
(2005) 01 DEL CK 0050
In the Delhi High Court
Case No : CS (OS) 2262/96

Milano International (India) Private Limited	APPELLANT
Vs	
Chandhok Textile Enterprises P. Ltd.	RESPONDENT

Date of Decision : 31-01-2005

Acts Referred:

Citation : (2005) 01 DEL CK 0050

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Anil K. Kher, for the Appellant; Raman Kapoor, for the Respondent

Judgement

Pradeep Nandrajog, J.—plaintiff's suit is for recovery of Rs. 25,40,000/- being the alleged loss suffered due to alleged defective dyeing of fabric supplied to the defendant by the plaintiff for purpose of dyeing. Defendant has a counter claim in sum of Rs. 1,63,990/- being the alleged unpaid price for dyeing of the fabric supplied by the plaintiff.

2. Counter claim has not been registered as a suit but parties have gone to trial in respect of the counter claim.

3. Following 6 issues were framed vide order dated 17.8.2000:

""1. Whether the defendant had completed the work allotted to him as per the specifications of the plaintiff-Company? If not, to what effect? OPD

2. Whether the plaintiff suffered any loss/damage on account of any defective dyeing work by defendant? OPP

3. Whether the plaintiff is entitled to the recovery of Rs. 25,40,000/- Along with interest as claimed? OPP

4. Whether the counter claims has been signed and verified by a duly authorised person? OPP

5. Whether the defendant is entitled to the relief claimed in its counter-claim?

OPD

6. Relief.""

4. plaintiff pleads that it had an order from a foreign buyer for supply of garments being:

a) 5750 sets of style No. 1536153; and

b) 5500 sets of style No. 1536152. at a total value of US \$ 1,27,687.50 equivalent to Rs. 45,32,900/-.

5. Garments had to be fabricated out of fabric having various colours. It supplied 27228 Meters of fabric to the defendant for dyeing during the period 26th March 1996 to 25th May 1996. plaintiff pleads that it was made known to the defendant that dyeing had to be as per specifications and should be of highest quality to meet international standards.

6. It is the case of the plaintiff that the dyed fabric returned by the defendant had the following defects:

a. The fabric was not dyed uniformly thereby resulting in mismatch of colours and the same is clearly visible on arms, front and back of the garments duly fabricated using the said cloth, which meant there was marked colour variation in centre salvage and even streak marks looked prominent.

b. The defendant supplied the dyed fabric as line dry, yet the garment showed shrinkage of 6.7%.

7. plaintiff further pleads that when defects aforesaid were noted, defendant was informed. Defendant assured that it would redyeing the fabric/garments. plaintiff handed over some quantities of fabric for test redyeing as also some garments for redyeing. Defendant failed to return the said garments.

8. Since defendant was not responding and date of shipment was coming near, plaintiff worked on the garments and exported the same. Foreign buyer lodged complaint regarding poor quality of the garments. 50% were found to be defective. In para 12 of the plaint, plaintiff pleads:

That since reimporting of the goods would involve huge expenditure and since the contention of the foreign buyer was found to be genuine and correct, the plaintiff renegotiated the prices and it was agreed to reduce the price to US\$ 6.00 per piece as against the agreed price of US\$ 11.35 per piece against balance quantity of 8950 sets out of which 5000 sets were exported at discount and order for balance of 3950 sets was cancelled. The total financial loss thus suffered by the plaintiff against the said Order was US\$ 71,582.50, equivalent to about Rs. 25,40,000/-.""

9. Defendant admits receiving 27,228 meters of fabric for dyeing during 26.3.1996 to 25.5.1996 and states that after dyeing, it returned the fabric, last delivery being on 6.6.1996. Receipt of fabric and its return after dyeing was in

lots. Defendant raised bills as per invoice in which it was clearly spelt out that no claim would be entertained beyond 7 days of the date of invoice. It is stated by the defendant that it received back only 900 meters of fabric for redyeing and qua the rest there was no complaint received by it. This 900 meters of fabric after redyeing was returned on 6.6.1996.

