
(1985) 11 DEL CK 0042
In the Delhi High Court
Case No : F.A.O. (O.S.) No. 185 of 1984

M/s. Saral Trading Co. and others

APPELLANT

Vs

M/s. Mahesh Steel Traders, New Delhi

RESPONDENT

Date of Decision : 29-11-1985

Acts Referred:

Citation : AIR 1987 Delhi 4

Hon'ble Judges : N.N. Goswamy, J;D.K. Kapur, J

Bench : Division Bench

Advocate : Madan Bhatia, for the Appellant; R.S. Narula with Sanjay Kaul, for the Respondent

Final Decision : Allowed

Judgement

D.K. Kapur, J.—These two appeals (Nos. FAO(OS) 185/84 and 186/84) are directed against the interim injunctions granted in the two suits entitled M/s. Mahesh Steel Traders v. M/s. Saral Trading Co. etc., and M/s. Mahesh Steel Traders v. Sehru "Mall Jagdish Rai & Sons. The injunctions were granted ex parte and then confirmed in both the suits, and the final judgment is common to both suits. So, a single common judgment will be sufficient to dispose of both these appeals.

2. The interim injunctions were granted in the two suits which were for specific performance of an agreement to sell 165 metric tons of CRC sheets in Suit No. 1361/84 and 160 metric tons of CRC sheets in the other suit on payment of the balance price. The restraint order was for preventing the defendant from selling, alienating or disposing of the goods to any other party except the plaintiffs.

3. The sheets in questions were imported from the German Democratic Republic under an import licence. According to the plaintiffs, the entire quantity of imported sheets was to be sold to them at the rate of Rs. 5,750/- per metric ton. The contract was entered into in April, 1984, and under the agreement, certain amounts were paid to the defendants and also on their behalf to the transporter

who brought the goods from Bombay to Delhi. The balance price was to be paid when the goods were to be lifted by the plaintiffs. The goods were stored at premises situated in Loha Mandi, Naraina, New Delhi. The Union Bank of India, Chandni Chowk, Delhi, had exercised its lien and put their lock and key on the godown. But, 75 metric tons of the material had been delivered to the plaintiffs. According to the plaintiffs, delivery orders had been given to take delivery of the material from the Bank, but for some reasons, this could not be taken delivery of.

4. The defendant's case was that they had never agreed to sell the goods to the plaintiffs and in fact they could not be sold because they are meant for actual use having been imported for consumption as a raw material for use in the defendant's industry. The Bankers who had advanced money against the goods were preventing the taking of delivery and had detained the goods at Bombay. When the goods arrived in Delhi, the Bankers refused to take delivery from the transporter. The defendants approached the plaintiffs to advance money for making payment to the transporter. This amount was advanced in view of old friendship. According to the defendants, therefore, the money was advanced on interest while the goods remained with the Bankers. The defendants had managed to pay Rs. 10,00,000/- to the Bankers, who released 75 metric tons of CRC sheets which were taken delivery of by Shri Khandelwal, who sent the goods to the defendants instead of giving them to the plaintiffs. The goods are such that they are not easily available in the market.

5. The learned single Judge granted the injunction on the ground that there was a prima facie case borne out by the documents and especially when 74 or 75 tons of CRC sheets had already been given to the defendants.

6. In support of these appeals, Mr. Bhatia has strongly contended that the injunction has disastrous results. According to him, the Bankers had behaved in an unreasonable manner to prevent the release of the goods and there was litigation between the defendants and the Bank. The plaintiff-respondents had never filed any suit during the period of that litigation, but as soon as the defendant succeeded against the Bank, the suit had been instituted in August, 1984. He pointed out that a large sum of money was owed to the Bankers by the defendant which money had been borrowed for importing these very goods. This loan was rising by leaps and bounds every day. If the alleged contract was to be enforced, the defendants would be out of pocket by a huge amount.

7. Keeping in view these circumstances we have first to see whether the balance of convenience lies in favour of the grant of any injunction. According to the plaintiffs, they had a contract with the defendants for purchase of the entire quantity of 400 metric tons of CRC sheets involved in the two suits at the rate of Rs. 5,750/- per metric ton. This contract was made orally in April, 1982. Assuming that there was such a contract, the amount which would have been paid to the defendants would be Rs. 23,00,000/-. But, this would have come to them in April, 1982. It is already the end of 1985 and the suit has not even commenced except for the filing of the pleadings and the consideration of the

interim injunctions. If the injunction is continued and the Bank retains the steel sheets till the suit is decided, it is likely to lead to the ruin of one or the other party involved in the suit. We think that in commercial contracts of this type, where the prices of the goods change from time to time, no injunction of this type can be granted.

8. At the same time, it must be pointed out that if there was a contract in April, 1982 and the goods had been brought by the transporter to Delhi from Bombay when the agreement was entered into, we cannot understand why the contract did not result in an immediate sale. If goods in a deliverable state are sold, then there is an immediate sale. All that was required was to perform the contract, the money to be paid by the plaintiffs to the defendants and for the defendants to take delivery of the goods. We have not been able to see the impediment to carry out the contract immediately.

