(2005) 12 MP CK 0007

In the Madhya Pradesh High Court

Case No : F.A. No. 20 of 1997

M.P. Text Book Corporation Board, Bhopal — APPELLANT

Vs

M/s Orient Paper Mills Ltd., Shahdol — RESPONDENT

Date of Decision : 01-12-2005

Acts Referred:
Sales of Goods Act, 1930 — Section 61(2)(b)

Citation : (2006) 2 MPLJ 262

Hon'ble Judges : B.M. Gupta, J;Arun Mishra, J

Bench : Division Bench

Advocate : B.P. Sharma, for the Appellant; Rajneesh Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

This appeal has been preferred by the unsuccessful plaintiff aggrieved by judgment and decree dated 30-9-1996 passed by XIth Additional District Judge, Bhopal in Civil Suit No. 3-B/91.

M. P. Text Book Corporation Board (hereinafter referred to as "the Corporation") has filed the suit for recovery of the interest of Rs. 6,65,473.34 as against the Orient Paper Mills Ltd. (hereinafter referred to as "the Mills"). In the plaint it is averred that the Corporation is State Government Undertaking and as per the decision taken by the Human Resources Ministry the paper used was to supplied on concessional rate. Defendant is a Limited Company. There were certain outstanding amount of advance in the year 1986. On 15-6-1986 a sum of Rs. 1,47,846/- was outstanding as advance till 30-8-1987, on 22-8-1986 a sum of Rs. 13,82,000/- which remained outstanding till 30-8-1987, further amount a sum of Rs. 12,00,000/- was outstanding as advance on 21-11-1986 till 30-8-1987. Thus, total amount in advance was Rs. 27,29,846/- . The interest was calculated till 1988 on the aforesaid amount in para 4 of the plaint as Rs. 6,65,473.34. It is further averred that plaintiff in the year 1987-88 wrote to the defendant to refund the advance, notice was also given on 25-4-1988 and 8-6-1988 but the interest was not paid. Sum of Rs. 5 lacs was refunded on 21-8-1987. Further a sum of Rs. 5 lacs was refunded on 1-9-1987, thus, total sum of Rs. 10 lacs was refunded in the month of August/September, 1987, as against the advance of Rs. 17 lacs order was placed by the plaintiff and supply was obtained in the month of April-May, 1988.

Defendant contended in the written statement that telegram was sent on 12-12-1986 to the plaintiff to arrange for the truck to take the delivery of the paper, however, plaintiff failed to obtain the delivery. On 23-12-1986 another letter was written to the plaintiff by the defendant that they were ready to effect the supply, however, Railway wagons were not available, as such plaintiff may arrange for collecting the paper. As control order 1979 came to an end on 22-1-1987, defendant wrote a letter on 23-2-1987 to make the purchase at the rate of Rs. 8,300/- per M. T. and to make the payment of other taxes, option was given for refund of the advance. Oral deliberation took place. Plaintiff agreed to receive back the amount. Plaintiff insisted for supply on concessional rate, defendant remained quiet. Sum of Rs. 10 lacs was repaid in August-September, 1987. At the request of the plaintiff the paper was supplied in April-May, 1988 of outstanding amount of Rs. 17 lacs, thus, no amount is due; there was no contract entered into between the parties to make the payment of any interest on the amount of advance which was only 25% of the amount payable.

The learned trial Court has dismissed the suit. It has been found that in the year 1986 supply could not be made at the concessional rate owing to the non-availability of the wagons, the plaintiff was unable to lift the paper in spite of the information being sent, as plaintiff was not willing to arrange for the transport by truck though the plaintiff was not responsible to collect the paper, however, there was no mala fide by the defendant in not sending the paper by Railway wagons, as they were not available, amount of Rs. 10 lacs has been refunded, as against the remaining 17 lacs, supply has been made, plaintiff is not entitled to recover the interest from the defendant.

