(2011) 05 DEL CK 0327

In the Delhi High Court

Case No : Regular Second Appeal No. 196 of 2007

Smt. Kanta Rani and Others APPELLANT

Vs

Saniton Fabrics Ltd. RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0327

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Manisha A. Narain, for the Appellant; Ashish Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal has impugned the judgment and decree dated 28.04.2007 which had reversed the findings of the trial Judge dated 15.03.2003. Vide judgment and decree dated 15.03.2003 the suit filed by the Plaintiff Kanta Rani and Ors. seeking recovery of Rs. 1,59,798.66 along with interest against the Defendant had been decreed. The impugned judgment had reversed this finding; suit of the Plaintiff stood dismissed.

2. The Plaintiff was carrying on the business of trading of cloth materials in the name and style of M/s Kumar Textiles as sole proprietor. The Defendant was also carrying on the business of manufacture and sale of suiting cloth material. On the materials supplied by the Plaintiff, the Plaintiff was entitled to sale incentives of 3%, special discount and 2% being the exclusive dealer of the products of the Defendant as also an additional discount of 1% being exclusive discount. Business transactions between the parties continued from 21.09.1991 till 21.03.1993; for a total sum of Rs. 26,63,633.11 @ 1% totaling to a sum of Rs. 1,59,798.66 as the discount incentives. The Defendant inspite of requests has failed to pay the said amount; suit was accordingly filed.

3. The Defendant has contested the suit. Territorial jurisdiction of the court was

challenged. On merits, it was stated that the Defendant was not liable to pay any out standings; the Plaintiff is liable to pay the amount as mentioned in the legal notice dated 10.10.1994; no amount was due from the Defendant.

4. On the pleadings of the parties, the following five issues were framed:

1. Whether the court has no jurisdiction to entertain and try the suit? OPD

2. Whether the suit as filed is bad for non-joinder of the parties? OPD

3. Whether the Plaintiff is entitled to recover Rs. 1,59,798.66 from the Defendant? OPD

4. If issue No. 1 is decided in favour of the Plaintiff, what rate of interest and for which period, the Plaintiff is entitled?

5. Relief.

5. One witness on behalf of each of the party was examined. Oral and documentary evidence was led. Original indent was proved as Ex. PW-1/1; invoices were proved asEx.PW-1/2 to Ex. PW-1/151; credits notes were proved as Ex. PW1/I to Ex. PW1/O;statement of account was proved as Ex.PW1/P. Suit of the Plaintiff was decreed.

6. This finding was reversed by the first appellate court. Suit stood dismissed.

7. This is a second appeal. It has been admitted and on 03.08.2007, the following substantial question of law was formulated:

1. Whether the stipulations on the indent Ex.PW-1/1 are not binding upon the defendant?

8. On behalf of the Appellant, it has been urged that the judgment is a perversity; document Ex. PW-1/1 has not been appreciated in the correct perspective; attention has been drawn to the cross-examination of DW-1 wherein he had admitted that a copy of the indent (Ex.PW-1/1) might be in the office; it is pointed out that the Defendant had intentionally not produced the document for which an adverse inference has to drawn against him.

9. Arguments have been countered. It is pointed out that the claim of the Plaintiff is admittedly based on an oral agreement; the Defendant had specifically disputed Ex. PW-1/1 and stated that it was a forged document; the onus was thus upon the Plaintiff to have proved the document which he had failed to prove. The impugned judgment calls for no interference.

10. The impugned judgment on this score had returned the following finding; it reads as under:

12. What is appearing from the material placed and proved is that the Appellant was engaging in the manufacturing and sale of suiting material. The Respondent was purchasing the suiting material from the Appellant from time to time. The

Respondent has purchased the suiting material from Appellant vide invoices Ex.PW1/2to Ex.PW1/151. The invoices by which the Respondent has purchased the suiting material from the Appellant perused. At the bottom of the invoices, the terms and conditions are printed which are as under:

-TERMS & CONDITIONS:

- (1) ALL PAYMENT SHOULD BE MADE BY PAYEE''S A/C.CHEQUE OR DRAFT ONLY IN FAVOUR OF SANITONE FABRICS LTD.

(2) OVERDUE INTEREST WILL BE CHARGED @ 24%

(3) GOODS ONCE SOLD WILL NOT BE TAKEN BACK

(4) DISPUTE IF ANY RELATING TO THIS TRANSACTION WILL BE SUBJECT TO THE ARBITRATION RULES OF HINDUSTAN CHAMBER OF COMMERCE, BOMBAY ONLY

(5) SUBJECT TO BOMBAY JURISDICTION ONLY

The perusal of terms and conditions reflects that there was no agreement between the parties regarding the payment of sale incentive @ 3%, special discount @ 2% and exclusive dealership discount @ 1%. The perusal of the invoices further reveals that whatever the discount, for which the Respondent was entitled, has been calculated and mentioned on the invoices itself. The invoices placed and proved by the Respondent are not indicative that the Respondent was getting special discount/incentive as pleaded.

13. The Respondent has based its claim on the document Ex.PW1/1. The document Ex.PW1/1 perused. Ex.PW1/1 appears to be an indent bearing No. 392 dated 23.11.1991. One rubber stamp is also affixed on Ex.PW1/1 allegedly pertaining to sale incentive/special discount. The contents of the rubber stamp are produced herein below for the facility of reference:

-SALES INCENTIVE 3%

SPECIAL DISCOUNT 2%

EXCLUSIVE DISCOUNT 1%

The perusal of Ex.PW1/1 even does not reflect that there was an agreement between the parties whereby the Appellant has agreed to give sale incentive @ 3%, special discount @ 2% and exclusive discount @ 1% to the Respondent. Mere affixing or recital of incentive does not mean that there was a valid and binding contract entered into between the parties regarding the payment of incentive/discount by the Appellant to the Respondent.

