(2008) 12 DEL CK 0051

In the Delhi High Court

Case No : Regular First Appeal 38 of 2004

Punjab Fibres Ltd. APPELLANT

Vs

Lank Mark Exports and Others RESPONDENT

Date of Decision : 05-12-2008

Acts Referred:

Citation : (2008) 12 DEL CK 0051

Hon'ble Judges : Pradeep Nandrajog, J;J.R. Midha, J

Bench : Division Bench

Advocate : Ch. Ranjit Singh, for the Appellant; Jagdeep Anand, for R-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The appellant has suffered a dismissal of the suit filed by it against the respondents.

2. Case of the appellant as pleaded in the plaint was that defendants 2 and 3 had been placing orders on the plaintiff for supply of textile yarn with assurance of due payment for said orders. It was pleaded that defendant No. 1 was the beneficiary of the said orders. Pleading that the appellant was maintaining a regular account pertaining to the supplies affected and that Rs. 3,16,750/- was outstanding the suit was filed claiming Rs. 5,00,000/- by alleging that pre-suit interest had accumulated in sum of Rs. 2,27,060/- but claim was restricted to Rs. 5,00,000/-.

3. Defendant No. 1 chose not to defend the proceedings. Defendants No. 2 and 3 stated that all goods were supplied directly to defendant No. 1 ad they had no concern with the appellant.

4. At the trial appellant examined two witnesses being Sh. Dhirinder Dhoval its accountant and N.G. Babu an accounts officer.

5. Both witnesses stated that the statement of account was Ex.P-4. PW-2 proved

the bills (photocopies) and consignment notes being Ex.P-5 to Ex.P-19.

6. Dismissing the suit learned Trial Judge has held that Ex.P-4 was a typed statement of account and that the account books were not produced. The bills being photocopies were held as no good evidence.

7. It is urged by learned Counsel for the appellant that no contemporaneous challenge was made when the bills (photocopies were proved) and hence urges that the bills have to be looked into.

8. Without being technical, we have considered the bills in question. The bills are drawn in the name of defendant No. 1 but have been forwarded either to defendant No. 2 or defendant No. 3.

9. The raising of the bills shows that the bills, though raised in the name of defendant No. 1, were being forwarded to defendants 2 and 3 probably for the reason said defendants were acting as the agents of the appellant.

10. There is no proof that defendants 2 and 3 delivered the goods in question covered by the bills to defendant No. 1. There is no evidence that defendants 2 and 3 in turn handed over the bills for payment to defendant No. 1 when goods were delivered.

11. Thus, there is no evidence on record to show any liability viz-a-viz defendant No. 1.

12. The witnesses of the appellant and in particular PW-2 stated that there was a verbal agreement between the appellant and defendants 2 and 3 that they would be given commission on orders obtained and that defendants 2 and 3 had no say in the recovery of the payment.

13. The said admission of PW-2 kills the case of the appellant that defendants 2 and 3 had to make payment pertaining to the bills.

14. Unfortunately, the appellant is losing the battle because its counsel at the trial level did not understand what was to be proved.

15. In the plaint it was stated that defendants 2 and 3 had placed the orders beneficiary whereof was defendant No. 1 and that said defendants were liable to pay the money to the plaintiff.

16. That apart, we find that the alleged statement of account Ex.P-4 is a typed copy (not a computer generated record); the original account books were never produced.

17. We find no merit in the appeal.

18. The appeal is dismissed.

19. No costs.

