
(2012) 03 DEL CK 0127

In the Delhi High Court

Case No : Regular First Appeal No. 592 of 2007

Oswal Agro Mills Ltd.

APPELLANT

Vs

Laxmi Oil Mills Pvt. Ltd.

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Contract Act, 1872 — Section 2

Citation : (2012) 03 DEL CK 0127

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Prakash Gautam, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 21.4.2007 dismissing the suit for recovery of damages filed by the appellant/plaintiff on the allegation that the defendant had committed breach of contract in supplying Rice Bran Extraction.

2. The facts of the case are that the appellant and the defendant entered into three contracts for supply to the plaintiff by the defendant of Indian De-oiled Rice Bran Extractions. Under each of the contract 500M/T of Indian De-oiled Rice Bran Extractions were to be supplied. The delivery was to be taken by the appellant/plaintiff latest by 31.12.1982. It was pleaded by the appellant/plaintiff that subsequently, the date of shipment/delivery was agreed to be postponed to 15.1.1983, but the defendant committed breach of contract because they failed to supply the Rice Bran Extractions. The subject suit, therefore, came to be filed claiming the damages on account of difference of contract rate and the market rate prevailing on 15.1.1983 along with claim of dead freight charges.

3. The defendant filed the written statement and did not dispute entering into

the contract, however, it disputed the factum of extension having been granted by it from 31.12.1982 to 15.1.1983. It was pleaded by the defendant that the alleged addendum dated 17.12.1982 (Ex. P1) which was signed by the broker, namely, M/s Nataraja Brokers was never accepted by the defendant for extending the period of shipment up to 15.1.1983. It was pleaded that M/s Nataraja Brokers did not obtain any confirmation from the defendant for extension of 15 days period for the shipment. It is further pleaded that defendant waited up to the last day of the shipment as per the arrangement on 31.12.1982, but since no delivery was taken, the contract came to an end due to the failure of the plaintiff to make arrangement of the shipment within the stipulated time, time being the essence of the contract. 4. The only issue which has been urged before me on behalf of the appellant is that there was an agreement of extension of the shipment from 31.12.1982 to 15.1.1983 and therefore the respondent/defendant is guilty of breach of contract in failing to make the supply. The trial Court has dealt with this aspect in paras 13 to 18 of the impugned judgment, and which read as under:-

13. The main controversy between the parties appearing from the material placed and proved on record is whether the concluded contracts dated 13.10.1982, 09.11.1982 and 09.11.1982 for supply of Indian Deoiled Rice Bran Extractions by the defendant to the plaintiff was extended upto 15.01.1983 or not. If the plaintiff has abled to prove that the concluded contracts were extended till 15.01.1983 in pursuance of letter dated 17.12.1982 Ex. DW1/1 and addendum to contract dated 17.12.1982 Ex. P1 in that eventuality the plaintiff is entitled for damages as prayed for. If the plaintiff has failed to establish the extension of shipment period upto 15.01.1983 then the plaintiff is not entitled for the damages as prayed for.

14. The perusal of pleadings reflects that the following facts are not disputed by the parties:--

- i) The plaintiff is engaged in the export of Indian Deoiled Rice Bran Extractions to various countries,
- ii) The defendant is the manufacturer of Indian Deoiled Rice Bran Extractions,
- iii) The plaintiff and the defendant through M/s Nataraja Brokers entered into contracts bearing no. NB/RB/128 dated 13.10.1982, NB/RB/131 dated 09.11.1982 and NB/RB/132 dated 09.11.1982 for the supply of 1500/- M/T of Indian Deoiled Rice Bran Extractions as per the rate specified in the said arrangements,
- iv) The shipment period was upto December, 1982 implying that the defendant has to supply the goods at Kakinada for shipment upto 31.12.1982, and
- v) M/s Nataraja Brokers issued a letter dated 17.12.1982 Ex. DW1/1 alongwith addendum to contract dated 17.12.1982 Ex. P1 wherein it was proposed to extend the shipment period for 15 days i.e. upto 15.01.1983.