10. Defendant states that for the first time, vide letter dated 29.6.1996 plaintiff raised an issue regarding poor quality of dyeing. Defendant pleads that most of the fabric was returned after dyeing by 3.5.1996. In para 8 of the written statement, defendant has pleaded:

""8. With reference to para 8 of the Plaintiff is absolutely wrong and denied. It is emphatically denied that there were any problems in the fabric dyed by the defendant Company. It is emphatically denied that the fabric was not dyed uniformly or that there was any mismatch of colours. The averments made in this para further reveal that it was the plaintiff who did not fabricate the cloth properly. If there was any mismatch of colours or the fabric was not dyed uniformly the plaintiff would have immediately returned the fabric to the defendant Company and/or not cut the same which terms were duly agreed to between the parties. The dyeing of fabric being of absolutely highest quality, is apparent from the fact that only 900 meters approximately which was sent back for redyeing, the plaintiff made no complaint with regard to the remaining 26000 meters approximately of the fabric and duly accepted the same and did not make any complaint. Even the small quantity of 900 meters which was redyed, the plaintiff accepted the same and did not make any complaint for nearly a month after which the frivolous and baseless letters to unduly enrich himself was sent by the plaintiff. All submissions made in this para of the plaint are absolutely false, wrong and baseless. It is denied that fabric dyed by defendant company was faulty or due to dyeing done by the defendant company there could be any alleged shrinkage. The defendant company has no concern with any shrinkage after the fabric has been delivered back to the plaintiff company. It may be pertinent to mention that as a practice generally with Exporters before the entire lot is put into fabrication sample garments are made and washed and any further shrinkage in the cloth checked before the entire lot is put in fabrication. If the plaintiff company has committed any error, it cannot obviously put that upon the defendant company who was concerned only with the dyeing of the fabric. In fact, after making a sample garment, if there is any shrinkage on washing other sample garment, the pattern is accordingly modified, which obviously depends upon the nature of the fabric and the extent of shrinkage which can take place in different kind of fabric and even Importer as a normal practice knows the permissible shrinkage which takes place. If there was any complaint due to dyeing done by defendant, the plaintiff would not have taken delivery of the entire fabric for nearly a period of three months and not even write a single letter or make any complaint to the defendant company.""

11. In para 11 of the written statement, defendant has pleaded:

""11. Para 11 of the plaint is wrong and denied. It is surprising for the plaintiff to make such allegations as have been made in this para of the plaint. It is a well known fact that before cutting of the fabric the entire fabric is checked and only then it is cut especially when this term is agreed to between the plaintiff and the defendant company. Therefore, there is no question of plaintiff's cutting and fabricating the documents and then shipping it abroad without checking and then receiving an alleged complaint from the foreign buyers. These submissions in itself show the malafides of the plaintiff for its own fault. It is trying to put the blame on the defendant Company which is not permissible. As a general practice with the Exporters keeping in view the fact that foreign importers are very particular about the quality, each garment is checked atleast 5 to 6 times at different stages before the same is packed and plaintiff Company being an Exporter would not adopt a different practice. Think itself shows the felicity of plaintiff's claim. If there was any defect it was due to fabrication done by the plaintiff and not the dyeing work done by the defendant company.""

12. In the counter claim, defendant states that it dyed fabric at a price of Rs. 2,88,126.31 and has received payment in sum of Rs. 1,55,876/-. Thus, Rs. 1,32,250.31 is due to it as on 31.3.1997. Adding interest @ 24% P.A., sum of Rs. 31,740/- is due as interest. In all Rs. 1,63,990/-, being the counter claim.

13. Responding to the counter claim, plaintiff has pleaded:

""22. That the contents of para 22 of the Counter-Claim, as stated, are wrong and are denied. It is denied that any amount is due and payable by the plaintiff to the Defendant. Whatever payment has been made by the plaintiff to the Defendant, the same is refundable by the Defendant to the plaintiff as the work of dyeing carried out by the Defendant was not as per the specifications and as a result of which, the plaintiff lost a huge amount and which amount has been claimed from the Defendant in the Plait. It is denied that any sum of Rs. 1,32,250/- is due and payable by the plaintiff to the Defendant.""

ISSUE No. 1

14. Evidence led by the plaintiff establishes that entire consignment of fabric sent to the defendant for dyeing was returned by the defendant after fabric was dyed and the plaintiff utilized the fabric for fabrication of garments. Evidence establishes that entire quantity of garments required to be exported by the plaintiff was exported. plaintiff's buyer intimated defect in the garments supplied vide a fix message dated 14.6.1996. The said communication from the buyer of the plaintiff Ex.P.4 (colly) records the following defect:-

""FRONT BACK FABRIC COLOUR DIFFERENCE.""

15. A further communication dated 18.6.1996 by the plaintiff's buyer Ex.PW.4 (colly) intimates the following reasons for rejection of the garments supplied:-

""The result of quality inspection, 40% of your products are failed.

We suppose that you may have reinspected the quality by yourself so you should understand this situation.

At the moment, our clients comment that they cannot accept this kind of quality, Therefore, they want to cancel rest of their order.""

