(2004) 12 DEL CK 0048

In the Delhi High Court

Case No : CP 269 of 2003

Royal Impressions APPELLANT

Vs

Michael Jansen Design P. Ltd. RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Citation : (2004) 12 DEL CK 0048

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Shiv Khorana, for the Appellant; Nemo, for the Respondent

Judgement

A.K. Sikri, J.—M/s. Royal Impressions, which is the sole proprietorship concern of Mr. Rajesh Kapoor, has filed this petition. The petitioner is doing the business of printing catalogues/visiting cards/envelops etc. Two printing orders were placed by the respondent company on the petitioner. One order was dated 22.2.2001 for printing of 500 sets of catalogues. The respondent is in the export business and wanted these catalogues containing information about its product to be printed. This order was for Rs. 9,09,00/-. However, after certain calculation, this amount was amended to Rs. 9,10,500/-. According to the petitioner, this order was duly executed. The respondent however, paid only a sum of Rs. 5,00,000/- against this order leaving a balance of Rs. 4,10,500-.

2. In fact, according to the petitioner, for printing of the catalogues she suggested and recommended the name of the petitioner and in these circumstances the respondent company contacted Mr. Rajesh Kapoor, who represented and assured that he was having necessary infrastructure, expertise and skill to do the job of printing and assembly of catalogues. On this assurance the petitioner was referred to by Ms. Chetna Sharma. Reposing complete faith in the petitioner, order dated 22nd February, 2001 was formally placed. In the letter dated 22nd February, 2001 it was clearly mentioned that five complete copies of the catalogue were required by March 28, 2001 and, Therefore, the petitioner should plan production schedule accordingly. The petitioner was also requested

to be in touch with Mr. Michael Janson, who had placed the order on behalf of the respondent clearly stating that this was necessary as the respondent could not afford mistakes.

3. Case of the respondent is that in spite of aforesaid clear terms with regard to delivery and quality, not a single copy of the catalogue was delivered by 28th March, 2001. By 16th May, 2001, when Mr. Michael Janson departed India for US to attend the foresaid furniture fair, only seven copies of catalogue were delivered, that too on 15th May, 2001, although by that time all the five copies should have been delivered. Mr. Jansen, Therefore, travelled to US without the copies of the catalogue and could not display respondent''s product and designs in the fair which led to loss of client, opportunity and substantial loss of potential business. It is also averred in the reply that due to non-delivery of the catalogue by 15th May, 2001 the company was, infact, not interested in taking the delivery of catalogue and in fact, was entitled to refund of Rs. 3 lacs. However, on the petitioner pleading with Mr. Jansen to take the delivery and not to cancel the order as it would cause immense loss to the petitioner and as the catalogues were in the printing process, company should accept the delivery and it was assured by the petitioner that he would supply the catalogue at a substantially reduced price in order to recover his investment only. Thereafter in the first week of June, 2001 in a meeting between the petitioner and Mr. Jansen and Ms. Chetna Sharma it was decided and agreed that the petitioner would supply, at the earliest, the ordered quantity of the catalogue at reduced price of Rs. 6 lacs and the respondent will try to use the catalogue for distributing the same in the US market, though the quantity for this purpose was large. It is further alleged by the respondent in the reply that on 10th November, 2001 the petitioner raised an invoice in the sum of Rs. 9,18,000/- stating that this was done for the accounting purpose, but however, the petitioner would charge only Rs. 6 lacs, as agreed. It is the case of the respondent that it started sending these catalogues to US market from October, 2001 but byanuary, 2002, the respondent began to receive phone calls and letter of complaints from important clients across the United States complaining about the poor quality of the catalogues. The complaints were mainly regarding bleeding in the colours, cracks in the cover page, no image clarity and law intensity of colours, loose binding etc. This forced the respondent to stop distributing the catalogues in the US market. Because of this poor quality even the alternative purpose could not be attained, alleges the respondent and the respondent suffered a severe setback causing it huge losses. However, by that time the respondent had already paid Rs. 5,50,000/- to the petitioner.

4. According to the respondent second order in the month of November, 2001 was placed as the petitioner had pleaded severe financial crunch before Mr. Jansen and requested for some more simple printing jobs not involving too much of expertise and skill.He also promised this time that there would not be any problem either on the front of delivery schedule or quality and relying on these assurances letter dated 20th November, 2001 was placed clearly mentioning that

if the work is not completed in time, te order would stand cancelled and advance will have to be returned. The completion time as mentioned in the order was 10-12 days for tear sheets and 15-20 days for mailers. The petitioner, however, did not adhere to the schedule and after 2-3 months sought to deliver certain material which was not only delayed but different from the ordered material. The respondent refused to accept the delivery but the petitioner dumped the same with the respondent. The petitioner is thus liable to refund Rs. 5,50,00/- given as advance which he has not done so far.