Shri B. P. Sharma, Learned Counsel for the plaintiff-appellant, has submitted that it is a case where supply was not made by the defendant, advance money was retained in February, 1987. Defendant himself has offered for refund of the amount and was not ready to supply at the concessional rate, though the deliberation went on for sometime for supply at the concessional rate, however, as per letter (Ex. P. 28) dated 23-7-1987 refund was required to be made by the plaintiff, in reply thereto letter (Ex. P. 29) was written on 6-8-1987 by the defendant to make the payment in instalment as it was facing financial crunch, it was assured that they would make the payment of Rs. 10 lacs in August, 1987, further Rs. 10 lacs in September 1987, balance amount shall be paid in October, 1987 but only a sum of Rs. 5 lacs was paid in August, 1987, further sum of Rs. 5 lacs was paid in September, 1987, further amount was not paid, ultimately as the money was not being refunded supply was asked as per letter (Ex. P. 30) dated

15-4-1988 as against the balance amount which was agreed to by the defendant on 22-4-1988; thereafter confirmation was made by the plaintiff-appellant Corporation on 29-4-1988. He has submitted that interest on the amount of the advance as against which refund was made of only 10 lacs and supply was made as against the advance of Rs. 17 lacs, interest ought to have been decreed by the learned trial Court. He has further submitted that the learned trial Court has erred in finding that it was not proved that on which date the advance was given, in view of the admission made as to the outstanding amount of advance to be Rs. 27 lacs which was not disputed, the plaintiff could not have been non-suited on the aforesaid ground.

Shri Rajneesh Gupta, Learned Counsel for the respondent-Paper Mills, has submitted that no case for interference is made out in the judgment and decree passed as there was no stipulation in the contract or the control Order 1979 for payment of the interest on the amount which was to the extent of 25% of the value of the paper to be supplied. He has further submitted that as the suit is not for refund of the price in case of the breach of the contract on the part of the seller, interest cannot be claimed as provided in section 61(2)(b) of the Sale of Goods Act, it can be claimed only where there is breach of the contract on the part of the seller. He has also pressed into service the various decisions to be referred hereinafter.

We have gone through the pleadings of the parties, the only witness examined by the plaintiff and the correspondence placed on record in the form of various communications between the parties which have been placed on record by the plaintiff. It is clear that the Paper Mills was making the supply to the Corporation since long at concessional rate as per Control Order, 1979. It is also clear that certain advances to the extent of Rs. 2 lacs were available with the Paper Mills paid by the Corporation for supply of the paper to be made for which in the month of December, 1986 before repeal of the Control Order, offer was made by the Paper Mills to the Corporation to collect the delivery of the paper and certain directives were also issued by the Central Government to effect the supply forthwith as the Railway wagons were not available, the Paper Mills was unable to effect the supply, on the other hand correspondence indicates that Corporation also refused to take the delivery as taking the delivery by the road, was not beneficial to its pecuniary interest as that was to be more expensive. It appears that prayer was also made, by the Corporation to allot the certain wagons, to the DRM, South East Railways, Bilaspur as per letter (Ex. P.8) but the wagons could not be allotted, thus, it is clear that there was no mala fide on the part of the Paper Mils in not effecting the delivery for want of arrangement of Railway wagons, supply could not be made at the concessional rate; in the meantime, the control Order 1979 was rescinded on 22-1-1987; thereafter it was not possible to effect the supply at the concessional rate; consequently an offer was made in February, 1986 as per letter (Ex. P.23) dated 23-2-1987 by the Paper Mills to the Corporation to advise whether they should refund the advance amount or to execute the pending order at the rate of Rs. 8,300/- M. T. plus excise duty, cess and CST at ex-mill price; refund was not insisted at the relevant time by the Corporation, they insisted for supply at the concessional rate by writing that order was placed earlier supply should be made at the concessional rate as that is not effected by the repeal of the Control Order 1979 and they wanted to take the delivery of 3,000 ton paper at once which was not technically feasible with the Paper Mills as apparent from letter (Ex. P. 24) dated 27-2-1987. For the first time on 23-7-1987 the Corporation wrote a letter (Ex. P. 28) for the refund of the amount, earlier to 23-7-1987, no such demand was made in writing, no such letter has been placed on record. In reply thereto the Paper Mills wrote a letter (Ex. P. 29) on 6-8-1987 in which it was mentioned that the Paper Mills was facing acute financial crunch and shall refund the amount in 3 instalments; in August, 1987 Rs. 10 lacs, in September, 1987 Rs. 10 lacs and in October, 1987 the balance amount, thereafter no correspondence has been placed on record, admittedly a sum of Rs. 5 lacs was refunded in August, 1987 and Rs. 5 lacs on 1-9-1987, thus, a sum of Rs. 10 lacs was refunded, remaining amount was not refunded thereafter. We find no correspondence on record till 15-4-1988 in which the Corporation has required the Paper Mills to make the delivery as against the outstanding advance of Rs. 17 lacs; letter (Ex. P. 30) was written by the Corporation to the Paper Mills, it was required to intimate the Corporation whether Paper Mills was ready to supply the paper at the rate quoted by the Paper Mills of Rs. 8,300/- per ton plus excise duty etc. so that firm order is placed by the Corporation with respect to the balance amount or deposit available with the Paper Mills. It is pertinent to mention that while requiring the acceptance of the offer of supply at the rate of Rs. 8,300/- , interest was not claimed by the Corporation, in letter (Ex. P. 30) there is no whisper as to the claim of the interest, thereafter offer was made to supply at revised rate of Rs. 8800/- , in case Corporation was ready to receive the supply at the aforesaid rate to confirm the acceptance; telegram (Ex. P.32) was sent by the Corporation on 29-4-1988, in reply to the aforesaid letter of the Paper Mills dated 22-4-1988, it was mentioned in the telegram (Ex. P. 32) that Corporation confirmed the acceptance of supply at the rate quoted by the Paper Mills in the aforesaid letter, it is not in dispute that thereafter supply was made at the rate quoted by the Paper Mills in the letter (Ex. P. 34) dated 22-4-1988 at Rs. 8800/- per M. T., thus, it is clear that an amount of Rs. 10 lacs was refunded and as against remaining amount of Rs. 17 lacs supply was made as per the unequivocal acceptance made by the Corporation without making any claim for the interest; after sending the confirmation it is clear that Corporation has raised the demand of interest Rs. 7.85 lacs as per letter (Ex. P. 31) dated 29-4-1988; we find that with respect to Rs. 17 lacs as advance price there was innovation of the contract to accept the supply at the rate of Rs. 8800/- , thus, it cannot be said that there was any breach of the contract committed by the Paper Mills with respect to the aforesaid amount; or with respect to the refund of Rs. 10 lacs made in August/September, 1987, we find that Paper Mills was ready and willing to-supply in December, 1986, Corporation did not accept the offer of taking the supply by road transport, Mills was not at fault, for the first time Corporation had asked for repayment on

