(1994) 09 DEL CK 0051

In the Delhi High Court

Case No : Suit No. 1450 of 1979

Radhika Woolen and Silk Mills Pvt. Ltd. — APPELLANT

Vs

Om Prakash and Sons and Others — RESPONDENT

Date of Decision : 01-09-1994

Acts Referred:

Citation : (1994) 4 AD 175 : (1995) 58 DLT 456 : (1995) 110 PLR 67

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Judgement

P.K. Bahri, J.

(1) This is a suit for recovery of Rs. 1,63,516.92 paise. The plaintiff is engaged in manufacturing of woolen yarn. Defendants 1 & 3 are the partnership concerns and defendant No. 2 is one of the partners. The plaintiff had appointed the defendants as one of its dealers for the sale of its products. The plaintiff was to supply the raw wool and woolen yarn for sale to the defendants and defendants were to get the commission. A contract was signed between the parties on 30/09/1978 and plaintiff supplied the goods to the defendants on the basis of the said contract of dealership from time to time as per invoices dated 12/10/19 7/11/1978 and December 11, 1978.

(2) According to the terms of the agreement, the defendants were to pay the price of the goods to the plaintiff within 15 days of selling the goods. It is the case of the plaintiff that defendants became irregular in making the payments in spite of the repeated demands and plaintiff sent a registered notice dated 7/05/1979requiring the defendants to clear the outstanding amount together with interest@18%perannumwithinl5days. It is pleaded that defendants in their letter dated 27/05/1979 admitted that the defendants had delayed the payments. Another letter was sent by the plaintiff to the defendants to pay the outstanding amount of Rs. 1,47,907.60 paise with interest @ 18% and defendants sent a reply dated 1 6/06/1979 and controverter their liability to make any payment to the plaintiff. So ,according to the plaintiff, a sum of Rs.

1,47,907.60 paise is still due from the defendants and calculating the interest @18% per annum up to the date of the suit, the suit has been filed for recovery of the amount mentioned in the opening of the judgment.

(3) The defendants have filed a written statement-cum-counter claim. It is averred by the defendants that dealership agreement which was to subsist for a period of two years from the date of its execution had not been terminated and still subsists and thus, this suit was not maintainable in the present form and moreover Delhi Courts had no territorial jurisdiction to try the suit. It was pleaded that plaint has not been signed and verified and suit has not been instituted bya duly authorised person on the plaintiff and it was also controverter that plaintiff is a duly incorporated company under the Indian Companies Act.

(4) The defendants pleaded that the defendants had established a goodwill in the entire Kashmir region in the wholesale market and to exploit the goodwill of the defendants, the plaintiff had appointed the defendants as its sole dealer and it was controverter that defendants has become irregular in payments. They have pleaded that according to the terms of the agreement, defendants were to obtain and sell minimum quantity of I lakh kilograms of the goods in ^period of12 months and in case the defendants were not to achieve this target, the defendants were to pay a penalty(c) Re. I.00per kilogram of such shortfall and the defendatnts were to get the commission of 2% on the net selling price of the goods so supplied to the defendants. It is pleaded that in order to boost up the sales and in order to achieve the target contemplated by the agreement, the defendants has worked hard but the plaintiff, in breach of the agreement, had commenced selling its products directly to the same very customers to whom the defendants were selling the goods as dealer. It is alleged that plaintiff had stopped supplying goods to the defendants since December 1979 and thus the plaintiff had committed breach of the terms of the agreement and defendants are entitled to have the damages from the plaintiff. The defendants would have earned Rs. 1,60,000.- as commission if the plaintiff had not stopped supplying the goods to the defendants for the agreed period. It is pleaded that defendants had been able to sell goods of the plaintiff of the value of Rs. 6,87,879.45 paise and thus, the defendants were entitled to have commission of Rs. 13,740.00which plaintiff has not paid .

