the same.