(2007) 08 DEL CK 0088

In the Delhi High Court

Case No : IA No. 8227 of 2004 in CS (OS) No. 1252 of 2003

Steel Authority of India Ltd. APPELLANT

Vs

Rohini Strips Limited and Others RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Central Excise Rules, 1944 — Rule 52A, 57GG
Civil Procedure Code, 1908 (CPC) — Order 37 Rule 3(5)
Negotiable Instruments Act, 1881 (NI) — Section 138, 141
Penal Code, 1860 (IPC) — Section 420

Citation : (2007) 08 DEL CK 0088

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Alakh Kumar, for the Appellant; Jagdeep Anand, for the Respondent

Judgement

S.N. Aggarwal, J.—M/s Steel Authority of India Limited (hereinafter referred to as the ''plaintiff'') has filed this suit for recovery of a sum of Rs. 5,51,74,220/- with interest on account of two dishonoured cheques. The said suit has been filed in terms of Order XXXVII of the CPC (the Code). The defendants have filed an application under Order XXXVII Rule 3(5) of the Code praying for grant of leave to defend the said suit.

2. The plaintiff is engaged in the manufacture of Iron and Steel materials through its various steel plants located in the State of Orissa, Jharkhand, Chhattisgarh and West Bengal. The Iron and Steel materials produced by the plaintiff are marketed through its various Regional, Branch Sales Offices and Customer Contact Offices situated in different parts of the country and having one of such of its Customer Contact Office at Resham Mill Road, Birla Nagar, Gwalior (M.P). The defendant No. 1 M/s Rohini Strips Ltd., a limited company duly incorporated under the Companies Act having its corporate and Head Office at New Delhi through defendants No. 3 to 5 who were also the Directors of defendant No. 1 were dealing in Iron and Steel Materials and they needed supply of Iron and Steel materials from the plaintiff. It is stated that in consideration of

the plaintiff supplying the materials to the defendant No. 1, defendants No. 2 to 5 gave personal guarantees as a security for the due payment of the amount due and outstanding along with interest in respect of the goods sold and delivered to the defendant No. 1 by the plaintiff.

3. The plaintiff is alleged to had supplied Iron and Steel materials of various quality on credit which were duly received and accepted by the defendant No. 1. The plaintiff is alleged to had supplied goods worth Rs. 2,45,78,845/- to defendant No. 1 during the period from August, 1997 till December, 1998. An adjustment of Rs. 4,48,692/- was given on account of various credit/debit notes issued by the plaintiff to the defendant No. 1 from time to time. After giving adjustment of the said amount, Rs. 2,41,30,153/- remain to be paid by defendant No. 1 to the plaintiff towards price of the goods and Rs. 1,21,68,443/- became due and payable on account of interest till 16.3.2000. In order to liquidate its liability the defendant No. 1 gave two cheques, one for Rs. 2,41,31,153/- and the other for Rs. 1,21,68, 443/- to the plaintiff towards price of goods and interest accrued thereon vide its covering letter dated 16.3.2000. Both these cheques were returned unpaid when presented for encashment vide return memo of the bank dated 1.6.2000. The plaintiff thereafter sent a legal notice dated 6/8.6.2000 u/s 138 of the Negotiable Instruments Act, 1881 to the defendants to which they did not give any reply. The plaintiff, therefore, filed criminal complaints in the Court of Chief Judicial Magistrate, Gwalior (M.P) against the defendants for committing offence u/s 138 read with 141 of the Negotiable Instruments Act, 1881 (as amended) and u/s 420 of the Indian Penal Code. The said complaints are stated to be still pending. The two cheques as referred above which were given by defendant No. 1 to the plaintiff were towards price of the goods purchased by defendant No. 1 from the plaintiff as mentioned in Para 7 of the plaint. Since the defendants did not pay the amount due from them despite service of legal notice dated 15.5.2003 upon them, the need arose for filing of the present suit filed under Order XXXVII CPC.

4. It is stated that an amount of Rs. 3,62,98,596/- was due and outstanding from the defendants as on 16.3.2000. The plaintiff has also claimed interest on the aforementioned amount at the rate of 25% p.a w.e.f 17.3.2000 till the date of payment. It is stated that a further amount of Rs. 1,92,71,067/- became due to the plaintiff on account of interest for the period from 17.3.2000 till the date of filing of the present suit. As such the plaintiff has prayed for a decree against the defendants for Rs. 5,51,74,220/- with pendente lite and future interest at 25% p.a.