(5) It is further pleaded by the defendant that defendants are entitled to have adjustment of Rs. 32,455.32 paise which comprised of the following items:-

(I)Rs. 2,186.87 paise - difference of rate in the bill according to the plaintiff''s representative Mr. L.D. Narang.(ii) Rs. 977.50 paise - Raw wool bill in the name of the plaintiff.(iii) Rs. 12,126.00- Reduction on account of defective goods which were sold to M/s. Emm Ess Enterprises and by mutual agreement the discount of the said amount was given to the said party as agreed to by Sh. D.C. Jain of the plaintiff.(iv) Rs. 74.70 paise - Miscellaneous expenses.(v) Rs. 4,954.50 paise - Cash amount paid to L.D. Narang agent of the plaintiff.(vi) Rs. 7,000.00 compensation of licenses.(vii) Rs. 5,135.75 paise - Goods delivered to M/s.

Gulam Nabi Butt and M/s. Mohd. Amin at the insta ce of the plaintiff''s representative.

(6) It is further pleaded that plaintiff''s representative had undertaken to obtain the payments and had taken the goods from the defendants for supplying to M/s.Gulam Nabi Butt and M/s.Mohd, Amin of the value of Rs. 5,135.75 paise.So, it is pleaded that plaintiff is not entitled to any amount from the defendants and the defendants are entitled to have the said amount from the plaintiff and even if it is assumed that defendants own Rs. 1,47,907.60 paise to the plaintiff, even then ,after adjusting the said amount, the defendants are entitled to recover Rs.44,547.72 paise from the plaintiff for which the defendants prayed that decree be passed against plaintiff with interest @ 18% per annum.

(7) In replication, the plaintiff controverter the pleas of the defendants and asserted that it is the defendants who had committed breach of the contract and plaintiff was fully justified in stopping further supplies of the goods to the defendants and defendants are not entitled to have any damages of Rs.1,60,000.00 from the plaintiff as plaintiff has not committed any breach of the terms of the agreement of dealership.

(8) Coming to the specific pleas of the defendants regarding the various amounts claimed by the defendants, it was pleaded that there was no term of the agreement that plaintiff cannot supply goods to various customers at Srinagar as no exclusive dealership has been given to the defendants. It is pleaded that after defendants failed to clear their outstandings, the defendants never asked for any further supplies of goods to be made to them by the plaintiff. It is not disputed that defendants have sold goods worth Rs. 6,87,879.45 paise but it was pleaded that defendants are not entitled to have any commission as defendants have committed breach of the terms of the contract. The plaintiff controverter that defendants are entitled to any adjustment of Rs. 32,455.32 paise and that Mr. D.C. Jain had ever agreed to give discount of Rs. 12,126.00 to any party and any defective goods had been supplied to any such party. No specific denial has been made by the plaintiff regarding the amount paid to the agent of the plaintiff. Only plea taken is that defendants should prove the said facts.

(9) On the pleadings of the parties, following issue were framed:-

1.Is the plaintiff a company duly incorporated under the Companies Act and the suit has been instituted and the plaint signed and verified by a person duly authorised to do so?2. Was the contract of agency/dealership validly terminated by the plaintiff? If so, when.3. In case the contract of agency/dealership has not been validly terminated ,is the suit maintainable in its present from?4. Has this Court territorial jurisdiction to entertain and try the suit?5. Has the plaint not been properly verified? If so to what effect?6. . Are the defendants entitled to commission at 2% on the sales effected by them as per agreement dated 30/09/1978 ? It so, what is the amount of such commission.7. Have the defendants committed breach of the contract of agency/dealership? If so, when in what respect and to what effect?8. Are the defendants entitled to any adjustment as claimed inparalO(i)of the written statement?9. Are the defendants liable to pay Court-fee on the amounts claimed by them (1) by way of adjustment (2) by way of commission?10. Is the plaintiff entitled to any interest? If so, at what rate, on what amount and for what period?11. Are the defendants entitled to any damages? If so, how much?12. To what amount, if any, is the plaintiff entitled?13. To what amount, if any, are the defendants entitled?

