

(2001) 05 DEL CK 0173

In the Delhi High Court

Case No : IA No. 2914 of 2000 in Suit No. 1668/99

M/s. Gujarat Heavy Chemicals Ltd.

APPELLANT

Vs

Krishna Sales Corporation and Another

RESPONDENT

Date of Decision : 21-05-2001

Acts Referred:

Citation : (2001) 93 DLT 581

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

Bench : Single Bench

Advocate : Mr. D.K. Aggarwal and Mr. Ashok Sethi, for the Appellant; Mr. Manoj Sharma, for the Respondent

Judgement

A.K. Sikri, J.—The plaintiff has filed this suit for recovery of Rs.17,94,486/- under Order xxxvII of CPC (for, short "CPC"). The case of the plaintiff, in brief, is that the plaintiff is a manufacturer of Soda Ash of different grades and qualities. Defendant No.2 is the sole proprietor of defendant no.1, purchasing Soda Ash from the plaintiff company. For this purpose, the defendants used to place order upon the plaintiff company at New Delhi. The offer of the defendants used to be accepted and the sales-cum-marketing office of the plaintiff company was then instructing their factory at Sutrapada, Gujarat for supply of required Soda Ash. The plaintiff company is maintaining regular books of accounts. As huge amount became outstanding, parties' accounts were settled down and the terms of the settlement were deduced in writing On 24th December, 1996. As per this settlement, the defendants accepted that an outstanding amount of Rs.16.24 lacs was payable by the defendants to the plaintiff. It was further agreed that out of this amount, a sum of Rs.4 lacs would be paid by the defendants to the plaintiff within thirty days of signing of the settlement. Balance amount was to be paid in Installments of Rs.10,000/- per month. It was also agreed that all the accounts, such as, commission, incentives, cash discounts etc. against future supplies of materials to be made to the defendants were also to be adjusted against the outstanding amount. The defendants also agreed that they would

enhance the the aforesaid Installment of Rs.10,000/- per month so that total outstanding is cleared at the earliest. The entire amount, in any case, was to be cleared within a maximum period of three years. The defendants also agreed to pay interest at the rate of 21 per cent per annum in case any default in the payment of outstanding is made. Some terms regarding future supplies were also agreed upon, reference to which would be made at the appropriate stage.

2. plaintiff's further case is that it commenced supplies as per the settlement dated 24th December, 1996. The defendants also paid certain amounts. However, the amounts as per the aforesaid settlement having not been paid, a legal notice dated 5th May, 1999 was sent to the defendants calling upon the defendants to pay Rs. 10,60,706/- along with interest at the rate of 21 per cent per annum. The defendants in reply dated 29th May, 1999 to the aforesaid legal notice although admitted the amounts as claimed by the plaintiff company, stated that they were unable to pay because of the on-going recession in the business and also that the plaintiff had failed to keep the promise of making of settlement of 100 MT per month as promised in settlement dated 24th December, 1996. According to the plaintiff, an amount of Rs.9,24,976/- is due towards liquidation of liability out of Rs.16.24 lacs as admitted vide agreement dated 24th December, 1996 and further sum of Rs.1,35,730/- is to be paid by the defendants towards fresh supplies made by the plaintiff company to the defendants after 24th December, 1996.

3. is No.2914/2000 has been filed by the defendants seeking leave to defend the suit. The main grounds on which leave to defend has been claimed, can be paraphrased as under:

1) This court has no territorial jurisdiction to try the present suit. It is submitted by the defendants that the plaintiff has its registered office in Ahmedabad and the defendants are placed and working for gain at Raipur, Madhya Pradesh. It is also submitted that the defendants were appointed as consignee distributor of the plaintiff company at Raipur, Madhya Pradesh. The entire business of distribution was carried out by the defendants at Raipur, Madhya Pradesh. Even memorandum of understanding dated 24th December, 1996 was entered into between the parties at Raipur, Madhya Pradesh. Therefore, cause of action having been arisen at Madhya Pradesh and defendants also working for gain at Raipur, Madhya Pradesh no cause of action has arisen in Delhi.

2. The suit is not maintainable under the provisions of Order xxxvII CPC inasmuch as it is not based on any written contract between the parties. According to the defendants, memorandum of understanding dated 24th December, 1996 is only in respect of settlement of accounts between the parties subject to some other terms and conditions as entered into between the parties thereto. The dealings between the parties were since 1992 and the plaintiff company also admits that these dealings started on the basis of oral agreement between the parties. In any case, it is submitted, the matter pertains to the settlement of account. As per memorandum of settlement dated 24th December,

1996 a sum of Rs.16.24 lacs was payable. Admittedly, defendants have been making payments thereafter and the present suit is filed, on this account, for recovery of Rs.9,24,976/-. This shows that some payments are made. However, till the accounts are finally settled, it cannot be said that amount of Rs.9,24,976/- is payable. Similarly in respect of future supplies i.e. supplies made after 24th December, 1996 and the payments made by the defendants against the supplies is again a matter of account and suit under Order xxxvII would not be maintainable once such accounts are to be settled.

