(2014) 07 CAL CK 0042

In the Calcutta High Court

Case No : C.S. No. 240 of 1993

Sigma Search Lights Ltd. APPELLANT

Vs

Telekrik Electricals (Nagpur) Pvt. Ltd. RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Citation : (2014) 07 CAL CK 0042

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Advocate : Dhruba Ghosh, Anupam Dasadhikary and Arun Mukherjee, Advocate for the Appellant

Judgement

Debangsu Basak, J.—The suit was for recovery of goods sold and delivered. A written statement of the Defendant No. 1 was found on record. However, none appeared for the Defendant No. 1 at the time of hearing of the suit. The plaintiff at the instance of the Defendant No. 1 sold and delivered 84 search lights, lamps and control gears to the Defendant No. 2. The Defendant No. 2 paid the value of the supplies to the plaintiff by demand draft. The Defendant No. 1 acted in breach of the arrangement between the plaintiff and the Defendant No. 1 necessitating the plaintiff to file the present suit.

2. The plaintiff subsequent to the filing of the suit applied for interim relief with regard to the demand draft on which various interlocutory orders were passed. On such interlocutory application by an Order dated July 9, 1993 the Hon''ble Court appointed a Receiver who was directed to collect the draft and to keep such draft in safe custody. Subsequently by an Order dated September 4, 1993 the Receiver was discharged and Joint Receivers were appointed. The Joint Receivers were directed to encash the bank draft and keep the proceeds thereof in an interest bearing fixed deposit. The Joint Receivers were Arun Chandra Mukherjee, Advocate of record of the plaintiff and Mrs. Heera Jain, Advocate.

3. The plaintiff disclosed various documents and produced one witness at the

hearing of the suit. I have considered the pleadings of the parties and the exhibits as well as the oral evidence on record.

4. The plaintiff was a manufacturer of search lights of various types. The Defendant No. 1 approached the plaintiff for manufacture of 150 numbers of search lights, lamps and control gears. The Defendant No. 1 had an order from the Defendant No. 2 dated December 29, 1992. The Defendant No. 2 was the Director of Industries, Stores Purchase Department, Uttar Pradesh, Kanpur and the Defendant No. 3 was the Inspector General of Prisons, Uttar Pradesh, Government of Uttar Pradesh. The plaintiff and the Defendant No. 1 agreed amongst themselves that the plaintiff would act as the agent of the Defendant No. 1 and would deliver the goods to the Defendant No. 3. The plaintiff would receive back to back payment from the Defendant No. 1 for the supplies. The plaintiff would receive 95% of the value of the goods. For such purchase the plaintiff and the Defendant No. 1 would open a Bank Account at Lucknow. The Defendant No. 1 placed order for 84 pieces of the goods for supply to the Defendant No. 2. The plaintiff supplied the goods to the Defendant No. 2. Bills in this regard were raised by the plaintiff on the Defendant No. 1. A chart showing the details of the Bills, relevant lorry receipts by which the goods were supplied and the consignment notes was prepared by the plaintiff and marked as exhibit. The plaintiff established supply of 84 pieces of goods. The fact that the plaintiff supplied the goods to the Defendant No. 2 would appear from the issuance of the demand draft by the Defendant Nos. 2 and 3 to the plaintiff. A copy of the demand draft was also marked as an exhibit in the suit.

5. The plaintiff requested payment from the Defendant No. 1. The Defendant No. 1 sought to raise disputes to deny payment to the plaintiff requiring the plaintiff to file the suit.

6. As noted herein in the instant suit a Receiver and subsequently Joint Receiver was appointed initially for custody and, thereafter, encashing the proceeds thereof and making fixed deposits out of the proceeds of such bank drafts.

7. The plaintiff, therefore, established its claim. The plaintiff had sold and delivered the goods to the Defendant Nos. 2 and 3. The Defendant Nos. 2 and 3 acknowledged the receipts of the goods and paid the value of such goods by way of a demand draft. The demand draft was encashed after obtaining orders in that regard from Court.

8. Then came the question of quantum of claim of the plaintiff. The aggregate value of the 10 bills of the plaintiff was Rs. 14,64,328/-. In terms of the arrangement between the plaintiff and the Defendant No. 1 the plaintiff was entitled to 95% thereof being Rs. 13,91,112/- along with interest.

9. The demand draft issued by the Defendant No. 2 was for a sum of Rs. 12,87,607.60p. The plaintiff will be entitled to the entirety of the proceeds of the demand draft issued by the Defendant No. 2 together with all accrued interest therein. The Joint Receiver appointed will encash the fixed deposit if required

prematurely and shall make over the proceeds of the fixed deposit to the plaintiff directly within seven working days of the date of communication of this order on them.

10. The plaintiff will be entitled to a decree of Rs. 13,91,112/- together with interest thereon at the rate of 9 per cent per annum on and from March 18, 1993 until realization against the Defendant No. 1. The rate of 9 per cent is awarded taking into consideration that the nature of transaction had by and between the parties is commercial and that the nationalized bank does not charge interest in respect of commercial transaction at rates less than that. The plaintiff ought to have received the sum of Rs. 13,91,112/- upon the supply being effected in March 18, 1993 and did not receive such payment and is, therefore, entitled to reasonable compensation by way of interest on non-receipt of such payment on March 18, 1993. The plaintiff will appropriate the proceeds received from the Joint Receivers towards pro tanto satisfaction of the decreetal amount. The plaintiff will be entitled to execute the balance decree against the Defendant No. 1. The plaintiff will also be entitled to costs of the suit assessed at Rs. 50,000/- from the Defendant No. 1.

11. C.S. No. 240 of 1993 is decreed accordingly. The department will draw up the decree as expeditiously as possible.

Later:

12. It was submitted that the remuneration of the Joint Receivers were not provided. The Joint Receivers will be entitled to 1000 G.Ms each as final remuneration. The Joint Receivers will deduct the remuneration from the accruals of the fixed deposit and will make over the net proceeds of the fixed deposit to the plaintiff by an account payee cheque. Upon such payment, the Joint Receivers will stand discharged without any requirement to file any accounts.