(10) Issue No. 1Ex.PW2/ is is the copy of the Certificate of incorporation showing that the plaintiff is a duly incorporated company. PW2/2, copy of resolution of the Board of Directors of the plaintiff company, has been proved which empowersSh. D.C.Jain to sign and verify the plaint and to institute the suit. Sh. D.C.Jainhas signed and verified the plaint and has instituted the suit. Counsel for defendants has not addressed any arguments on this issue. In view of the above evidence ,I hold that plaintiff is a duly incorporated company under the Indian Compaines Act and plaint has been signed and verified and the suit has been instituted by a duly authorised person on behalf of the plaintiff. The issue is decided in favor of the plaintiff.

(11) Issue Nos. 2 b 3These issues are interconnected and thus are dealt with together.

(12) PW-I, Mr. D.L. Malhotra, who is working as accountant of the plaintiff company appeared in the witness box and deposed that the plaintiff had sent the goods to the defendants as per bills, copies of maintaining regular books of accounts and Ex. PW1/l is the copy of the statement of account of the defendants and as on 8/12/1978, a sum of Rs. 1,47,907.60 paise was due from the defendants .He also deposed that defendants have been irregular in making the payments and he also proved on record the legal notices sent to the defendants, copies of which are Ex. P-17 and P-20 and the letters which were written to the defendants and copies of the same are Ex. PWI/2 to PWI/11. He admitted that the goods were being supplied on the basis of the agreement Ex. P-1. In crossexamination, it has come out that defendants had issued two cheques but both were dishonoured and he deposed that as defendants failed to make the outstanding payments, the plaintiff did not supply any more goods to the defendants and even defendants did not ask for supply of more goods.

(13) PW-2, D.C. Jain, who is one of the Directors of the plaintiff company, besides proving the Certificate of Incorporation and the resolution deposed thathe was not looking after the day to day business of the plaintiff company but he admitted that the goods were supplied to the defendants in terms incorporated in agreement Ex. P-l .He admitted that Mr. Laxman Dass Narang was one of the employees of the plaintiff who had been deputed to work at different places by the company .

(14) In rebuttal, defendant No. 2 appeared as DW-1 and deposed that in violation of the terms of the agreement, plaintiff had started marketing the

goods in the territory of Jammu & Kashmir directly to the customers of the defendants and plaintiff had stopped supplying the goods in breach of the terms of the agreement .He also deposed that discount of Rs. 12,126.00 was given to one of the customers as defective goods were supplied by the plaintiff and this was confirmed by Dewan Chand Jain and a sum of Rs. 4,954.50 paise was paid to Laxman Dass Narang, employee of the plaintiff, in account and defendants are entitled to have Rs. 7,000.00 by way of compensation and Rs. 5,135.75 paise was also liable to be adjusted as the goods were supplied to the customers at the behest of Laxman Dass Narang who had taken up the responsibility of getting the amount from the said customers which he did not carry out and that plaintiff had agreed to given adjustment of Rs. 2,186.07 paise which was due to difference in rates. Incross-examination, he proved the vouchers Ex. DW-I/AI to DW-1/A6 and he proved the signatures of Laxman Dass Narang on Ex. DW-I /B.

(15) It is pertinent to mention that no testimony was given by Dw 1 that cheques given by the defendant had not bounced or that the goods had not been received in respect of which the plaintiff is claiming the amount. I have gone through Ex. P-l and find that there was no restrain clause incorporated in the agreement that plaintiff would not be entitled to supply goods directly to any customers in Jammu & Kashmir region. It was also not mentioned in the agreementEx. P-l that defendants are being made exclusive dealer of the plaintiff company in a particular territory. So, mere fact that plaintiff had started supplying goods directly to some customers in Kashmir does not mean that plaintiff has committed any breach of the terms of the agreement.

