

(2010) 11 AP CK 0004

In the Andhra Pradesh High Court

Case No : City Civil Court Appeal No. 149 of 1999

Reliance Cellulose Products Ltd.

APPELLANT

Vs

Trichi Distilleries and Chemicals Ltd.

RESPONDENT

Date of Decision : 24-11-2010

Acts Referred:

Citation : (2011) 6 ALT 372

Hon'ble Judges : B. Prakash Rao, Acting C.J.; R. Kantha Rao, J

Bench : Division Bench

Advocate : M. Papa Reddy, for the Appellant; S. Ravindranath, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This is an appeal from the judgment and decree, dated 30.11.1998 passed by the V Senior Civil Judge, City Civil Court, Hyderabad in O.S. No. 77 of 1986.

2. The Plaintiff is the Appellant. The Plaintiff instituted a suit for recovery of an amount of Rs. 3,25,692.50 ps. as damages for breach of contract committed by the Defendant. The trial Court dismissed the suit with costs. Feeling aggrieved, the Plaintiff filed the present appeal.

3. We have heard the learned Counsel appearing for the Appellant as well as the Respondent.

4. The brief facts necessary for considering the contentious issues in the appeal may be stated as follows:

5. The Appellant is the company registered under the provisions of the Companies Act and the Respondent is a manufacturer of Acetic Acid which is required for the Appellant company in its manufacturing process. On or before 17.10.1983, the Respondent agreed to supply 170 Metric Tonnes (MT) of Acetic Acid @ Rs. 5,450/- per MT and undertook to deliver the same in 17 tanker loads

at the work place of the Appellant at Patancheru. The delivery schedule indicated that the load consists of Acetic Acid of 10 MT. The Respondent dispatched two tanker loads of Acetic Acid on 03.01.1984 and 04.01.1984 respectively, but failed to deliver the remaining quantity. Subsequently, at the instance of the Respondent, the rate per Metric Tonne was enhanced to Rs. 5,700/-, thereafter the Respondent delivered 13th and 14th tanker loads on 15.02.1984 and 25.02.1984, but failed to supply the remaining loads. Again at the request of the Respondent, the rate was increased to Rs. 6,350/- per MT which is applicable to 7th tanker load and the said load was supplied.

6. The contention of the Appellant is that due to non-supply of Acetic Acid which is essential for manufacturing purpose of the Appellant company, it had to purchase the same from other agencies at higher rate and they incurred loss to the tune of Rs. 32,480/-. It is the version of the Appellant that on 14.07.1987 the Respondent agreed to supply 140 MT Acetic Acid @ Rs. 7,550/- per MT as per the delivery schedule, but supplied only one tanker load on 31.07.1994 and failed to supply the remaining quantity of 130 MT. In the months of August, September and October, 1984 there was heavy fluctuation in the market rate of Acetic Acid ranging from Rs. 7,800/- to Rs. 14,000/- per MT and due to non-supply of the same, the Appellant was constrained to purchase Acetic Acid from other dealers and ultimately suffered loss of Rs. 3,25,692.50 ps. which was sought to be recovered as damages from the Respondent.

7. The Respondent opposed the claim by contending in the course of its written statement that the manufacturing of Acetic Acid depends upon timely allotment of alcohol and other raw-material by the government, regular supply of power, harmonious industrial relations and the like. It is the version of the Respondent that during the relevant period, the supply of alcohol by the State Government was very low which resulted in loss of production and the factory functioning is about 8 to 10 days per month. The main contention however of the Respondent is that there is no concluded contract between the Appellant and the Respondent. By passing purchase order, the Appellant only offered to purchase certain quantity of Acetic Acid from the Respondent but the Respondent did not accept the same. The purchase order may contain some terms and conditions for supply but there was No. written agreement between the Appellant and the Respondent to supply the product as per the schedule attached to the purchase order. Since there is no concluded agreement or contract between the parties, the question of committing breach by the Respondent does not arise and the Appellant is not entitled to claim any damages. It was also contended by the Respondent that the Appellant was highly irregular in making payments and it cannot insist upon the Respondent to deliver the consignments as per schedule since it depends upon several factors as indicated hereinabove.

8. Basing on the rival contentions, the learned trial Court framed the following issues:

i) Whether the Plaintiff is entitled to recover Rs. 3,25,692.50 ps. with interest

thereon @ 21.5% per annum as prayed for?

ii) Whether the rate of interest is exorbitant and is not based on the contract?

iii) Whether the court fee paid is not correct?

iv) To what relief?

