(2011) 01 DEL CK 0481

In the Delhi High Court

Case No : Regular First Appeal No''s. 41 of 2000 and 59 of 2004

Shri Ahsok Parshad Gupta	APPELLANT
Vs	
K.M. Sugar Mills Ltd. K.M. Sugar Mills Ltd. Vs Shri Ahsok Parshad Gupta	RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0481

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Satya Prakash Gupta, in RFA 41/2000, Lalita Kohli and Abhishek Swarup, in RFA No. 59/2004, for the Appellant; Lalita Kohli and Abhishek Swarup and Satya Prakash Gupta in RFA 59/2004, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—These are two cross appeals filed by the parties, who were the plaintiff and Defendant in the trial court respectively, to the impugned judgment and decree dated 7.8.1999 whereby the suit for recovery of the Appellant Sh. Ashok Parshad Gupta (Appellant in RFA 41/2000) was decreed in part and dismissed for a part of the amount.

2. The Appellant in RFA 59/2004 was the Defendant in the suit and by which cross appeal it is prayed that the trial court ought to have granted to this Appellant/Defendant discount of 25% even on the second bill of supply of the chemicals by applying the same principle as applied in the first bill.

3. Reference which is made in this judgment to the Appellant and Respondent are those as in RFA 41/2000.

4. The facts of the case are that the Appellant was the seller and the Respondent was the buyer. Supply was made of certain chemicals by two bills dated 12.11.1992 and 29.1.1993. The first bill was for a sum of Rs. 2,61,128/- and the second bill was for a sum of Rs. 1,33,796.50. The total value of the goods

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therefore was Rs. 3,94,924.50. Since the Respondent failed to make payments of the bills, the suit for recovery was filed. The defence of the Respondent in the trial court was that the goods were defective and, therefore, the Appellant was not entitled to payment of 35% of the value of both the bills.

5. After the pleadings were completed, trial court framed the following Issues for determination:

1. Whether the goods supplied by the plaintiff to the Defendant were of sub standard quality? OPP

2. Whether this Court has no territorial jurisdiction to try and decide this suit? OPP

3. Whether the Defendant is entitled to deduct Rs. 1,40,834.64 on account of supply of the sub standard quality of goods? OPP

4. Whether the plaintiff is entitled to interest, if so, at what rate and to what amount? OPP

5. Whether the plaintiff is entitled to the suit amount? OPP 6. Relief.

6. The main discussion is with respect to Issue No. 1 and while dealing with this Issue, the trial court has arrived at a finding that goods covered under the first bill were not of the requisite quality/purity. In this regard, the trial court relied upon the letter dated 20.1.1993 written by the Appellant to the Respondent and in which the representative of the Appellant had agreed that defective goods will be replaced. The trial court has relied upon the report of M/s. Shri Ram Institute in which there were findings that the goods were defective.

Two arguments were raised by the Appellant/plaintiff in the trial court, firstly that there was no specific agreement regarding the level of purity and secondly the samples were not taken in the presence of the representative of the Appellant. These two arguments have been dealt with by the trial court firstly by holding that the Appellant, when he appeared as witness (PW-1), himself admitted in his cross-examination that the level of purity in the chemicals supplied by him was 98 or 99% as per ISI specifications. The trial court found, however, as per the report of the M/s. Shri Ram Institute that the purity content was far-far lesser and in fact even lesser than 50%. So far as the factum of not lifting of the samples in the presence of the representative of the Appellant is concerned, the trial court has referred to the fact that when this grievance was made by the Appellant, Respondent asked the Appellant to depute his representative to take the second sample and get it tested from its own laboratory, however the Appellant mysteriously remained quiet.

7. The trial court has also found that so far as the second bill is concerned, the same is dated 29.1.1993 and, therefore, the agreement, as stated in the letter dated 20.1.1993 of the Appellant, cannot apply to the subsequent delivery dated 29.1.1993.

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8. Before this Court, the learned Counsel for the Appellant argued that the trial court has wrongly held that the materials were defective. The same arguments which were raised in the trial court and dealt with by the trial court were again re-argued before this Court. On behalf of the Respondent in the cross-appeal it was argued in addition to supporting the decree to the extent passed that since discount was given for the first bill for 25% of the amount on account of defective goods, discount of 25% ought to have been given even for the second bill since the goods were defective even under the second bill.

