

(1989) 07 PAT CK 0033

In the Patna High Court

Case No : Appeal from Original Decree No. 80 of 1979 (R)

Shri Sitaram Ladsaria

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 12-07-1989

Acts Referred:

Sales of Goods Act, 1930 — Section 42

Citation : (1990) 2 PLJR 111

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : P.K. Sinha, for the Appellant;

Final Decision : Allowed

Judgement

B.P. Singh, J.—This appeal is directed against the judgment and decree passed by the Subordinate Judge, 1st Court, Dhanbad in money Suit No. 49 of 1978, dated 24th March, 1979. The Learned Subordinate Judge, dismissed the suit filed by the appellant for recovery of the amount of Rs. 19,000/- from the defendants/respondents as per account given in Schedule "B" of the plaint, as also pendent lite and future interest at the rate of 12% per annum. Sri P.K. Sinha, has made his submissions on behalf of the appellant, but the respondents/defendants have not appeared to contest the appeal, though served with notices.

2. The material facts of the case are not in dispute. The appellant/plaintiff deals in electrical goods, insulating materials and such other articles, and carries on his business at Dhanbad, in the name and style of M/s India Trading Company. The appellant is the sole proprietor of the aforesaid concern. The respondent No. 1 is the Bharat Coking Coal Limited, (Hereinafter referred to as the BCCL) through its Area General Manager, Kustore. The BCCL invited quotations for supply of copper strips with double glass cover and silicon varnish of 6 m.m. X 2 m.m. thickness. The quotation of the appellant was accepted by the BCCL, and the appellant was called upon to supply the goods according to the specifications, the supply to be made was of 220 Kgs of such copper strips. The order for the supply is dated

19.5.75 and is marked as Exhibit "1".

3. It is not in dispute that the goods were supplied on 28.7.75. According to the appellant the price of the goods should have been paid within 30 days from the date of receipt of the goods, after inspection of the materials supplied to the respondents/defendants. However, they took no steps either to inspect the goods supplied, or to pay the price thereof. Since the appellant was not paid the price of the goods supplied, on 20.2.1976 he sent a demand notice through his lawyer. Upon receipt of the lawyer's notice, it appears that the respondents got goods inspected on 30.3.1976. The inspection note (Exhibit "C") is dated 30.3.1976 and discloses that upon inspection the goods were not found to be according to the specifications. The case of the respondents is that the strips did not have the requisite thickness. It appears that the rejection memo was communicated to the appellant/plaintiff on the 2nd of April, 1976. It appears that thereafter, there was some negotiation between the appellant and the respondents as is evident from the letters written by the BCCL dated 31.3.1977 and 25.12.1976 which have been marked as exhibit "4e" and "4f" respectively. However, since no payment was made to the appellant/plaintiff, the instant suit was filed for recovery of the amount together with interest.

4. The facts stated, above, are not in dispute. The appellant submitted that once the goods were supplied to the respondents, they should have paid the price of the goods within 30 days. According to the appellant, even if, the amount was not paid within 30 days, it should have been paid within a reasonable time. Since the respondents had a right of inspection, and rejection of the goods on the ground that they were not according to the specifications, the inspection should have been done within a reasonable time. According to the appellant, the goods were supplied on 28.7.75. The rejection note was received by the appellant on 2.4.1976. According to the appellant, the respondents could not have rejected the goods after a lapse of over eight months. The trial court has negatived this plea and has held that since the goods were not according to the specifications the appellant could not claim the price merely because it had delivered the goods which were not according to the specifications.

5. It is fairly well-settled that where a purchaser places an order for supply of goods according to the specifications given by him, the seller must supply the goods which are according to the specifications. In case the goods are not so supplied, it would be open to the purchaser to reject the goods and not to pay for them. However, the right to accept or reject the goods must be exercised within a reasonable time. If the goods are supplied at any place as per the directions of the purchaser, it is the duty of the purchaser to inspect the goods within a reasonable time and to accept or reject the goods within a reasonable time. Section 42 of the Sale of Goods Act provides that the buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when,

after lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. It therefore, follows that the respondents were required in law to accept or reject the goods, within a reasonable time. What is reasonable time is a question of fact and depends upon the facts and circumstances of each case, having regard to the agreement between the parties, the nature of goods involved, as also the nature of investigation which has to be carried out to ascertain the quality and nature of the goods involved. If the purchaser does not reject the goods within a reasonable time, he is deemed to have accepted the goods.

6. Applying this principle to the instant case, it would appear that the copper strips of a particular specification were required to be supplied. Those goods were supplied on 28.7.1975. The respondents had only to inspect the quality and thickness of the copper strips. For ascertaining whether the goods were according to specifications a period of about one month would have been more than sufficient. Even if, more latitude be given for this purpose, it is difficult to accept that for inspecting such goods and accepting or rejecting them, the reasonable time required would be more than two months even where the buyer is not prompt in his actions. In the instant case, however, the goods were inspected for the first time on the 30th of March, 1976 and that too when the appellant issued a lawyer's notice. In my view, the respondents having not rejected the goods for almost eight months, they forfeited the right to reject those goods after such long delay. It must be held that they had accepted the goods and were consequently liable to pay for them. It must be that goods were not according to specifications, but the law gives to the buyer the right to reject goods which are not according to specifications within a reasonable time. If the buyer fails to do so, he must squarely blame himself. In the instant case, a plea was sought to be raised on behalf of the respondents, that on account of some re-organisation in its office, there was delay in inspection. That hardly explains the delay of eight months. It appears to be a vague and lame excuse. I therefore, hold that this appeal must succeed. Accordingly, the suit is decreed with costs. In the facts and circumstances of this case, interest at the rate of 6% from 28.8.75 till the date of filing of the suit as also for future interest till realisation of the amount is awarded. Let a decree be drawn up accordingly.