3. It was further submitted that the defendants had given a security of Rs.1 lacs. The case of the plaintiff was that no interest was payable on this amount whereas the defendants were claiming interest at the rate of 18 per cent per annum. Learned counsel for the defendants referred to the statement of accounts filed by the plaintiff company itself as per which interest of Rs.13,500/- was paid by the plaintiff company to the defendants on this security deposit. This clearly shows that interest was payable and it would be triable issue for which evidence was required.

4. It was also submitted that even the amount of Rs.16.24 lacs as stated in the settlement dated 24th December, 1996 was payable subject to the conditions mentioned therein which included the condition of supply of 100 MT of Soda Ash by the plaintiff company to the defendants. However, the plaintiff company had failed to supply the required quantity every month to the defendants and thus committed breach of the terms of the said settlement.

4. On the basis of the aforesaid pleas, it was submitted that the defendants had valid defense and there were certain triable issues and the defendants were Therefore entitled to unconditional leave to defend.

5. Before dealing with the aforesaid contentions, it may be mentioned that the settlement dated 24th December, 1996 is not disputed. It is also not disputed that as per that settlement, defendants as on that date, had to pay a sum of Rs.16.24 lacs to the plaintiff company. It is also not in dispute that the defendants have been making payments in accordance with that settlement although defendants were irregular in making these payments and complete payments were not paid. The plaintiff company had sent legal notice dated 5th May, 1999 calling upon the defendants to pay a sum of Rs.10,60,706/- as on 14th August, 1998. In reply dated 29th May, 1999 through Advocate it was admitted that the defendants had to pay to the plaintiff about Rs.12 lacs and reasons for non-payment of the amount were given in the said reply. This admission is in the following words:

"It is however admitted that Krishna Sales Corporation has to pay the same amount to the company to the tune of Rs.12 lacs but the reasons for non-payment are detailed in the following paras".

6. Reading of the subsequent paras of the reply shows that one reason was the general slump in the business and other reason was that the plaintiff company

had not adhered to the condition for payment mentioned in settlement dated 24th December, 1996 as per which the plaintiff company had to supply 100 MT of Soda Ash to the defendants per month. Thus after admitting the liability of Rs.16.24 lacs in the settlement dated 24th December, 1996 and after making payment of certain amounts, in the aforesaid reply, the defendants are admitting the dues to the extent of about Rs.12 lacs.

7. However, for working out exact amount, settlement of account has to be done. Moreover, with regard to territorial jurisdiction as well as the adjustment of security deposit and question of payment of interest thereon, the defendants have been able to show that these aspects raise triable issue and could be determined by evidence. No doubt, the plaintiff has in the plaint stated that the agreement was entered into in Delhi when the defendants approached the plaintiff company for grant of distributorship of Soda Ash and that payments were made in Delhi, the argument of the learned counsel for the defendants is that there is nothing in writing on record to show that agreement was entered into between the parties at Delhi for grant of distributorship of Soda Ash. Further whether there was any agreement to make the payments in Delhi is also to be established. Stand of the defendants is that they are stationed at Raipur, Madhya Pradesh (now Chattisgarh) from where they are working for gain and wherefrom payments were made and simply because the plaintiff deposited the cheques in Delhi would not confer the jurisdiction upon this court. In so far as payment of interest on security deposit is concerned, the defendants have been able to show from the records of the plaintiff that the plaintiff has been paying interest on this amount to the defendants earlier.

8. Having regard to the facts and circumstances of this case, although the defendants would be entitled to leave, it cannot be unconditional in view of the admission of liability in Agreement dated 24th December, 1996 as well as in reply dated 29th May, 1999 to the legal notice of the plaintiff. It is the case of the plaintiff that defendants have mortgaged the property admeasuring 115 ft. by 165 ft. totalling 17,975 sq.ft. situated at City Station, Pandri, Raipur being Khasra No.543/3 G details of which are given in settlement dated 24th December, 1996 and the defendants agree that this property shall remain as security deposit for satisfaction of decree if any passed in this case. The defendants shall file an affidavit to this effect by 10th July, 2001. In case no such affidavit is filed, it would be presumed that the defendants are not willing to provide this property as security and in that eventuality, the defendants shall have to deposit a sum of Rs.10 lacs in this court as condition for grant of leave.

9. This is stands disposed of.

S.No. 1668/99

10. Written statement be filed within eight weeks. Replication be filed within four weeks thereafter. Parties may file documents within twelve weeks from today.

11. List before the Joint Registrar for admission/denial of documents on 12th

October, 2001 and before the court for framing of issues on 26th November, 2001.