16. Witness of the plaintiff in examination in chief has deposed that the dyed fabric was received between 26th March, 1996 to 25th May, 1996. Questions 6 to 15 put to the witness of the plaintiff and his reply during cross examination are relevant and may be noted:

Q.6 Is it correct that when fabric after dying was sent to you by the defendant one meter fabric was sent by your store to Head Office for approval?

A.6 When fabric is received after dying, a small cutting is checked for colour matching and bleeding. That is the only thing which is checked at that stage.

Q.7 Is it correct that after approval of the above swatch that the delivery of the entire lot is taken from the dyer/defendant?

A.7 Yes

Q.8 Was this followed in the present case for the entire lot?

A.8 Yes

Q.9 After the fabric has been accepted from the dyer, how many departments does the fabric go through till the garments are finally dispatched to the buyer?

A.9 When the fabric is received in the stores it goes to the cutting department, it is presumed that the fabric is correct for cutting.

Q.10 While the fabric is cut in the cutting department, is it put in layers on the table for cutting purposes?

A.10 It is correct.

Q.11 Where the fabric goes after the cutting is done?

A.11 It goes for stitching in the stitching department or to the fabrication unit.

Q.12 After the garment is fabricated what else is done to it?

A.12 After the garment is ready, thereafter, thread cutting is done, measurement checking, washing, pressing and packing for necessary dispatch.

Q.13 In the present case also was the above procedure followed?

A.13 Yes, it was followed. (Volunteer) When the fabric was being laid for cutting in the cutting department, we detected certain 'center salvage'. Then we called the representative of the defendant Mr. Srivastava that this is the problem we have detected, but he convinced us that it was OK for cutting and we went ahead with the further procedure.

Q.14 According to you there was colour variation in the fabric but despite the same you fabricated the garments and sent them to your buyer, is it correct?

A.14 Mr. Srivastava convinced us that there will be no problem in stitching the garment.

Q.15 Do you have any proof to show that Mr. Srivastava visited your factory or gave any assurance to you to the above effect?

A.15 Everything was done in good faith. I do not have any documentary proof of the same.

17. In cross-examination the witness admitted that after the died fabric was received, a small quantity was cut and checked for colour matching. He admitted that after the process aforesaid is performed satisfactorily, fabric is sent to the cutting department where it is put in the layers on the table for cutting purposes and thereafter cut. He admitted that the cut fabric is sent to the stitching department or to the fabrication unit. In response to question No. 28 during cross-examination, witness admitted that fabric received after dyeing from the defendant was used for fabricating the garments. In response to question No. 8, witness admitted that the normal procedure of testing the dyed fabric for colour matching etc. was done in the present case. In response to question No. 23, witness admitted that only 940 meter of fabric was returned for redyeing and save and except said quantity, no other fabric was returned for dying.

18. No specifications of dyeing having pleaded in the plaint and none have been deposed to by the witness of the plaintiff. No specifications allegedly prescribed by the importer of the plaintiff pertaining to colour have been brought on record.

19. From the evidence of the plaintiff, assertion of the plaintiff that it orally brought to the notice of the defendant the alleged dyeing defects is unbelievable for 3 reasons. Firstly, only 940 meters of fabric was returned for redyeing. Secondly it is highly unbelievable that the plaintiff, which is in garment business for long would accept defectively died fabric and process it for manufacture of garments and export the same. Thirdly, no sample has been produced by the plaintiff to show the alleged defective dyeing.

20. It has to be noted in this context that plaintiff raised the issue of defective dyeing only after its foreign buyer rejected the goods. It has also to be noted that the foreign buyer, while rejecting part of the goods has stated, reason for rejection to be colour difference at the front and back of the garment. This is explainable as per what the defendant states and what has been brought out in the evidence of the witness of the plaintiff. Dyed fabric was spread on tables for cutting after it was put in layers. There is every possibility of the plaintiff using different cut pieces from different segments of dyed fabric while stitching the garments. Learned counsel for the defendant explained that it is impossible to get complete identity of shoe when fabric is dyed in lots. In all probability, plaintiff mixed up cut fabric evidenced by the fact that grievance of foreign buyer

was that front and back fabric had a colour difference. (Ex.P.4 Colly).

21. Learned counsel for the plaintiff was at pains to rely upon an alleged admission of witness of the defendant to bring home the point that the defendant admitted defective dying. Following statement of DW.1 during cross-examination was relied upon:-

""It is incorrect that defect of centre selvage was complained to Mr. Srivastava by plaintiff. It is incorrect to suggest that Mr. Srivastava examined the fabric as regards centre selvage complained and clarified that there was no centre selvage defectinyed fabric.""

