

(2018) 08 CAL CK 0060
In the Calcutta High Court
Case No : Civil Suit No. 259, 266 of 2016

Rinki Plastics Private Limited

APPELLANT

Vs

Gd Petro Chemicals Private Limited

RESPONDENT

Date of Decision : 24-08-2018

Acts Referred:

Citation : (2018) 08 CAL CK 0060

Hon'ble Judges : MOUSHUMI BHATTACHARYA, J

Bench : Single Bench

Advocate : Chayan Gupta, Pallavi Gandhi, V. Raja Rao

Judgement

Moushumi Bhattacharya, J.

The instant suit is on account of unpaid price for goods sold and delivered by the plaintiff to the defendant. The plaintiff has claimed a decree for a

sum of Rs.3,59,43,670/- together with interim interest and interest upon judgment at 18% per annum.

The case made out in the plaint is that the plaintiff is engaged in the business of manufacture and sale of PVC pipes and fittings and has acquired a

substantial goodwill in this line of business. The defendant approached the plaintiff requiring various types of PVC pipes and fittings and placed orders

on the plaintiff for supply of several quantities of the aforesaid goods of required specifications. The plaintiff caused the goods of specifications as

given by the defendant and delivered the same to the defendant of a total amount of Rs.3,92,96,670/- (Rupees Three Crores Ninety Two Lakhs

Ninety six thousand Six Hundred Seventy) in January 2014. The plaintiff raised invoices for the goods delivered to the defendant together with copies

of the challans showing receipt of the goods as delivered to the defendant. The

defendant received the goods supplied by the plaintiff without any demur or protest but failed and neglected to pay the amount raised under the invoices despite repeated requests. The arrangement for payment under the transaction was maintained by way of a mutual open current running and continuous account where payments received on ad hoc basis from the defendant were given due credit without reference to any particular invoice and the amount was debited from the account for the payments made.

The total amount of goods sold and delivered by the plaintiff to the defendant in January 2014 stood at Rs.3,92,96,670/- and the total payments made

by the defendant for such deliveries amounted to Rs.33,53,000/- (Rupees Thirty Three Lakhs Fifty Three Thousand). A sum of Rs.3,59,43,670/- is

therefore due and payable by the defendant to the plaintiff (and is the decretal amount claimed). The plaint refers to a schedule of a statement of the

payments received by the plaintiff from the defendant from time to time against the goods supplied and a balance of Rs.3,92,96,670/- being outstanding

from the defendant. The plaintiff caused a notice issued through its advocate to the defendant on 31st August 2016 calling upon the defendant to pay

the outstanding dues with interest. Despite such notice, the defendant did not take any steps to repay the dues of the plaintiff. The instant suit was

filed on 1st October 2016.

The material disclosed in the plaint shows that the suit is maintainable as the plaintiff's claim for the dues against the defendant is not barred by

limitation. The defendant is carrying on business within the jurisdiction of this Court and therefore this Court is vested with the jurisdiction to try the

instant suit.

The defendant did not enter appearance in the suit despite service of summons on the defendant and hence by an order dated 1st May 2018, the suit

was directed to proceed as an undefended suit. In the said order it was also recorded that Counsel appearing for the defendant sought leave to retire

from the matter since no instruction was forthcoming from her client.

In order to prove his case, the plaintiff produced various documents which were marked as Exhibits in the examination-in-chief. These are:

Ext. A (collectively) - true copies of invoices/bills issued by the Plaintiff for the goods sold and delivered to the plaintiff.

Ext. B (collectively) - true copies of challans for receipt of goods as delivered

by the plaintiff to the defendant.

Ext. C- statement prepared by the plaintiff.

Ext. D, E and F- ledger and statement of outstanding amounts and receipts prepared by the plaintiff.

Ext. G- notice dated 31st August, 2016 from the plaintiff's advocate-on-record to the defendant together with postal receipt.

Mr. Sandip Modi was brought in as a witness for the plaintiff to give evidence in support of the case made out in the plaint. Mr. Modi is a director of

the plaintiff since inception of the plaintiff company in 2009. The witness deposed that the defendant approached the plaintiff in January 2014 over

telephone pursuant to which the arrangement of purchase and delivery of the goods between the plaintiff to the defendant was agreed upon. Witness

deposed that supplies were effected from the plaintiff's factory and the defendant used to send its men with a vehicle (lorry) to the plaintiff's

factory where the defendant's men would pick up the goods by signing challans and invoices.

In the examination-in-chief, the witness was shown the invoices raised by the plaintiff on the defendant at the time of supply of the goods and

identified the said documents pointing out that the price, delivery terms and the mode of payment were mentioned in the invoices being Exhibit-A of

the Judges Brief of Documents. The witness has identified and encircled the address of the defendant on the invoices and has proved the said invoices

as being true and correct. Since the originals of the invoices were said to be with the defendant, the witness was called upon to prove copies of the

invoices by identifying the signature on the documents as being of Mr. G.R. Saha, an office staff of the plaintiff. The witness identified the signature

of G.R. Saha and has also encircled the payment terms indicated in the invoices which was stated to be 90 days from the date of delivery of the

goods.