5. The defendants seek leave to defend the suit inter alia on the following grounds:

(i) The cheques which the plaintiffs seek to rely in support of its claim in the suit were issued in blank and only as security. The amount and the other particulars in these cheques were filled up by the plaintiff subsequently without consent, knowledge or approval of the defendants. It is alleged that the cheques in question were presented by the plaintiff to its banker without instructions or prior approval of the defendants. In substance, the plea of the defendants is that they are not bound by the cheques which are basis of the plaintiff''s suit.

(ii) The defendants have also contended that they are entitled to recover from the plaintiff an amount more than Rs. 3.80 crores on account of Central Excise, MODVAT and conversion charges. The plea of the defendants in this regard is that they had to pay Central Excise and MODVAT charges in respect of purchases made by defendant No. 1 from the plaintiff from September, 1994 to January, 1995 because of the plaintiff''s failure to furnish various particulars and documents which are as under:

(a) The details of buyer and manufacture which is essential under Rule 57GG of Central Excise Rules 1944.

(b) Duplicate for Transporter as valid documents for the purpose of taking Modvat Credit under Rule 52A of Central Excise Rule 1944.

6. According to the defendants, they had to pay Rs. 1,01,00,347/- as Central Excise on account of Modvat amount, interest and penalty due to above default on the part of the plaintiff. This liability is alleged to be besides 100% penalty on the aforementioned amount of Rs. 1,01,00,347/- as interest thereon. The defendant No. 1 is also alleged to had carried out the work of conversion for the plaintiff. According to the defendants, the plaintiff also became liable to pay conversion charges to the defendant No. 1.

7. The case of the defendants is that in case they are granted leave to defend the suit, they will show that it is they who are entitled to recover from the plaintiff instead of plaintiff asking for a decree for the suit amount against them.

8. I have heard arguments of learned Counsel of both the parties on the instant leave to defend application and have also perused the entire record carefully.

9. The defendants have raised two fold defence to the suit for recovery filed against them by the plaintiff. Their first attack is on the cheques which are the basis of the plaintiff''s suit. The defendants have alleged that the cheques in question given by them to the plaintiff were given when they were blank and that the amount and other particulars in these cheques were filled up by the plaintiff subsequently. In substance, the defendants are denying their liability under the cheques in question. This defence of the defendants shall be dealt with afterwards. We first consider and examine the second defence relating to certain amount allegedly due to the defendants from the plaintiff.

10. The contention of the defendants in defence to the suit is that the plaintiff also owes more than Rs. 4 crores to the defendants towards Central Excise, Modvat amount and conversion charges. The amount alleged to be due to the defendants from the plaintiff under this head is in respect of purchases made by them for the plaintiff from September, 1994 to January, 1995. The defendants admittedly did not make any claim or counter claim against the plaintiff either on

account of Modvat amount, Central Excise or conversion charges till date or while filing leave to defend application to defend the present suit. The plaintiff has denied its liability to pay any amount to the defendants towards Modvat amount, Central Excise or conversion charges as mentioned in the leave to defend application. The claim, if any, of the defendants in regard to the above on the face of it has by now become barred by limitation and cannot be entertained. Hence, the defence raised by the defendants in regard to the amount allegedly due and outstanding from the plaintiff on account of Modvat, Central Excise or conversion charges does not raise any triable issue requiring leave to defend to be granted to defend the present suit.

11. Reverting to the main defence of the defendants to the claim of the plaintiff in the present suit, one needs to refer to the correspondence that exchanged between the parties when there was no dispute between them. It is generally believed that a man can lie but not the circumstances. The defence intended to be set up by the defendants that they had issued blank cheques to the plaintiff on the face of the record appears to be sham, illusionary, moonshine and an afterthought. The two cheques one for Rs. 2,41,31,153/- and the second for Rs. 1,21,68, 443/- both dated 16.3.2000 were given by defendant No. 1 to the plaintiff along with a covering letter annexed therewith. It shall be pertinent to refer to the letter of the defendant No. 1 dated 16.3.2000 addressed to the plaintiff by which cheques in question were given and the said letter reads as under:

This refers to our huge overdue outstanding of Rs. 3,62,98,575.00 (Rupees Three Crore Sixty Two Lakh Ninety Eight Thousand Five Hundred Seventy Five Only) in respect of the Principal Amount as well as interest thereon calculated upto 16.03.2000.