15. An agreement can be reached by the process of offer and acceptance. A

contract must resolve itself into a proposal and its absolute and unqualified acceptance. Section 2(a) of the Contract Act, 1872 (hereinafter referred to as "The Act") deals with the proposal. It provides that when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. To have made a proposal, a person must have signified to another his willingness to do or to abstain from doing anything and has done so with a view to obtaining the assent of that other to such act or abstinence. A proposal is distinguished from mere statement of intention which is not intended to require acceptance. The latter may be merely a statement of intention, or an invitation to make offers, or to do business. Such a statement not intended to be binding is an "invitation to treat". Section 2(b) of the Act deals with acceptance. It provides that when the person to whom the proposal is made signifies his assent thereto the proposal is said to be accepted. A proposal, when accepted, becomes a promise. An acceptance is a final and unqualified expression of assent to the terms of an offer. An unqualified, unconditional acceptance of the offer creates a contract when communicated to the offeror.

16. It is not disputed between the parties that the contract was entered into between them for the supply of Indian Deoiled Rice Bran Extractions vide contracts dated 13.10.1982, 09.11.1982 and 09.11.1982. However, both the parties are claiming that they were approached by the opposite party for the sale and purchase of Indian Deoiled Rice Bran Extractions. The plaintiff has stated that M/s Nataraja Brokers approached the plaintiff for the sale of Indian Deoiled Rice Bran Extractions on behalf of the defendant and the said offer of the defendant was accepted by the plaintiff at New Delhi. It implies that as per plaintiff, it was the defendant which had approached the plaintiff for the supply of Indian Deoiled Rice Bran Extractions. The defendant had stated that M/s Nataraja Brokers enquired from the defendant whether it would sell Indian Deoiled Rice Bran Extractions to the plaintiff which was accepted by the defendant. The plaintiff has not examined any representative of M/s Nataraja Brokers who negotiated with the plaintiff and the defendant for the sale and purchase of Indian Deoiled Rice Bran Extractions. The offer if any made by the defendant that was not an offer but an invitation to treat. for the sale of Indian Deoiled Rice Bran Extractions. If any offer was made by the defendant to the plaintiff through M/s Nataraja Brokers for the sale of Indian Deoiled Rice Bran Extractions as alleged by the plaintiff in that case, the plaintiff should have examined representative from M/s Nataraja Brokers to prove that it was the defendant which has made the offer for the sale of goods to the plaintiff. It appears that the plaintiff has approached to the defendant through M/s Nataraja Brokers for the purchase of Indian Deoiled Rice Bran Extractions. The plaintiff which made the proposal is the "promisor" while the defendant which accepted the offer is the "promisee" in view of Section 2(c) of the Act.

17. The real controversy between the parties is that whether the defendant has extended the shipment time upto 15.01.1983 after the receipt of letter dated

17.12.1982 Ex. DW1/1 written by M/s Nataraja Brokers to the defendant alongwith addendum to the contract dated 17.12.1982 Ex. P1. The defendant in the written statement has denied any confirmation was obtained by M/s Nataraja Brokers for extension of shipment period by fifteen days. It was for the plaintiff to prove in affirmative that the defendant has agreed for the extension of shipment period for 15 days i.e. upto 15.01.1983 for the supply of Indian Deoiled Rice Bran Extractions at Kakinada and as such the defendant has committed the breach of contract. The perusal of contracts reveals that Indian Deoiled Rice Bran Extractions were to be supplied upto December, 1982 i.e. upto 31.12.1982. It means that the time was the essence of the contract. The defendant was under an obligation to supply Indian Deoiled Rice Bran Extractions to the plaintiff upto 31.12.1982 and the plaintiff was also under an obligation to accept the delivery of Indian Deoiled Rice Bran Extractions upto December, 1982 i.e. upto 31.12.1982. The plaintiff in para no.6 of the plaint stated that M/s Nataraja Brokers after confirming from the defendant which agreed for extension of 15 days in the shipment period issued an addendum dated 17.12.1982 extending the shipment period for 15 days upto 15.01.1983. The letter dated 17.12.1982 Ex. DW1/1 and addendum to contract Ex. P1 was not disputed by the defendant. But the defendant has stated that they have never confirmed or agreed for the extension of period. The plaintiff has not examined material witness i.e. representative from M/s Nataraja Brokers to prove that the defendant has agreed and confirmed for the extension of shipment period by 15 days. Once the contract was concluded between the parties, any addition/alteration or modification therein was subject to consent of both the parties. The time was the essence of the contract which cannot be altered unilaterally without obtaining the consent of other party. There is nothing on record to establish that the defendant has agreed to extend the shipment time upto 15.01.1983. Letter dated 17.12.1982 Ex. DW1/1 addressed by M/s Nataraja Brokers to the defendant perused. M/s Nataraja Brokers vide said letter only informed the defendant that the nominated vessel is likely to be delayed to reach Kakinada for one week. The perusal of Ex. DW1/1 does not reflects that the defendant has agreed for the extension of shipment period by 15 days i.e. upto 15.01.1983. The defendant has only admitted the receipt of Ex. DW1/1 and addendum Ex. P1 but not admitted that defendant has agreed to extend the shipment period by 15 days.