Witness deposed that payment terms in all the invoices, (Exhibit-A collectively to the Judges Brief of Documents) are identical and have been signed

by the same person, namely, Mr. G.R. Saha. The invoice also mentions the rate of interest to be claimed at 24% although plaintiff has claimed interest

at the rate of 18% as prayer (b) of the plaint. Witness was then shown copies of the delivery challans given by the plaintiff to the defendant for the

material received by the latter; Exhibit-B of the Judges Brief of Documents. The witness deposed that the challans correspond to the invoices and that

the address of the defendant was also mentioned in the challans. With regard to the actual deliveries, witness deposed that the defendant used to call

the plaintiff's men and inform that the defendant was sending its men with a lorry to collect the goods. The delivery challan mentioned the

particular lorry/truck number and further deposed that the lorry (vehicle) number mentioned on the invoices and on the delivery challan is the same

and that all the vehicle numbers mentioned in the challans are reflected in the invoices. Since the originals of the challans were stated to be with the

defendant, questions were put to the witness for the plaintiff to prove the delivery challans which were duly proved by the witness. The witness

further explained that the defendant received these challans from the plaintiff's factory, namely, M/s. Rinki Plastics Private Limited. The contents

of the delivery challans were proved to be true and correct.

Mr. Modi then identified and deposed in relation to a statement prepared by the plaintiff on the amount outstanding from the defendant being

Rs.3,59,43,670/-. This statement (Exhibit-C of the Judges Brief of Documents) has been stated to be prepared by the office accountant of the witness

and signed by the witness himself. The ledger, statement of outstanding dues and receipts prepared by the plaintiff (Exhibit- D, E and F respectively of

the Judges Brief of Documents) has been identified and proved by the witness. Witness has deposed that the debtor's (defendant's) ledger

maintained by the plaintiff states all the dates and the amounts together with the connected invoice numbers and aggregates to Rs.3,92,96,670/- and

has been prepared by the witness's office accountant. The witness deposed that he has gone through the entire document and certified its

contents to be true and correct.

Witness next deposed to the debtor's ledger which shows that payment received from the defendant amounted to Rs.33,53,000/- and the

remaining amount therefore is Rs.3,59,43,670/-. This document (Exhibit-E) was said to have been prepared by the witness's accounts department

and the contents have been duly certified as being true and correct. The next document proved is the total invoice raised by the plaintiff on the

defendant and shows the invoices, dates, challan numbers and the amount of

Rs.3,92,96,670/- out of which the plaintiff has received Rs.33,53,000/-

from the defendant and the outstanding till date is Rs.3,59,43,670/-. The witness deposed that in this particular statement, the heading "amount

received through Bank" signifies the payment which has been received by the plaintiff from the defendant through RTGS/NEFT. The witness has

signed this document (Exhibit-F). Witness has then identified and proved the notice (Exhibit-G) sent by the plaintiff's advocate Mr. Rao to the

defendant since despite repeated requests by the plaintiff, the defendant failed to clear its dues. The witness has identified the signature of the

plaintiff's advocate who signed the notice in front of the witness and deposed that the said notice was sent through speed post. Next, the witness

stated that he has signed and affirmed the plaint on behalf of the plaintiff and certified the contents of the plaint as being true and correct.

From the facts as stated above and the evidence given by the plaintiff's witness, there cannot be any doubt that the plaintiff supplied the goods

according to agreed specifications to the defendant and that the latter received the goods without any objection or protest. The fact of supplies having

been made by the plaintiff to the defendant has been proved by the invoices raised by the plaintiff on the defendant, relevant contents of which tally

with the delivery challans given by the plaintiff to the defendant at the time of physical handing over of the said goods to the defendant at the factory

of the plaintiff. Both the invoices as well as the delivery challans mention the specific vehicle (lorry) number which was sent by the defendant to the

plaintiff's factory for collecting the goods. Since the originals of the invoices and the delivery challans were given to the defendant, the

plaintiff's witness satisfactorily proved the copies of the said documents.

There is no reason to doubt the authenticity or the contents of the statements made by the plaintiff in respect of the outstanding dues. This statement

has been sufficiently bolstered by the debtor's ledger giving all the material particulars including the relevant dates, the amount raised and the

invoice number. Exhibit-F shows that the plaintiff has given due credit to the payment of Rs.33,53,000/- received from the defendant through RTGS

and hence the remaining amount pending payment is Rs.3,59,43,670/-, the decretal amount claimed in the plaint. The fact that the defendant failed to

make any payment after the 33 lacs would be borne out from Exhibit-G being the

notice issued by the plaintiff's advocate dated 31st August 2016

to the defendant which mentions the fact of unpaid price for the goods sold and delivered to the defendant. The defendant admittedly did not take any

steps pursuant to such notice and the suit was filed in October 2016 thereafter.

The defendant has no defence to the claim. It did not enter appearance in the suit and showed no interest in defending the statements made in the

plaint by way of a written statement or otherwise. The lack of interest on the part of the defendant would be evident from the submission made by

Counsel appearing for the defendant. on 1st May 2018 that no instructions were forthcoming from the defendant in respect of the instant suit.

By reason of the aforesaid, there shall be a decree in terms of prayers (a) and (b) of the plaint for a sum of Rs.3,59,43,670/- and interim interest upon

Judgment at 18% per annum from 30th January 2014 till payment. The department is directed to draw up and complete the decree as expeditiously as

possible. Urgent Photostat certified copy of this judgment, if applied for, be delivered to Counsel for the plaintiff, upon compliance of all the usual

formalities.