(16) The defendants admittedly had not paid the price of the goods supplied to the defendants, so plaintiff was very much right in stopping further supplies to the defendants. The defendants had not sent any notices to the plaintiff that plaintiff should continue to supply the goods in accordance with the agreement. It is true that one of the terms of the agency agreement contemplates giving of three months notice for terminating the agency agreement and no such notice had been given in such specific terms but the legal notice issued to the defendants claiming the outstanding amount, in my opinion, clearly shows the intention of the plaintiff to terminate the agency agreement because of the default committed by the defendants in not making the payment in accordance with the agreement.

(17) So, I hold that plaintiff has not committed any breach of the terms of the agreement .It is the defendants who have committed breach of the terms of the agreement by not making the payments in accordance with the agreement despite legal notice being served on the defendants. So, these issues are decided in favor of the plaintiff and against the defendants.

(18) Issue No. 4 According to the statement''s made by PW-1 and PW-2, the agreement in question was executed at Delhi and it was also recorded in the agreement that the same is subject to the exclusive jurisdiction of Delhi Courts. Even otherwise ,the goods had been supplied from Delhi to the defendants and

payments were agreed to be made to plaintiff at Delhi and thus part of cause of action has arisen within the territorial jurisdiction of Delhi Courts. So, Delhi Courts have jurisdiction to try this suit. Learned Counsel for defendants has not raised any arguments in regard to this issue. The issue is decided in favor of the plaintiff.

(19) Issue No. 5 The Counsel for defendants has not raised any arguments in support of this issue. The issue is decided against the defendants.

(20) Issue No. 6 It is, indeed, not disputed in the pleadings and it is evident from the terms of the agreement that defendants were to obtain 2% commission. The plaintiff, in replication, had admitted the fact that defendants had sold goods worth Rs. 6,87,879.45 paise. If that is so, the defendants are entitled to have a sum of Rs. 13,74U.00 as commission from the plaintiff. The learned Counsel for defendants ,on the other hand, has argued that defendants are entitled to commission of Rs. 1,60,000.00 as the agency agreement has not been terminated in accordance with the terms of the agreement. As already held by me above that plaintiff has not committed any breach of the terms of the agreement and it was the defendants who had committed breach of the terms of the agreement, so the agreement stood validly terminated, thus the defendants are not entitled to any commission for whole period of two years. Hence, I hold this issue inf avor of the defendants to the extent that defendants are entitled to have commission of Rs. 13,740.00 from the plaintiff. The issue is decided accordingly. ISSUES No. 8 &11From the documents proved by the defendants which are Ex. DWI/AtoDWI/A-4, it is evident that Rs. 3,000.00have been taken by Laxman Dass Narang,a representative of the plaintiff. So, this amount the defendants are entitled to adjust .The defendants have not been able to lead any other documentary evidence to show that defendants are entitled to have adjustment of any other amount from the plaintiffs. Apart from the statement of DW-1, there is no evidence to show that in fact any defective goods had been supplied to any of the parties or any goods had been supplied to some of the customers, the responsibility for collecting the payment of which was taken by Laxman Dass Narang. So, defendants are not entitled to have adjustment of any other amount. The issues are decided accordingly. ISSUE No. 9The defendants have paid the requisite Court fee on the counter claim, so this issue is decided in favor of the defendants. ISSUE No. 10The plaintiff is entitled to have interest @18% interest from the plaintiff. So, the plaintiff is entitled to have 18% interest on the outstanding amounts. Issue is decided accordingly. ISSUE No. 12In view of the above findings in various issues, I hold that plaintiff is entitled to have principal amount of Rs. 1,47,907.60 paise minus Rs. 16,740.00which comes to Rs. 1,31,167.60 paise and calculating the interest (c) 18%, the interest amount welcome to about Rs. 13,900.00, so the total amount due from the defendants to the plaintiff is Rs. 1,45,067.60 paise. I hold this issue accordingly. ISSUE No. 13In view of the above discussion, the defendants are not entitled to any amount from the plaintiff. The issue is decided against the defendants. I decree the suit for recovery of Rs. 1,45,067.60 paise with proportionate costs and grant interest

@ 18% per annum from the date of suit till realisation.The counter claim of the defendants is dismissed.