18. PW Anil Malhotra deposed that the first shipment was to be loaded on a ship arranged by the plaintiff at Kakinada, A.P. The ship reached the Kakinada Port on 23rd December, 1982 and the plaintiff has informed the said fact to the defendant telegraphically. The said facts are not pleaded by the plaintiff in the plaint. The PW further deposed that the defendant did not load the ship with Rice Bran Extraction and wanted extension of 15 days for said purpose which was granted. The testimony of PW reflects that it was the defendant which sought the extension of 15 days from the plaintiff for shipment of Indian Deoiled Rice Bran Extractions which is contrary to the pleadings. The plaintiff in para no.6 of the plaint stated that the defendant has only confirmed the extension of shipment

period by 15 days. It is not the case of the plaintiff that the defendant had sought the extension of shipment period by 15 days.

The DW deposed that the defendant did not accede to the request for extension of time and the defendant wrote to the broker about the non agreeing to the extension of time vide letter dated 03.01.1983. The receipt of letter dated 03.01.1983 is not disputed by the plaintiff although the plaintiff has stated that it was manipulated but DW was not cross examined on the said point whether the letter dated 03.01.1983 was manipulated.

(underlining added)

5. I completely agree with the findings and conclusions of the trial Court, inasmuch as, admittedly, there is no addendum/amendment signed by the defendant for extending the shipment period from 31.12.1982 to 15.1.1983. The addendum/amendment dated 17.12.1982 was issued by M/s Nataraja Brokers which was only a broker simplicitor which had brought two parties together and which was entitled to brokerage in terms of Clause 7 of the contract. Since there is no agreed amendment for postponing of the date of shipment to 15.1.1983, it cannot be said that the defendant committed a breach of contract in not supplying the goods on 15.1.1983. The trial Court has rightly noted that there is nothing on record to show that the defendant ever agreed to the addendum dated 17.12.1982, Ex. P1, and in fact the defendant had written its letter dated 3.1.1983 to the appellant/plaintiff that they had never acceded to the request of extension of time.

I may additionally note that M/s Nataraja Brokers was not a commercial agent of the respondent/defendant, so as to bind the respondent/defendant, inasmuch as, the trial Court has noted that whereas the appellant/plaintiff claims that defendant approached it through M/s Nataraja Brokers, the respondent/defendant claims that it was in fact the plaintiff who approached the defendant through M/s Nataraja Brokers. In fact M/s Nataraja Brokers was a broker simplicitor as I have already stated above that in the contract entered into between the plaintiff and defendant, as buyer and seller, M/s Nataraja Brokers was only shown as a broker who was entitled to brokerage as per Clause 7 of the contract.

6. An appellate Court would not interfere with the findings of the trial Court with respect to one possible and plausible view taken by the trial Court unless the view taken by the trial Court is illegal or perverse. In

view of the aforesaid, I do not find any illegality or perversity with the impugned judgment which calls for interference in appeal, because there was no agreed amendment of the contract for postponing the date of shipment from 31.12.1982 to 15.1.1983.

7. The appeal is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.