I am enclosing cheque No. 0761670 dated 16.03.2000 drawn on Central Bank of India, Malanpur, Distt. Bhind, M.P. for Rs. 2,41, 30,153.00 (Rupees Two Crore Forty One Lakh Thirty Thousand One Hundred Fifty Three Only) towards Principal. Further, cheque No. 0761671 dated 16.03.2000 for Rs. 1,21,68,443.00 (Rupees One Crore Twenty One Lakh Sixty Eight Thousand Four Hundred Forty Three only) drawn on Central Bank of India, Malanpur, Distt., M.P. towards Interest accrued till date is also enclosed.

We request you to kindly return all the cheques submitted to you earlier in this regard. Thanking you,

Yours faithfully,

for ROHINI STRIPS LIMITED

sd/-

Alok Agarwal

DIRECTOR

12. The defendants have not denied the aforementioned letter in their leave to defend application. They have not whispered even a word as to how and under what circumstances the said letter reached upto the plaintiff. If the contents of the aforementioned letter of defendant No. 1 are to be accepted then it is difficult to believe the contention of the defendants that the cheques in question given by them to the plaintiff were blank when they were so given. The plaintiff has also placed on record certain other correspondence that exchanged between the parties before filing the present suit. A perusal of all these documents would show that the defendant No. 1 has expressly admitted its liability towards the plaintiff and had given repeated assurances to the plaintiff to clear its dues shortly. It appears that the defendants have not honoured their commitment contained in these letters written by them to the plaintiff. Even during the pendency of the present suit, the defendant No. 1 assured the plaintiff to clear its outstandings and in this regard reference is made to the proceedings of this Court dated 10.11.2005. On 12.10.2004 the defendant No. 1 sent its offer to the plaintiff in writing by which it offered to clear its liability in a time bound schedule. This letter of defendant No. 1 written to the plaintiff on 12.10.2004 reads as under:

With reference to our Proposal dated November, 4, 2003 revised proposal dated Feb., 28, 2004 dated 3rd September, 2004 and October, 6, 2004 and subsequent meetings and discussions held with SAIL officials for the settlement of dues, our revised proposal is as under: We propose to pay the principle outstanding till March, 2000.

1. We propose to pay a down payment of Rs. 35.00 lacs.

2. We propose to pay Rs. 1000 PMT on purchase of H.R. Coils from SAIL subject to a minimum of Rs. 15.00 lacs per month.

3. The amount paid may kindly be adjusted towards the principle outstanding.

4. Regarding interest, it is submitted that the company has faced very hard time and has accumulated heavy losses. The company has paid huge amount of interest to SAIL at very high rate of interest. We therefore request to kindly calculate the interest at 7.5% on simple method basis and we are ready to pay the interest as proposed from the date of delivery orders against which unpaid dues are pending.

We also request you to kindly extend your co operation as under:

We may be given 2000 ton HR Coils per month regularly to run the plant uninterrupted. If SAIL finds it difficult to give 2000 tons per month, then we may be given atleast 1500 ton per month initially.

All the legal suit/cases criminal/civil may kindly be withdrawn or may kindly be kept pending till the entire amount is paid by us. The Hon''ble concerned court may also be informed upon approval of this proposal.

We hope that you will find the above most suitable and to support your old and loyal customer, we request you to kindly accord your approval on the above request to enable us to deposit the initial amount as above and to restart the plant at an early date. We shall be obliged for your cooperation in this regard. The above is without prejudice.

Thanking You,

Yours faithfully,

For Rohini Strips Limited

Sd/-

Director

13. The above offer made by defendant No. 1 during the pendency of the suit was accepted by the plaintiff vide its letter dated 29.1.2005, contents whereof reads as follows:

This is in reference to your proposal No. Nil dt. 5th October, 2004 regarding clearing the outstanding balance of SAIL. In this connection this is to inform you that the subject proposal may be accepted with following terms and conditions:

1. You have to make a down payment of Rs. 35 lakhs (Thirty Five Lakhs only) initially as proposed by you.

2. You can resume business with SAIL on cash and carry basis.

3. You have to pay Rs. Ten Lakhs or Rs. 1000/- per MT (Rs. One Thousand per Metric Ten) in respect of future deliveries on monthly basis which ever is higher towards principal and interest outstanding.

4. All though our normal interest rate is higher but our Company can agree on the repayment of interest accrued on principal outstanding @ 7.5% (Seven and a half percent) as proposed by you from the Delivery Order dates against which payment is outstanding.

5. SAIL will offer you a tentative quantity of 1000 MT (One Thousand Metric Ton) of HR Coils on monthly basis. However, the above said quantity is only indicative in nature and may vary depending upon the availability of material from our PLANTS. There will be no linkage between the minimum monthly amount of Rs. Ten Lakhs to be paid by you with the offered quantity and no claim whatsoever will be entertained regarding failure if any on part of SAIL in any month regarding offering of material to you.