9. I am unable to agree with the arguments of the Appellants in both the appeals and both the appeals are liable to be dismissed. The trial court has rightly examined all the issues and after detailed discussions arrived at a conclusion that the goods/chemicals which were supplied by the Appellant to the Respondent were not of the requisite quality qua the first bill. Para 9 of the impugned judgment (internal pages 7 to 11 of the impugned judgment: there are repetitions of para numbers) is relevant and the same exhaustively deals with the position and the same is accordingly reproduced below:

9. As against this evidence of the plaintiff, the Defendant examined V.K. Verma, Dy. Director, in Siriram Institute for Industrial Research. He deposed that the sample of caustic soda, washing soda and Amonima Bifloride was sent to this Institute by the Central Agency, Darya Ganj. He examined those for finding the purities in the samples. After examining the samples he gave three separate reports. He proved his reports as Ex-DW1/1 to Ex.DW1/3. He further deposed that price of these chemicals depends upon the level of purity. The only part of cross-examination which is relevant is that the witness admitted it to be correct that the report given by this Institute is more reliable and authentic then the report given by any other private laboratory. There is no dispute that as per the reports of this Institute Ex-DW1/1 to Ex.DW1/3 samples were found to be of sub standard quality. Report Ex.DW1/1 shows that level of purity in the sample of caustic soda was 37.1%. It is admitted by the plaintiff himself during cross-examination of this witness that the report given by Siriram Institute is more authentic and reliable than any other private laboratory. The arguments of the learned Counsel are two fold. Firstly, there was no specific agreement regarding the level of purity in the goods supplied and secondly, the samples were not taken in the presence of representative of the plaintiff and hence this report was not with regard to the goods supplied by the plaintiff and not binding on the plaintiff. There is no force in the contention raised by the ld. counsel because PW-1 himself admitted in his cross-examination that the level of purity in the chemicals supplied by him was 98 or 99% as per ISI specifications. So even if there was no specific agreement but when certain specifications are prescribed by ISI, presumption is that the goods supplied would be of that standard only. The second contention was that the sample was not taken in the presence of their representative. It is admitted by the plaintiff that they were informed well in time by the Defendant that the goods supplied by them were of sub standard quality. Goods were supplied on 12.11.92 and on 6.1.93 itself the plaintiff

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received letter from the Defendant that the goods supplied were of substandard quality. It is admitted that their representative visited the premises of the Defendant for inspection of the goods. It is admitted in the plaint itself that the representative of the plaintiff TP Tripathi went to Faizabad and agreed for getting the goods tested either from DCM Laboratory or from any other Laboratory and to abide by the test report of the Laboratory. It is also admitted in para 11 of the plaint that the said representative of the plaintiff also agreed to replace the balance of the goods sent by the plaintiff in case any defect was found after the goods were tested by the Laboratory. It is admitted in the plaint itself that the letter dated 20.1.93 was given by the said representative of the plaintiff to the Executive Director of the Defendant in which all the aforesaid facts were mentioned. Letter mark A is the same letter. This letter was denied by the plaintiff during admission denial of documents. Admittedly, no evidence has been led by the Defendant to prove this document or to prove their defence that the goods supplied were of sub standard quality and TP Tripathi had handed over the letter mark A to the Defendant. But still, I am forced to rely upon this letter because the contents of this letter have been admitted by the plaintiff in para 11 of the plaint itself. This is the same letter dated 20.1.93 addressed by TP Tripathi to the Executive Director of the Defendant. In this letter, Tripathi agreed to abide by the report of the DCM Laboratory. Now it does not lie in the mouth of the plaintiff to say that the sample was not taken in their presence and they are not bound by the report of DCM Laboratory, though in the letter mark A it is not specifically written that the sample has been taken in the presence of Tripathi and same has been sealed but the contents of the letter give an impression that this letter was written by Tripathi after taking of the samples in his presence because when he was very much present there and had specifically gone there for inspection of the goods supplied by them and was also binding himself with the report of the DCM Laboratory, there was no occasion for the Defendant not to take the samples in his presence and Tripathi also would not have agreed to accept the report of the Laboratory unless sample was taken in his presence and he was satisfied that the sample was being taken out of the goods supplied by them only. In para 20 of the plaint, the plaintiff submitted that the letter dated 26.8.94 was sent by them to the Defendant wherein, it was informed to the Defendant that no sample was taken in the presence of their representative. In reply dated 8.9.94 to this letter of the plaintiff, the Defendant again wrote them that two samples were taken from the chemical supplied by them in presence of their representative, out of which one sample was sent for analysis to DCM Laboratory through Central Agency, Darya Ganj and one was still lying with them. All the samples were sealed in presence of Tripathi under his signatures and once again the plaintiff was advised that they could send their representative who could collect the second sample which was lying with them and get it analysed from any other Laboratory if they were having no faith in the DCM test. After receipt of this letter, the plaintiff did not depute any representative to collect the samples which were still lying with the Defendant and to get it analysed from any other Laboratory. Under these facts and circumstances and

