
(2005) 08 DEL CK 0043

In the Delhi High Court

Case No : CM No. 9894 of 2005 in Co. Appeal No. 41 of 2004

Misuki Exports Pvt. Ltd.

APPELLANT

Vs

Sterling India

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Citation : (2006) 129 CompCas 657 : (2005) 123 DLT 489 : (2005) 84 DRJ 87

Hon'ble Judges : V.K. Jain, J; Rekha Sharma, J

Bench : Division Bench

Advocate : M. Dutta, for the Appellant; P.C Jain and Tarun Diwan, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—In a first appeal no reply to the appeal has to be filed. However, if the court is desirous of looking into the pleadings before the trial court it can always call for the records. In this view of the matter reply to the appeal is directed to be taken off the record.

2. The appellant, M/s Misuki Exports Pvt.Ltd., has filed this appeal impugning the order passed by the learned Company Judge dated 9.11.04. We have perused the suit record, as well as, the impugned order.

3. The main submission of learned counsel for the appellant is that the learned Company Judge erred in not appreciating the fact that in the balance sheet of the appellant company up to 31.3.02 the name of the respondent was shown as a creditor. However, on 15.4.2002, a debit note was raised against the respondent company for a sum of Rs.3,19,250/- and in view of that debit note the appellant was not liable to pay any amount to the respondent.

4. From a perusal of the record we find that in the balance sheet filed by the appellant company as on 31.3.2001 the appellant had acknowledged its liability for a sum of Rs.2,97,140/- and it was also so reflected in the balance sheet up to 31.3.2002. The appellant however took the stand that it had raised a debit note

of Rs.3,19,250/- on 15.4.2002, and as such, was not liable to pay any amount. Learned Company Judge directed the appellant to place on record statement of account for the period 1.4.2001 to 31.3.2002, particularly the entries, whereby, the amount in question was paid. The statement of account was directed to be filed supported by an affidavit and the appellant was directed to explain as to whether the balance sheets were filed with the Registrar of Companies and / or other statutory authority or not. The affidavit was required to be filed within 4 weeks.

5. Although no affidavit was placed on record but it appears from the impugned order that the copy of the same was given to the learned Company Judge. Relying upon the same, the Company Judge observed that in the reply filed by the respondent no such plea was raised as was raised in the affidavit filed by it. Rather a new plea was taken that some of the fabrics which were supplied were defective and Therefore a debit note No.183 dated 15.4.2003 in the sum of Rs.3,19,250/- was raised. Learned Company Judge also observed that when the matter was argued on 9.11.2004 the appellant had not stated that a debit note was raised for a sum of Rs.3,19,250/-. It is also important to note that no such plea was raised by the appellant in reply to the petition for winding up filed by the respondent. The date of the debit note is material for it goes to show that the liability of the respondent for a sum of Rs.3,19,250/- as mentioned in the debit note was sought to be fastened upon it after the appellant had admitted its liability to the tune of Rs.2,97,140/- in the balance sheet. No material was placed on record either before the learned Company Judge or before us to show as to how this amount of Rs.2,97,140/- was liquidated in favor of the respondent. The mere fact that a debit note was raised will not be sufficient to hold that the liability of the appellant company for a sum of Rs.2,97,140/- was set off, moreso, when the same did not find any mention in the initial defense taken by the appellant in the reply to the petition for winding up nor was any such argument raised at the time when the matter was heard by the learned Company Judge. There is no merit in this petition. The same is Therefore dismissed.