(2015) 01 DEL CK 0287

In the Delhi High Court

Case No : CS (OS) No. 314 of 2006

Raj Kamal Prakashan Pvt. Ltd. APPELLANT

Vs

Jharkhand Shiksha Priyojna RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:
Sales of Goods Act, 1930 — Section 42

Citation : (2015) 01 DEL CK 0287

Hon'ble Judges : Najmi Waziri, J.

Bench : Single Bench

Advocate : Pravin Sharma, for the Appellant; Abhijeet Sinha, Advocates for the Respondent

Judgement

Najmi Waziri, J.—This suit has been filed for recovery of Rs.23,14,176/- along with pendente lite and future interest @ 18 per cent per annum for books supplied by the plaintiff to the defendant.

Plaintiff''s case

2. The plaintiff is a book publisher and the defendant is a project of the Department of Education, Government of Jharkhand, which was initiated with a view to encourage education as well as the knowledge of the Hindi language. Books were ordered by the defendant vide purchase orders dated 11.10.2004 to be supplied to its various libraries. The purchase order was honoured by the plaintiff and the details of the books supplied by them are as under:

3. The total value of the books supplied, in varying sets of books to different libraries of the defendant in Kodarma District of Jharkhand, is stated to be Rs.23,14,176/-. The books were more or less the same but the number of sets varied. The cost has not been paid by the defendants on the ground that the person who placed the order was not competent to do so. A plea in this regard was taken in the Written Statement (for short ''WS'') for the first time on 6.7.2006 but the books were delivered and the receipt of the books is not in

dispute. The learned counsel for the plaintiff submits that the WS cannot be taken into consideration as it has neither been signed nor verified and the affidavit purporting to support it has been sworn on 5.7.2006, i.e., even before the WS came into existence, a day later on 6.7.2006. Therefore, he submits that the said affidavit could not have supported a document which was yet to come into existence and the said affidavit would be of no value. He further submits that the plaintiff pursued the non-payment of bills by a letter dated 13.12.2004. Copy of the receipts and the bills of challans were deposited in the office of the defendant in order to facilitate payment for the books. The officers of the defendant assured that the payment would be released through demand drafts at the earliest. However, in the absence of any response, a reminder was sent on 18.2.2005 through post, followed by another on 24.3.2005. A reminder was again sent on 26.7.2005. Legal notices dated 24.3.2005 and 26.7.2005 too were sent by the plaintiff to the defendant but to no avail. It is stated by the learned counsel for the plaintiff that before institution of the present suit, a legal notice was sent yet again on 30.7.2005. There has been no response to any of their letters.

4. The learned counsel for the plaintiff has drawn the attention of this Court to the defendant''s evidence by way of affidavit, wherein Mr. Sachidand D. Tigga, District Programme Officer (for short ''DPO'') of the defendant has deposed that the plaintiff had supplied the books but it was so done without following the prescribed procedure and in collusion with Mr. Raj Narayan Pathak, Assistant Resource Person (for short ''ARP''), who was not competent to make any purchase; that the said ARP had cancelled the aforesaid purchase order vide letter dated 13.12.2004, which was intimated to the plaintiff through facsimile on 14.12.2004; that simultaneously, all the Block Resource Co-ordinators (for short ''BRC'') were directed not to receive the books supplied by the publisher; that subsequently, vide letter dated 15.12.2004, the BRC were asked not to receive the books supplied by the plaintiff; that when this matter was brought to notice of the authorities, an FIR was lodged against the District Programme Co-ordinator (for short ''DPC'') and subsequently, the ARP was dismissed from service vide letter dated 14.11.2008, which is exhibited as Ex.DW1/5.

5. The learned counsel for the plaintiff further relies upon the report of the Auditor (Ex. DW1/4A) which notes that payments apropos (i) purchase order Nos. 2551-57 (placed upon the plaintiff) and (ii) 2558-67 (placed upon Radha Krishna Prakashan, New Delhi) dated 11.10.2004 (pataka-5) amounting to a sum of Rs. 43,50,707/-, had been pending due to budgetary overrun. He submits that the said report also questions the cancellation of the purchase order and the intimation regarding non-acceptance of the books from the plaintiff by the District Libraries in view of the fact that the books had already been supplied; furthermore it cannot be overlooked that the said purported intimation letter was sent to the District Libraries only after the books had already been received by the latter. Furthermore, the learned counsel submits, that there is nothing on record to show that the intimation for not accepting the books was sent to the

plaintiff, that neither is there any proof in this regard nor has the mode of intimation been proven by the defendants.

6. The learned counsel for the plaintiff also relies upon the cross examination of Mr. Tigga where he deposed that as per the records maintained by the defendant, the books were delivered by the plaintiff in terms of the purchase orders; that the books were received after cancellation of the order but he did not recall the date; that there is nothing on record to show that the books were delivered after cancellation of the purchase orders; that the notice cancelling the purchase orders was sent only by fax transmission; that the books had been supplied by the plaintiff to about 6-7 centers of the defendant; that the audit report held that the ARP was not competent to place the orders. However, the learned counsel for the plaintiff submits that neither in the FIR nor in the affidavit is there any whisper of the lack of competence in or lack of authority of the ARP to place the purchase orders. On the contrary, he submits that the audit report very clearly states that payments could not be made due to budgetary overrun. He further submits that in fact, the purported letter of cancellation dated 13.12.2004 itself reasons that the books had not been supplied despite a lapse of two (2) months from the date of the purchase order.