22. A perusal of the statement made by DW.1, if read meaningfully clearly establishes that the witness stood his ground, being that, it was incorrect that defect of centre selvage was complained to Mr. Srivastava.

23. The normal rule is that place of delivery is the place for examination of the goods, unless prior examination/inspection before delivery is a term of the contract between the parties. Evidence on record clearly establishes that the plaintiff accepted delivery, save and except for 940 meters of fabric which was sent back for redyeing and was received back after redyeing. plaintiff utilized the fabric for stitching of garments. No written complaint was ever lodged when dyed fabric was sent back defectinyed by the defendant. Stand of the plaintiff that defects were orally conveyed is hardly convincing. plaintiff was duty bound to point out defects within a reasonable period on receipt of dyed fabric. plaintiff was not to use the fabric for manufacture of garments. Issue No. 1 is accordingly decided in favor of the defendant and against the plaintiff. It is held that the defendant completed the work of dyeing as per specifications. Issue No. 2.

24. In view of the decision on issue No. 1, issue No. 2 has to be decided against the plaintiff and in favor of the defendant. plaintiff has failed to establish that it suffered any loss/damage on account of defective dyeing work by the defendant.

Issue No. 3

25. plaintiff may have suffered a loss at the hand of its foreign buyer, but the loss has not been linked to defective work of the defendant. Issue No. 3 is accordingly decided against the plaintiff and in favor of the defendant. It is held that the plaintiff is not entitled to recover any sum from the defendant.

Issue No. 4

26. DW.1 has deposed in his affidavit that the Board of Directors of the defendant at the meeting held on 13.8.1996 authorized him to contest the suit, sign pleadings, engage a lawyer and given evidence. Board resolution being Ex.D-1, inter alias resolves that DW.1 Mr. Rakesh Chandhlok, Director of the Company is authorized to file and defend all legal proceedings on behalf of the company including suits. In view of Ex.D-1 and the fact that Mr. Rakesh Chandhlok is even otherwise a Director of the defendant, issue No. 4 is held in

favor of the defendant and against the plaintiff. It is held that the counter claim has been signed and verified by a duly authorised person.

Issue No. 5

27.DW.1 in his affidavit by way of evidence has deposed that Ex.D.2 is the statement of account maintained by the defendant pertaining to the plaintiff. Delivery, challans showing delivery of fabric to the plaintiff have been proved as Ex.D.2 to D-17. Invoices raised have been proved as Ex.D.18 to D-25.

28.Statement of account pertaining to the plaintiff being Ex.D.2 contains entries in reference to the various bills and invoices. plaintiff has chosen not to cross-examine DW.1 in the context of the entries in the statement of account. A perusal of the pleadings of the plaintiff, rebutting the counter claim, as noted in para 13 above, denies liability by alleging that since the defendant has not carried out the work as per specifications resulting in huge loss to the plaintiff, amounts received by the defendant from the plaintiff are liable to be refunded and on that account nothing is payable to the defendant.

29. Issue is accordingly held in favor of the defendant and against the plaintiff. It is held that as on 31.3.1997 a sum of Rs. 1,32,250.31 is due and payable by the plaintiff to the defendant.

30. Defendant has laid a counter claim in sum of Rs. 1,63,990/- being Rs. 1,32,250.31 due as principal as on 31.3.1997 and Rs. 31,740 towards interest till date of counter claim @ 24% p.a.

31. No term of contract has been shown by the defendant as per which, for late payment it was agreed between the parties that interest @ 24% p.a. would be payable.

32. Ex.P.1 is a legal notice dated 13.8.1996 served by the defendant upon the plaintiff requiring it to pay a sum of Rs. 1,32,250.31 along with interest @ 24% p.a. w.e.f. 1.7.1996.

33. Interest would be payable to the defendant, under the circumstances, as per the Interest Act, 1972. Defendant has led no evidence as to what interest was being paid by the scheduled banks on fixed deposits. However, this court could take judicial notice of the fact that in the year 1997 on fixed deposit of 3 years and above, scheduled banks were paying interest @ 10% p.a. Rate of interest has since fallen and currently, maximum interest being paid by scheduled banks on fixed deposits is 6% p.a. Accordingly, I award interest in favor of the defendant and against the plaintiff @ 8% p.a. on the sum of Rs. 1,32,250.31 w.e.f. 1.4.1997 till date of decree and future interest on said sum of Rs. 1,32,250.31 @ 6% p.a. from the date of decree till date of realization.

34. Defendant would be entitled to cost against the plaintiff.