

(2015) 04 DEL CK 0113

In the Delhi High Court

Case No : CS (OS) 2238/2014, I.As. No. 13784, 17546 and 18660 of 2014

New India Colour Co. Ltd.

APPELLANT

Vs

Hanung Toys and Textiles Ltd. and Others

RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 37

Citation : (2015) 04 DEL CK 0113

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Kajal Chandra, Swati Sinha and Prerna Chopra, for the Appellant;
Abhimanyu Bhandari and Kartika Sharma, Advocates for the Respondent

Judgement

Manmohan, J.—Present summary suit has been filed under Order XXXVII CPC for recovery of Rs. 34,16,722/- along with pendente lite and future interest @ 18% per annum.

2. Ms. Kajal Chandra, learned counsel for the plaintiff stated that goods worth Rs. 20,25,883/- had been supplied to defendant no. 1 Company for its Unit III plant at Noida during the period April, 2013 to September, 2013. She further stated that the plaintiff had supplied goods worth Rs. 7,44,732/- to the defendant no. 1 for its Unit v. plant at Roorkee during the period May 2013 to August 2013.

3. Ms. Kajal Chandra contended that the present suit had been filed under Order XXXVII CPC on the basis of the terms and conditions mentioned in the invoices. The terms and conditions mentioned in the invoices are reproduced hereinbelow:-

"i. We recommend that before using our products in full scale production, the customer should make his own tests to determine the suitability of the products for his own purpose under his operating conditions. As the circumstances under which our products are stored, handled and used, are beyond our control, we cannot assume any responsibility for their use by the customer.

ii. No claim with regard to the return of the goods, shortage of weight, or any other matter whatsoever will be recognized unless notified in writing within 8 days after receipt of goods.

iii. In case of any legal dispute the forum shall always be Delhi.

iv. Interest @30% will be charged on this invoice from due date.

v. Our responsibility ceases as the goods leave our godown."

4. Ms. Chandra stated that the plaintiff gave to the defendant a credit of 60 to 90 days for making payment from the date of invoices and for any payments made thereafter, the plaintiff was liable to pay interest @30%.

5. Ms. Chandra contended that the defendant no.1 company had duly acknowledged the receipt of the goods worth Rs. 20,25,883/- and Rs. 7,44,732/- at its Unit III as well as Unit v. plants respectively by issuing "C" forms to the plaintiff. In support of her contention, she referred to C Forms No. 0912137C609213 and 0912139C609212 both dated 13th December, 2013 with regard to invoices for Unit III at Noida and also C Forms No. UKC0314042548461 and UKVAT/C-2009-0235457 dated 7th March, 2014 in respect of Unit v. at Roorkee.

6. On the other hand, Mr. Abhimanyu Bhandari, learned counsel for the defendants stated that the plaintiff was seeking recovery of amounts relying upon certain invoices when, in fact, none of the said documents had been accepted or acknowledged by the defendant no. 1 Company or its officials. He stated that none of the terms and conditions of the invoices had ever been accepted by the defendants.

7. Mr. Bhandari further stated that the defendants had received a batch of goods which were defective and of inferior quality. He stated that owing to the default of the plaintiff company, the defendants had received several debit notes from various customers amounting to Rs. 30,00,000/- (approx.) which was much more than the alleged claim of the plaintiff. He stated that besides the loss of business and money, the defendants had also lost many of their important customers and reputation in the market leading to immense damage to the defendant no. 1 Company.

8. Having heard learned counsel for the parties, this Court is of the view that it is essential to first outline the principles on which leave to defend is to be granted in a summary suit. In *Mechelec Engineers and Manufacturers Vs. Basic Equipment Corporation*, AIR 1977 SC 577 : (1976) 4 SCC 687 : (1977) 1 SCR 1060 : (1976) 8 UJ 953 the Supreme Court has held as under:-

"(a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona

fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shows such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence or the defence set-up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence."

(emphasis supplied)

9. Upon a perusal of the paper book, this Court is of the view that the defence of the defendants, that they had not accepted or acknowledged any of the invoices or had not accepted the terms and conditions mentioned in the invoices, is a sham inasmuch as the invoices are duly acknowledged and there is no contemporaneous record evidencing dispute about the terms and conditions mentioned in the invoices.

10. Further, the defence that the plaintiff had supplied the goods which were defective or inferior is a moonshine as the defendant no. 1 Company had filed its two account confirmation statements both dated 1st March, 2014 confirming the balance of Rs. 20,25,883/- with respect to goods supplied to Unit III and Rs. 7,44,732/- with respect of Unit V.

11. However, keeping in view the fact that parties have had a very long business history, this Court is of the view that present case falls in category (e) and not category (d) of the test stipulated in *M/s. Mechelec Engineers and Manufactures* (supra).

12. Consequently, conditional leave is granted to the defendants upon the defendant depositing the principal sum of Rs. 27,70,615/- within eight weeks with the Registry of this Court. Upon deposit of the said amount, Registry is directed to keep the same in an interest bearing FDR, till further orders.

13. However, it is clarified that in the event the aforesaid amount is not deposited within time stipulated hereinabove, the plaintiff shall be entitled to a decree in terms of the prayer clause in the plaint.

14. List the suit for directions on 27th July, 2015.