14. An agreement can be reached between the parties by the process of offer and acceptance. For every transaction, there must be a proposal and its absolute and unqualified acceptance. A proposal is distinguished from mere statement of intention which is not intended to require acceptance. It may be an invitation to

make offers or to do business. Such a statement not intended to be binding as an offer. If there was some stipulation regarding the payment of special discount/ incentive by affixing rubber stamp on Ex.PW1/1, it was not a proposal as per law of contract. It was nothing more than an invitation to treat.

15. It is not the case of the Respondent that the Respondent has agreed to have business dealings with the Appellant due to payment of incentive/discount by the Appellant to the Respondent. Even the statement of account Ex.PW1/P does not establish that there was an agreement between the parties whereby the Appellant has agreed to pay incentive/discount as pleaded. The invoices Ex.PW1/2 to Ex.PW1/151 proved by the Respondent are only indicative of price of goods and other payments under different heads to be made by the Respondent to the Appellant. These invoices are not reflective of that there was a binding contract between the parties for payment of incentive/discount by the Appellant to the Respondent.

16. The perusal of impugned judgment reflects that the trial court has relied upon the statement of DW1. The DW1 deposed that the Appellant had been maintaining an open running account in the name of M/s. Kumar Textiles. It is not in dispute between the parties that they were having the business dealings. The dispute is regarding the payment of incentive/discount as appeared from the pleadings of the Respondent. It was for the Respondent to prove affirmatively that there was a binding agreement between the parties regarding the payment of incentive/discount as per indent Ex.PW1/1. The trial court has erred in observing that the Appellant has not produced an open running account and also not pleaded that the rubber stamp on the indent Ex.PW1/1 was forged. The main issue was regarding the existence of binding contract between the parties as to the payment of incentive/discount by the Appellant to the Respondent. It was required to be proved by the Respondent by leading appropriate evidence. The trial court has failed to appreciate the real controversy between the parties regarding the alleged entitlement of incentive/discount of Respondent from the Appellant on the sale proceeds. The Appellant has not withheld best evidence i.e. official copy of Ex.PW1/1 as observed by the trial court. Even otherwise office copy of Ex.PW1/1 was not a material document particularly when the Respondent was required to prove the existence of binding contract/agreement between the parties regarding the payment of incentive/discount by the Appellant. The trial court has erred while deciding the issue No. 3 in favour of the Respondent and against the Appellant. The Respondent is also not entitled to claim any interest.

17. The Respondent has failed to prove the existence of any binding contract/ agreement between the parties regarding the payment of incentive/discount. Mere rubber stamp on Ex.PW1/1 is not indicative of existence of any binding contract/agreement between the parties regarding the payment of incentive/ discount between the parties.

18. The appeal is allowed. The suit is dismissed. Impugned judgment and decree dated 15.03.2003 is hereby set aside.

11. The impugned judgment had correctly appreciated the bills/invoices proved by the Defendant Ex. PW-1/2 to Ex. PW-1/151. A perusal of any one of these documents shows that the terms and conditions of agreement between the parties are contained in these documents. The said terms and conditions read as follow:

(1) ALL PAYMENT SHOULD BE MADE BY PAYEE''S A/C.CHEQUE OR DRAFT ONLY IN FAVOUR OF SANITONE FABRICS LTD.

(2) OVERDUE INTEREST WILL BE CHARGED @ 24%

(3) GOODS ONCE SOLD WILL NOT BE TAKEN BACK

(4) DISPUTE IF ANY RELATING TO THIS TRANSACTION WILL BE SUBJECT TO THE ARBITRATION RULES OF HINDUSTAN CHAMBER OF COMMERCE, BOMBAY ONLY

(5) SUBJECT TO BOMBAY JURISDICTION ONLY

12. There is also a column mentioning SST discount, TSC discount and special discount; these discounts had been taken care of before the bill was finally prepared. No special discount was permissible as is evident from these documents asin the column of special discount, the figure is blank. The impugned judgment had noted that all the terms and conditions governing the rights of the parties were contained in the aforenoted bills; the submission of the Appellant/ Plaintiff that there was an oral agreement between the parties was not proved. The further submission of the Appellant that DW-1 had admitted that an office copy of the indent was lying with him is neither here nor there; if the Defendant required it, a specific question should have been put to DW-1 and he should have been asked to produce the copy of the same but none of this transpired in the courts below.

13. The two courts below have returned positive fact findings. This Court being a second appellate court can delve into facts only if there is perversity. No such perversity has been pointed out by learned Counsel for the Appellant.

14. The last submission of learned Counsel for the Appellant is that the impugned judgment had noted that Ex.PW-1/1 was an invitation to offer and not an offer and is thus an illegal finding is neither here nor there. Whether Ex. PW-1/1 it is held to be an invitation or a mere invitation to offer would not in any manner advance the case of the Appellant either way. The document Ex. PW-1/1 is the document under scrutiny. The impugned judgment after the appreciation of its contents read along with other documentary evidence adduced by the parties had held that Ex. PW-1/1 is a forged document; rubber stamp is not genuine; the Plaintiff was not entitled to the sale incentive, special discount and the additional discount as claimed for by him. This finding of fact does not in any manner calls for any interference.

15. Substantial question of law is answered accordingly in favour of the

Respondent and against the Appellant. There is no merit in this appeal. Dismissed.

