
(2011) 05 MP CK 0052

In the Madhya Pradesh High Court

Case No : First Appeal No. 100 of 1996

M.P. State Road Transport Corporation and Others

APPELLANT

Vs

Super Stone Rubber Industries

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Sales of Goods Act, 1930 — Section 37, 37(2), 37(4)

Citation : (2011) ILR (MP) 2194 : (2011) 4 MPHT 360

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—This first appeal u/s 96 of the CPC has been filed by Defendants against the judgment and decree passed by learned Trial Court decreeing the suit of Plaintiff for Rs. 1,00,000/- along with interest @ 6% per annum.

2. In brief, the suit of Plaintiff is that the Plaintiff-Unit manufacture and sell the rubber and Defendants used to purchase the rubber items from Plaintiff. The Defendant No. 2, Divisional Manager, M.P. State Road Transport Corporation, Division Jabalpur placed order dated 29-10-1983 to Plaintiff to supply 10,000 kilograms of cushion back rubber slab @ Rs. 22/- per kg. and further directed that after supplying the goods of earlier order No. 807, dated 7-9-1983, the fresh supply of the order dated 29-10-1983 be supplied with certain other conditions. In compliance to the order placed by the Defendant, on 20-2-1984, the Plaintiff supplied 4,293 kgs. of cushion back rubber slab amounting to Rs. 1,01,636.17. The said goods were sent on 22-2-1984 in compliance to the order placed by the Defendant. The goods which were sold and sent to the Defendant, were received in the office of the Defendant No. 2 on 3-3-1984 and the Defendant by acknowledging the receipt of the goods sent by Plaintiff, wrote a letter on 8-3-1984 that till the further order is supplied, the Plaintiff should not

send the remaining bulk of goods vide order dated 29-10-1983, which was given to the Plaintiff, as a result of which, the Plaintiff stopped sending the goods further.

3. It is the further case of Plaintiff that despite having received the goods, the Defendants did not pay the requisite amount of the bill to the Plaintiff and for its payment, the Plaintiff although sent a letter on 24-3-1984 and another letter to Defendant No. 6, General Manager of the Corporation. One more letter was written reminding to make the payment on 2-4-1984 and a copy thereof was also sent to Defendant No. 7, Divisional Technical Manager, Jabalpur of the Corporation. Despite the repeated requests made by Plaintiff, the Defendants did not make the payment.

4. The Plaintiff in its letter also clarified that if the goods which were sent by him would not be utilised and shall remain idle in the godowns, it may be deteriorated. Further it has been pleaded by the Plaintiff that the goods of the cushion back rubber slab which were sent to the Defendants are such type of goods that if the same are not utilised, on coming into contact with dust, air, water, heat and cold the said goods may become unusable. Despite the Plaintiff intimated to the Defendant that goods be utilised, the same were not utilised by the Defendants, on the contrary on 25-5-1984 Defendant No. 2, Division Manager, Jabalpur of the Corporation intimated the Plaintiff that the goods have been sent by the Plaintiff in violation to the conditions mentioned in order dated 29-10-1983 and therefore, the decision has been taken by the Defendant not to accept the goods and further directed the Plaintiff to uplift the goods upto 7-6-1984. The Plaintiff contacted the Senior Officers of the Defendants that such a letter has been written in order to avoid the payment and thereafter a suit has been filed for realisation of the amount of goods Rs. 1,00,000/- and interest @ 18% per annum.

5. The Defendants filed a joint written statement and admitted the factum of receiving the goods sent by Plaintiff, but, according to them, the goods in excess were sent and therefore, it was directed to the Plaintiff to uplift the goods and take it back. Because the Plaintiff had failed to take back the goods, the Defendants are not liable to pay any amount. Hence, it has been prayed that the suit be dismissed.

6. Learned Trial Court after recording the evidence of the parties decreed the suit of Plaintiff.

7. In this manner, this appeal has been filed by the Appellants/Defendant.

8. I have heard Shri S.H. Karanjawala, learned Counsel for the Appellants and Shri Gajendra Singh, learned Counsel for the Respondent. Having heard learned Counsels for the parties, I am of the view that this appeal deserves to be dismissed.

9. In the present case, the factual aspect of the matter is not in dispute since it

is admitted to the parties that in compliance to the order placed by the Defendants the goods of cushion back rubber slab were sent by the Plaintiff. True, the Plaintiff sent the goods in excess, but, the excess bulk of the goods was not sent back by the Defendants to the Plaintiff nor sent any letter immediately after receipt of the goods in excess that it had been sent in breach to the contract. Therefore, I am of the view that Defendant cannot be get rid of making the payment.

10. The provisions of Section 37 of the Sale of Goods Act, 1930 (in short "the Act") are having applicability to the present case which speak about delivery of the wrong quantity. For ready reference, it would be relevant to quote the said provision which reads, thus:

37. Delivery of wrong quantity.--(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Whether the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

11. On bare perusal of the aforesaid provision this Court finds that the seller may send larger quantity of goods to the buyer other than the contracted quantity and if the larger quantity is accepted by the buyer and the same is not rejected, the buyer is bound to pay for the larger quantity also. In this context, Sub-section (2) of Section 37 of the Act is quite clear. Apart from this, according to Sub-section (4), the provisions under this section are subject to any usage of trade, special agreement or course of dealing between the parties. It is borne out from the evidence placed on record that earlier also the excess amount of the cushion back rubber slab was being received by the Defendants. On bare perusal of the order dated 7-9-1983 (Exh. P-1), this Court finds that order to supply cushion back rubber slab for tyres and the requirement was very urgent so that the production of the Defendants may not be affected. It is an admitted fact that the goods which were sent by the seller (Plaintiff) to the buyer (Defendants) were received in the office of buyer at Jabalpur on 3-3-1984. According to me, if the excess amount of the bulk of the goods which was sent by the Plaintiff to the Defendants was not required by them, immediately, either it should have been sent by the Defendants to the Plaintiff and the Plaintiff may be asked to pay the

transportation charges for sending the excess goods or notice should have been sent to the Plaintiff (seller) to uplift the goods immediately because it has been sent in the excess and larger quantity. Admittedly, the excess bulk of the goods (cushion back rubber slab) was accepted by the Defendants (buyers) and it was kept idle in their godowns without using it for the purpose for which it was bought. The goods (rubber slab) became unusable on account of lying idle and it was also exposed to air, dust, heat, cold and water. Only after near about three months, on 25-5-1984 notice was sent by the Defendants (buyers) to Plaintiff (seller) to uplift the goods since it has been sent in large quantity and in excess to the order which was placed vide Exh. P-1.

12. It is borne out from the evidence that the goods which were lying in the possession of the Defendants for a considerable long period, became unuseful and therefore, if immediately the action was not taken by the Defendants (buyers) in terms of Section 37 of the Act and the goods were retained by them for a considerable long period, they are liable to pay the price of the goods.

13. Learned Trial Court after correctly applying Section 37 of the Act has decreed the suit of Plaintiff. After going through the evidence placed on record and the documents which are filed, I am of the view that learned Trial Court did not commit any error in arriving such a conclusion and rightly decreed the suit of Plaintiff.

14. This appeal is found to be bereft of substance and same is hereby dismissed with costs. Counsel fee of Rs. 2,000/- if pre-certified.