23-7-1987 by writing letter (Ex. P. 28), thereafter Rs. 10 lacs was admittedly refunded in August/September, 1987, thus, we find that there was no delay, once the refund was asked to make the payment of the aforesaid amount of 10 lacs, as such we find that on the amount of Rs. 10 lacs also Corporation cannot be said to be entitled for claiming interest.

Apart from that, we find that there was no contract entered into between the parties, none has been pleaded nor there was any provision in the control order, when the supply is made at the concessional rate to offer the interest as against the amount of advance which was with Paper Mills, we find that actually the amount of advance was paid on which date, is not clear but after adjustment the aforesaid amount of Rs. 27 lacs remained as advance on the date pleaded by the plaintiff but that does not make any difference in the case, in the absence of any stipulation as to the payment of interest in the contract or breach of contract having been committed by the Paper Mills, in our opinion, it is not permissible to award the interest as provided in section 61(2)(b) of the Sale of Goods Act. Section 61(2)(b) of the Sale of Goods Act reads thus :-

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 -

61(2)(b) to the buyer in a suit by him for the refund of the price in a case of a breach of the contract on the part of the seller - from the date on which the payment was made.

Thus, under the aforesaid provision the interest can be claimed on the amount of the price in case breach has been committed on the part of the seller, in the circumstances, we find that there was no breach of the obligation on the part of the Paper Mills at the concessional rate, supply could not have been made owing to the repeal of the control Order 1979 which provided for supply at the concessional rate.

We also find force in the submission of Shri Rajneesh Gupta, Learned Counsel for the respondent made on the strength of the decisions in Commissioner of income tax Bombay North, Kutch and Saurashtra v. Patel and Company Jamnagar, AIR I960 SC 278 , in Mahabir Prashad Rungta Vs. Durga Datt, , in Vithal Das Vs. Rupchand and Others, and in Vinod Kumar Shrivastava v. Ved Mitra Vohra and Others, 1970 MPLI 306, that in the absence of stipulation in such a (sic) contract for interest, it cannot be ordered to be paid, in the circumstances of the case, we find that the suit has been rightly dismissed by the learned trial Court.

Resultantly, we find no merit in this appeal. Appeal is hereby dismissed. Parties to bear their own costs as incurred of this appeal.