7. The learned counsel for the plaintiff submits that, therefore, insofar as bills have been raised against the defendant for the books supplied, the same are liable to be paid. A decree in favour of the plaintiff is sought accordingly. He further submits that in terms of Section 42 of the Sale of Goods Act, 1930, once a buyer has accepted the goods, he is liable to pay for the same if, after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them. As regards the territorial jurisdiction of this Court to entertain the present suit, he submits that this Court possesses the same since the purchase orders were received in Delhi, goods were dispatched from Delhi and payments were to be made at Delhi. Defendant''s case

8. The learned counsel for the defendant, on the other hand, submits that the purchase orders were not placed by a competent officer, therefore, anybody lacking authority to contract with a third party could not bind the defendant by his unauthorised acts. He submits that any purchase order above the value of Rs.25,000/- would require sanction by the District Level Purchase Committee of the defendant; that this was not done in the present case, therefore, the purchase orders were without any authority and any delivery made against that order would be non est vis-a-vis the defendant. He refers to the evidence of the plaintiff wherein it has claimed that it had been supplying goods to the defendant on previous occasions as well. He submits that the plaintiff was never able to show in its evidence that on earlier occasions also, it had supplied goods to the defendant through a purchase order placed by the ARP without prior approval of the District Level Purchase Committee. The learned counsel further submits that this was nothing but a purported transaction, in connivance with the said ARP viz. Mr. Raj Narayan Pathak, only to benefit the plaintiff for supply of goods,

without any authority of law. He also submits that although the goods were received by the defendant at various centers but the plaintiff had been asked to take back the same from the centers. However, the learned counsel fairly admits that there is nothing on record to show that the plaintiff had been so asked, i.e. to take back the books which had allegedly erroneously been supplied to the defendant. He further submits that the moment this illegality came to the notice of the defendant, disciplinary as well as criminal proceedings were initiated against the persons concerned. The ARP, was removed forthwith whereas departmental and criminal proceedings are pending against the DPC. Therefore, he submits that the supply of books was without authority and no monies are payable. Analysis

9. At the outset, this Court is of the view that the WS of the defendant cannot be taken into consideration since it has neither been signed nor verified. Moreover, the affidavit purporting to support the WS has been executed on 5.7.2006, a day prior to the WS coming into existence on 6.7.2006. Therefore, the WS could not be relied upon by this Court and it would amount to the defendant having no defence at all. Accordingly, since the WS has neither been signed nor verified or supported by a proper affidavit, after the coming into existence of a WS, the said WS cannot be taken into consideration.

10. Even assuming the WS can be taken into consideration, this Court is of the view that the defendant has failed to set up any defence. The purchase orders were placed upon the plaintiff for supply of books, towards which it had also sought release of payments by writing letters and issuing legal notices, which were never responded to by the defendant. Admittedly, the books were received by the defendant at its various centers. There is nothing on record to show that the cancellation letter dated 13.12.2004 was ever delivered to the plaintiff. The document purporting to be a facsimile transaction, cancelling the purchase order has not been proved nor has the same been followed up by any postal receipt or confirmation of sending the same through post. It has also not been proven that a copy of this cancellation order or any direction or intimation, was ever sent to the defendant''s District Centers, directing the latter to not receive the books supplied by the plaintiff. There is further nothing on record to show that the plaintiff was asked to take back the books supplied by it. In the circumstances, by application of Section 42 of the Sale of Goods Act, 1930, the defendant would be liable to pay for the books supplied to it. More importantly, in the defendant''s Auditor''s Report it has been stated that the payment was not made only because of budgetary overrun and not because of lack of competence in the ARP in placing the aforesaid purchase order. If the purchase order had been cancelled or if the plaintiff/seller/supplier of the books had been asked to take back the illegitimately supplied goods, then there would have been no question of any outstanding amount towards the plaintiff and indeed it would have been so recorded in the Audit Report. The said report further raises serious doubts whether the Resource Centers were ever intimated or instructed not to accept the books supplied by the plaintiff. It is inconceivable that a Government Agency

which placed the purchase order through regular post would cancel the same only by sending a facsimile message and would not even follow it up by regular post. Furthermore, Mr. Tigga, DPO has admitted in evidence that the ARP had issued orders for purchase of books with other publishers also, the payment against which have already been cleared. This only goes to show that the person/ ARP was competent to place the orders. In other words, it amounts to the defendant ratifying such purchase orders having been placed by the ARP as it had earlier made payments against such ARP placed purchase orders.

11. In view of the aforesaid discussion, the suit is therefore, decreed in favour of the plaintiff and against the defendant. The defendant shall pay to the plaintiff a sum of Rs.23,14,176/- along with interest @ 10 per cent per annum from the date of supply of books (to be precise from January, 2005) till the date of payment.

12. Let the decree sheet be drawn up accordingly.