5. On the basis of aforesaid details it is pleaded that it is the petitioner who is liable to refund Rs. 5,50,000/- taken by the petitioner against the two orders and also liable for damages and losses suffered by the respondent due tot he acts of breaches on his part. It is, thus, stated that no amount is due to the petitioner and present petition is misuse and abuse of the process of law. The petitioner has not approached the court with clean hands and concealed relevant facts. It is the petitioner which has committed breach of the contract and in any case, there is dispute which deserves to be settled by leading evidence in a civil court and present petition is not maintainable.

6. Learned counsel for the parties, at the time of arguments laid stress on the respective pleadings on the basis of which case of the petitioner was that the orders were duly executed and the petitioner is entitled to remaining amount and the defense rained in the reply was after-thought and the respondent''s counsel, on the other hand, argued for dismissal of the petition as malicious.

7. As mentioned above, the placing of two orders is not disputed, although the respondent has his own version about the same. Execution of the order is also not in dispute, although defense of the respondent is that the order was executed belatedly and is not up to the mark as well. However, this defense has surfaced for the first time in the reply to the petition. The receipt of petitioner''s statutory notice by the respondent company is not denied. Admittedly, no reply was sent at that time. In thereply although the respondent maintains that first order was executed belatedly and it had right to reject the same, at the same time it is admitted that the supply of catalogue by the petitioner was accepted by the petitioner. The respondent has allege that it was on the basis of discussion between the parties in which Ms. Chetna Sharma also participated wherein the petitioner pleaded that cancellation of the order would lead to ruining of his business and also agreed that for the ordered quantity of catalogues he was charged reduced price of Rs. 6 lacs. However, there is no record of any such alleged meeting or that the petitioner agreed to charge Rs. 6 lacs. The respondent admits that invoice dated 10th November, 2001 was raised in the sum of Rs. 9,1,000/-. Again the respondent comes out with the allegation that the petitioner stated that it was only for accounting purpose. Otherwise the petitioner would be accepting the agreed price of Rs. 6 lacs. There is no record of this as well. It is difficult to accept that the alleged belated supplies will be accepted by the respondent on the aforesaid terms but without reducing the said

terms in writing. On the contrary, raising invoice dated 10th November, 2001 in the sum of Rs. 9,18,000/- further indicates that there may not be any such agreement. At least after receipt of the said invoice, the respondent could have reacted by writing that the petitioners had agreed to charged reduced price of Rs. 6 lacs if there was any such agreement. There is no response to the said invoice from the respondent''s side. Again although the respondent complains about the so-called poor quality and for which some of the letters from the clients are annexed, it is intriguing to note that the petitioner was not conveyed about it at any time. How, after receiving such complaints from its customers and losing potential business worth crores, as alleged by the respondent the respondent would maintain a stoic silence and would not even bring the same to the notice of the petitioner, is equally surprising. On the top of it, the petitioner was rewarded by second order. This conduct of the respondent exposes hollowness of its defense taken now in the reply.

8. Even in regard to execution of second order, it is not disputed that, although belatedly, the delivery of the goods was again accepted. If it was ''''dumped'''', as alleged by the respondent not a single letter was written by the respondent to the petitioner rejecting the same and asking the petitioner to take back the goods delivered. The respondent claims that it is entitled to refund of Rs. 5,50,000/- and also damages and losses suffered by it on account of acts/ breaches on the part of the petitioner.urprisingly, there is not a single demand letter sent by the respondent to the petitioner for this purpose. On the contrary, when notice is received by the respondent from the petitioner it is not even replied. Thus, it is the petitioner who takes step for filing the present proceedings but till date no action is taken by the respondent for alleged recovery. All these facts taken together would clearly show that defense raised is weak and sham.

9. This petition is, Therefore, admitted. Citation shall be published in the ''''Statesman'''' (English) and ''''Veer Arjun'''' (Hindi) for 11.4.05. However, in case the respondent deposits the amount of Rs. 5 lacs (after adding some interest component) with the Registrar General of this Court within four weeks, citation shall not be published. In case the amount is not deposited by the respondent the petitioner is entitled to published the citation and also would be entitled to press for appointment of a Provisional Liquidator.