9. In this connection, the form of the contract pleaded by the plaintiffs in para No. 4 of the plaint shows that the contract was not at all certain. According to this pleading, the price was settled at Rs. 5,750/- per metric ton and a sum of Rs. 1,61,200/- was paid, but regarding the balance, the pleading is as follows:

The balance amount was payable as and when the goods were to be lifted by the plaintiff as per the quantity lifted.

These words indicate that according to the plaintiffs there could be an indefinite delay in taking delivery of the goods, but the price was to be fixed as in April, 1982. It may be that there can be such a contract, but it is unlikely that the payment of the price can be indefinitely delayed. Either there is a sale which means that the price is payable immediately, or there is no sale. The feature of this contract to the effect that the payment of the price and the taking of delivery are indefinitely postponed, whereas the rate is fixed, means that the contract is unequal because it is open to the plaintiff not to take delivery, or to postpone the delivery indefinitely. The contract, therefore, as pleaded in the plaint, is of an uncertain type. It is also an inequitable contract because according to the plaintiffs, the defendants need not take delivery for a long time and need not pay the price, whereas the plaintiffs have got to go on making payment to the Bank of the interest amount. As this is only an interim stage in the suit, what we have to see is whether this is a case in which an injunction should be granted which would be disastrous to the appellants, and would also harm the plaintiffs as they might have to pay the Bank interest if they succeed in the suit.

10. Then there is the circumstance that the suit was filed in August, 1984, more than two years after the alleged transaction. We do not see any reason why there should have been delay in filing the suit. The price of the sheets has inevitably gone up immensely. But, according to the plaintiffs, the price was fixed as in April 1982. We have been unable to find out any pressing necessity, for having a contract at the rate prevailing in 1982 which was to be performed years later. of course, it will be open to the Court to find that there was such a contract.

11. In order to uphold the plaintiffs case for the grant of an injunction, reliance has been placed on the fact that Shri Suresh Khandelwal did take delivery of 74 or 75 metric tons of RCC sheets. This was sometime in 1982. Some delivery orders had been given according to the plaintiff to Shri Suresh Khandelwal to take delivery against payment. We do not know why the delivery was not taken. According to the [earned counsel for the plaintiffs, the Bank was raising some impediment to the delivery of the CRC sheets, but we cannot see what objection there could be as the price was to be paid into the Bank. The price was a huge amount being Rs. 23,00,000/- and if the same had been paid to the Bank, we cannot see why the Bank should refuse to give delivery. Prima facie, we are not of the view that Shri Suresh Khandelwal had at any time offered a sum of Rs. 23,00,000/- to the Bank to take delivery of the goods, assuming that there was any such contract.

12. The impression we have is that some amount of the CRC sheets was sold to Shri Khandelwal against payment, but that does not mean that the contract was for the sale of the entire quantity. If it was, we cannot see why Shri Khandelwal should not have paid the entire amount and taken CRC sheets at that very time.

13. Assuming that there was a contract and Shri Khandelwal was refused delivery of the balance quantity of 325 metric tons, we fail to understand why the suit could not be filed on the very next day. The postponement of the institution of the suit for a period of two years is totally inexplicable.

14. One of the points argued before us was that a sum of Rs. 3,85,000/- or so had to be adjusted against the price of Rs. 23,00,000/-, so that he full amount could not be paid to the Bank. This shows that there was all the greater reason to file the suit in 1982 and also to join the Union Bank of India as a party, because according to the plaintiffs present contention, it was the Bank which was not giving delivery.

15. One point is quite clear. The goods had come to Delhi from Bombay through a transporter. The goods were with the transporter in April, 1982. If that was so, we fail to understand why the plaintiffs could not have taken delivery of the goods from the transporter in April, 1982 against the payment of the price. If the money was owed to the Bank, the money could have been paid directly to the Bank. It is ununderstandable as to what was the impediment to the immediate performance of the alleged contract. This contract was not a sale of future goods, but one for the same goods which had been imported from Germany and were with the transporter. If there was any such contract, it could have been performed there and then. The answer as to why it was not performed appears to He in the form of the alleged contract as pleaded in the plaint. According to that contract the price was fixed at Rs. 5.750/- per metric ton, but it was open to the defendants to take delivery whenever they liked and also to pay whenever they liked. If this was the contract, it will be for the Court to see at the time of eventual decision as to whether it should be specifically performed or it is one in which damages should be granted (if any).

16. Keeping in view the huge loss that would result in the continuation of the injunction and the fact that the contract is to a large extent uncertain, it is not a case in which any interim injunction should be granted. Then there is the further circumstance that the alleged contract is supposed to be oral. When a huge contract involving Rs. 23,00,000/- is oral, and allegedly contains terms according to the plaintiffs which are wholly favourable to the plaintiffs, it hardly seems a suitable case in which the injunction could be upheld.

17. Keeping in view the facts that the suit was delayed, the alleged contract is optional and uncertain, and it is not at all clear why it could not be performed immediately, we are of the view that the judgment under appeal should be reversed and the injunction should be discharged. We accordingly accept this appeal and set aside the order granting injunction against the appellants. The appellants will get costs.