9. Before the learned trial Court, the Appellant examined PWs.1 and 2 and marked Exs.A-1 to A-135. Whereas the Respondent examined DW-1 and marked Exs:B-1 to B-43. Upon considering the entire evidence on record and having regard to the facts and circumstances of the case, the learned trial Court answered all issues in favour of the Respondent and dismissed the suit with costs.

10. The only point that arises for determination in this appeal is - whether there is a concluded contract between the Appellant and the Respondent so as to make the Respondent liable to pay damages for breach of contract?

11. Ex.A-1 dated 17.10.1983 is the letter of offer made by the Appellant which the Appellant considers it as a contract. Perusal of Ex.A-1 only indicates that it is a purchase order placed by the Appellant with the Respondent indicating some terms and conditions of supply including the delivery schedule. DW-1-Financial Manager of the Respondent company admitted that Ex.A-1 bears his signature. But he explains that he signed on Ex.A-1 only acknowledging the receipt of the same but he never accepted the terms and conditions mentioned in Ex.A-1 and there is No. such agreement between the parties. In fact, nowhere in Ex.A-1 it is mentioned that the Respondent company accepted the terms and conditions in the purchase order. The counsel for the Appellant also did not even suggest to DW-1 in the cross-examination that he signed Ex.A-1 accepting the terms and conditions mentioned in the purchase order. PW-1 admitted in his evidence that there is No. separate letter addressed by the Respondent accepting the terms and conditions mentioned in Ex.A-1. Whereas, PW-2, the Chairman and Managing Director of the Appellant company admitted in the cross-examination that there is No. separate letter confirming the terms and conditions in Ex.A-1 from the Respondent.

12. As per the delivery schedule in Ex.A-1, the Respondent has to supply two loads of Acetic Acid in November, 1983 and three loads each in the months of November and December, 1983. But supplied two tanker loads on 03.01.1984 and 04.01.1984. The Appellant company received the consignments without any protest even though there is abnormal delay. There was even No. correspondence from the Appellant objecting for the inordinate delay in supplying the product. Not only there occurred inordinate delay, the price was also increased from time to time and the Appellant did not raise any protest. In spite of this, the Appellant continued to receive the consignments under Exs.A-4, A5 and A-6 purchase orders accepting the higher price quoted by the Respondent. This is evident from Exs.A-9 and A-10 acceptance letters of the Appellant. All these circumstances clearly reveal that there was no concluded agreement or

contract between the parties. If at all, there is any such concluded contract, when the terms and conditions and delivery schedule mentioned in Ex.A-1 was not followed by the Respondent, the Appellant ought to have refused the delivery of the product after the period stipulated in Ex.A-1 and it also ought not to have agreed for the enhanced price. From the defence of the Respondent mentioned in the written statement, it appears that it was not possible for the Defendant to stick on to a particular schedule because the production of Acetic Acid depends upon various factors such as timely allotment of alcohol and other raw-material by the government, regular supply of power, harmonious industrial relations and the like. Further, if the conduct of the parties is taken into consideration, it is not possible to accept that there is any concluded contract between them. The Appellant was placing purchase orders and the Respondent was supplying the product from time to time basing on the availability of the product and its convenience. Without making any protest, the Appellant was accepting the delivery of the product beyond schedule and also accepting the enhanced price quoted by the Respondent from time to time. A contract can be said to be created only when there is intention on the part of the parties to enter into a legal obligation. In the instant case, only offer was made by the Appellant but there is No. material either express or implied to indicate that the said offer was accepted by the Respondent. There is no material placed on record by the Appellant showing communication from the Respondent about the acceptance of offer made by the Appellant. Moreover, the conduct of the parties obviously reveal that there was no concluded contract between them. Unless there is a concluded contract between the parties, the question of committing any breach by the Respondent does not arise. There were No. definite terms agreed between the parties so as to bind them legally. Merely because the Respondent dispatched some consignments in response to the offer made by the Appellant to purchase, it is not possible to hold that there is an agreement between the parties with some specified terms. The evidence on record also does not show that the parties agreed to abide by certain terms and conditions. For all these reasons, it is not possible to hold that the Respondent committed any breach of contract and the learned trial Court did not commit any error of law or fact in dismissing the suit filed by the Appellant. The decree and judgment passed by the trial Court do not call for any interference in the present appeal.

13. Accordingly, the appeal is dismissed without any order as to costs.