(2010) 07 DEL CK 0097

In the Delhi High Court

Case No : Regular Second Appeal No. 42 of 2005 and CM No. 2150 of 2005

Sh. B.N. Wadhwani Sole Prop. of Jeewan Diesels APPELLANT

Vs

Calcom Electronics Ltd., Shri Arun Bhatia, Shri Sushil Malik and Spectral Services and Consultants (P) Ltd. RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Citation : (2010) 07 DEL CK 0097

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : D.D. Singh, for the Appellant; V.K. Srivastva, for R-1 and R-3, Rakesh Kumar Garg and Noopur Singhal for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—plaintiff M/s Jeewan Diesels (Delhi) through its proprietor Sh. B.N. Wadhwani had agreed to supply 750 KVA D.G. sets to defendant No. 1 to be installed at 23/1, Wazirpur Industrial Area, Delhi-52. Advance payment of Rs. 4,00,000/- was received by the plaintiff on 29.3.1989 from defendant No. 4. plaintiff placed an order for the supply of the said D.G. sets with its manufacturer namely M/s Kirloskar Cummins Ltd. The D.G. Sets were to be commissioned at the site by 30.4.1989. In June 1989 the manufacturer raised the prices of the D.G. sets by 10% with effect from 1.7.1989. The said information was communicated by the plaintiff to the defendant. The enhanced price, however, was not paid by the defendant to the plaintiff. Suit for this amount i.e. a sum of Rs. 1,45,000/- along with interest was accordingly filed.

2. The Trial Court vide judgment dated 7.1.2004 dismissed the suit. Five issues have been framed. Ex.PW-1/5 dated 22.2.1991 i.e. the ''C'' Form issued by the defendant to the plaintiff had been considered as also the other documentary evidence including the letters Ex.PW-1/7 to Ex.PW-1/1 1 sent by the plaintiff to the defendant. The communication Ex.PW-1/17 i.e. the purported letter sent by the plaintiff to the defendant informing him about the increase in the price of the

D.G. sets was held not proved. Trial Court had further held that the invoices depicting the price at which the plaintiff had purchased the D.G. sets from the manufacturer have also not been placed on record. In this view of the matter the suit of the plaintiff was not proved and was accordingly dismissed.

3. The first Appellate Court endorsed the finding of the Trial Judge. The appeal was disposed of on 2.11.2004. While disposing of the appeal the Appellate Court inter alia held as follows:

The basic question involved in the present appeal is as to whether the price hike of Diesel Generating Set by M/s Kirloskar Cumins was duly intimated to the respondent or not. The appellant in this regard relied on letter Ex.PW-1/7, but failed to establish as to by which mode the said letter was sent to the respondent. Secondly, the appellant had with-held the invoice by which the Generating Set was allegedly purchased from M/s Kirloskar Cumins. Had the said invoice been placed before the Court it would have dispelled all the doubts concerning enhancement of the price of the equipment. The appellant thus with held the vital evidence for which learned trial court rightly drew adverse inference against the appellant. I do not see any reason to interfere with the order passed by learned Civil Judge. Also, I do not find any perversity in the impugned judgment and decree passed by the learned Trial Court.

4. Before this Court, it has been urged that a substantial question of law has arisen and which has been formulated in para 10 of the appeal. It is submitted that the ''C'' Form Ex. PW-1/5 was an admitted document which admits of the transaction between the parties. It had been issued by the defendant to the plaintiff depicting a transaction of Rs. 20,90,000/- between the parties. This document being an admitted document no further evidence was required to be led before the Court as an admitted document is not required to be proved.

5. Counsel for the appellant has placed reliance upon 2002 II AD (Delhi) 335 Taneja Skins Co.Pvt. Ltd. v. Bharath Skins Corporation. This judgment recites the undisputed proposition that where a document including a ''C'' Form is not disputed it may lend support to the claim of the plaintiff that an amount is due.

6. The question of law which has arisen and which has been formulated by this Court reads as follows:

Whether the ''C'' Form Ex.PW-1/5 dated 22.2.1991 was a valid acknowledgment of the transaction between the parties and was by itself sufficient to decree the claim of the appellant/plaintiff.

7. Perusal of the record shows that this question has to be answered in the negative and against the appellant. Both the fact finding Courts below have held that the plaintiff had failed to adduce evidence to prove his claim that he was entitled to the escalated amount of 10% in the increase in the price of the D.G. sets. Apart from the fact that Ex.PW-1/17 i.e. the letter purportedly issued by the plaintiff informing the defendant of the escalated price, not having been

proved, the plaintiff had also failed to place on record the invoices which would have depicted the price at which he had purchased the D.G. sets i.e. whether at the old rate or whether they were purchased at the increased and enhanced rate i.e. 10% over and above the agreed rate. No such evidence had been led before the Courts below.

8. Ex.PW-1/5 has been scrutinized. It has been relied upon by the Trial Court while dealing with issue No. 4. This document is an admitted document. It merely depicts the sale transaction between two registered sale tax payees i.e. between the plaintiff and the defendant, both the entries are dated 11.1.1990. This document had been considered by both the Courts below. It does not by itself in any manner prove the case of the plaintiff. The case of the plaintiff was that he had to install the D.G. sets with the defendant No. 1 by 30.4.1989. Even as per his own showing the price of the D.G. sets had been enhanced after 1.7.1989 i.e. much after his contract period. The transactions mentioned in Ex.PW-1/5 are dated 11.1.1990, which are again of a much later point in time.

9. The ''C'' Form is only a form issued by Sales Tax Department to the registered sale tax payers. If A, a registered sales tax payer buys any goods from B ,another registered sale tax payer and issues a ''C'' Form to him; in such an eventuality the sale tax will be collected and deposited by the issuer in the treasury of the government meaning thereby the issuer of the ''C'' Form undertakes to pay the sales tax.

10. Claim of the plaintiff could not have been decreed on this document alone as has been urged before this Court.

11. There is no discrepancy or fault in the findings of both the Courts below. The substantial question of law is answered accordingly. Appeal is without merit. The appeal and the pending application are dismissed.