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considering the reports Ex.DW1/1 to Ex.DW1/3 and the letter of the Defendant dated 6.1.93. I am of the opinion that the Defendant has successfully proved that the goods supplied to it vide bill dated 12.11.92 for a sum of Rs. 3,61,158.50 were of sub-standard quality.

I do not find any error whatsoever in the discussion and conclusions in above quoted para 9. The trial court has rightly held the goods to be defective.

10. As regards the percentage of discount this aspect has been dealt with in para 10 (running page 27) of the impugned judgment and the same reads as under:

10. The onus was on the Defendant to prove that the goods supplied vide bill dated 22.11.92 as well as vide bill dated 29.1.93 for sum of Rs. 1,33,796.50 were defective. The Defendant has successfully proved that the goods supplied to them vide bill dated 12.11.92 were of sub-standard quality because immediately letter dated 6.1.93 was written to the plaintiff informing him that the goods supplied by them were of sub-standard quality. The samples were taken in the presence of representative of the plaintiff and reports Ex.DW1/1 to Ex.DW1/3 have been proved but no evidence has been led by the Defendant to prove that the goods supplied vide bill dated 20.1.93 for Rs. 1,33,796/- were of sub-standard quality because after receipt of these goods, there is no communication on the record by the Defendant that the plaintiff was intimated regarding the sub-standard quality of the goods or that any chemical examination report was obtained to prove that the goods were sub-standard. Hence, I hold that the goods supplied by the plaintiff to the Defendant vide bill dated 22.11.92 for sum of Rs. 2,61,128.50 were of sub-standard quality. Issue is decided accordingly.

Once again, there is no illegality or perversity in the aforesaid findings because once the goods are found to be defective, the Respondent was surely entitled to reduction in the amount of bill. The trial court on a balanced judgment has found it fit to grant 25% although the Respondent has prayed for deduction of 35%. I do not find that my estimate can in any manner better replace the considered estimate of reduction granted by the trial court of 25%. I may however note that the Respondent in its correspondence had claimed a discount varying between 25% to 32% and which it had made into a flat claim of discount of 35% in its written statement.

11. So far as the argument of the Respondent in the present appeal and the Appellant in RFA 59/2004 is concerned that discount of 25% should also be granted in the second bill. I find that this argument is not acceptable because the delivery of goods under the second bill was pursuant to the invoice dated 29.1.1993. The agreement of replacement of the goods as shown in the letter dated 20.1.1993 is therefore prior to the actual supply of goods under the second bill dated 29.1.1993. On 20.1.1993 surely it cannot be presumed that the goods which would have been supplied by a subsequent bill on 29.1.1993 would also be defective so the agreement dated 20.1.1993 should automatically apply to the second bill also. The trial court has therefore rightly rejected the claim of

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discount of 25% on the second bill and which aspect has been dealt with by the trial count in para 10 of its judgment with which I agree.

12. In view of the above, I do not find any illegality or perversity for this Court to interfere in exercise of its appellate jurisdiction. Merely because two views are possible, this Court is not entitled to interfere with the judgment of the trial court. There is neither any illegality nor any perversity nor any injustice caused to either of the parties by the impugned judgment and decree.

13. The appeals are therefore dismissed, leaving the parties to bear their own costs. The interim orders are vacated. The amount so pursuant to the decree had been deposited by the Appellant in RFA 59/2004. The amount deposited by the Appellant in RFA 59/2004 along with accrued interest, if any, be released to the Respondent in the said RFA 59/2004 and the Appellant in RFA 41/2000. Trial court record be sent back.

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