6. The sizes required by you are to be submitted by 15th of previous month for the month in which you require the material. Your required sizes will be accepted based on the availability of material in our PLANTS and hence you will be required to submit your requirement in line with the availability of material as indicated to you from time to time.

7. You have to confirm acknowledge the outstanding dues towards Principal amount and interest @ 7.5% (Seven and a half percent) till 31.01.2005 thereon as proposed by you on all Delivery Orders against which payment is outstanding.

8. The above proposal is without any prejudice to our rights and conditions on all pending court cases, both civil/criminal, as filed against you. However, SAIL can withdraw the same on clearance of the dues towards principal and interest.

You may kindly submit a copy of this letter with your signature as a token of acceptance of the above terms and conditions along with a Demand Draft of Rs. 35 Lakhs (Thirty Five Lakhs only) in favour of STEEL AUTHORITY OF INDIA LIMITED payable at Gwalior, within seven days of issuance of this letter.

This is without any prejudice to our rights and conditions in this matter.

Thanking you

Yours truly,

For Steel Authority of India Ltd.

sd/-

P.K. Mathur

CUSTOMER CONTACT OFFICER

14. The conditions for accepting the offer of defendant No. 1 as contained in the plaintiff''s aforementioned letter dated 29.1.2005 were accepted by defendant No. 1 vide its letter dated 3.2.2005 which reads as follows:

We thankfully acknowledge the receipt of your letter No. SAIL/GWA/04-05/1093 dated 29.01.2005 which was received in our office on 02/02/2005, accepting our proposal to pay the dues of SAIL. We accept the conditions stipulated therein.

As informed earlier, We are arranging funds to pay the down payment of Rs. 35.00 lacs and to restart the business with SAIL on cash and carry basis. The arrangement of funds may take some time, and we hope that the funds will be arranged very soon, by them we request you to bear with us.

Thanking you,

Yours faithfully,

sd/-

Director

15. The defendant No. 1 thereafter acted upon its offer and paid Rs. 35 lacs to the plaintiff by means of four demand drafts, three of Rs. 9 lacs each and the fourth of Rs. 8 lacs sent vide its covering letter dated 30.3.2005. After paying Rs. 35 lacs the defendants are stated to be have not paid even a single penny to the plaintiff in terms of their compromise. At no point of time the defendants ever

averred that the cheques in question on the basis of which the present suit was filed was given by them in blank. It shall be significant to mention that the defendants in Para 36 of their leave to defend application have admitted purchase of raw material from the plaintiff under the invoices referred to in Para 7 of the plaint. It is not the case of the defendants that they had paid for the price of the goods purchased by them from the plaintiff. They have also not pointed out any entry in the statement of account which according to them may be incorrect.

16. Mr. Anand appearing for the defendants had referred to a judgment of the Supreme Court in Santosh Kumar Vs. Bhai Mool Singh, and on the strength of this judgment he had contended that the defendant is entitled to grant of leave to defend in a suit based on bounced cheques where the plea of defendants is that the said cheques were given by them only as a collateral security for the price of the goods supplied. This judgment, in my view, is not applicable to the facts of the present case. In Santosh Kumar''s case (supra) the defence of the defendant was that he had made cash payment of the goods purchased by him from the plaintiff and the cheques which were bounced were given only as collateral security for the price of the goods supplied. In the present case, there is no such defence set up by the defendants that they had made either cash payment or payment by any other mode towards price of goods purchased by them from the plaintiff from time to time. Furthermore, in the case relied upon by the defendants'' counsel, there is no document at the time of grant of leave to defend to ascertain as to whether the cheques in question were given towards price of goods or as collateral security. Under these circumstances, it was held that the plea raised by the defendant raises a triable issue and entitle him to grant of leave unconditionally.

17. In the present case, there is overwhelming evidence on record to show that the cheques in question were given by the defendant No. 1 to the plaintiff towards price of the goods and since these cheques were returned unpaid, this entitled the plaintiff to seek recovery against the defendants under Order XXXVII CPC. The defence set up by the defendants that the cheques in question were given by defendant No. 1 to the plaintiff while they were blank and as collateral security is apparently an afterthought and seems to has been raised only to avoid liability of the defendants as long as they can.

18. Mr. Anand appearing for the defendants had also argued that the suit filed by the plaintiff against the defendants is barred by limitation having been filed beyond three years from the date of issuance of cheques issued on 16.3.2000. The present suit was filed by the plaintiff on 23.5.2003. The cheques on the basis of which present suit was filed are dated 16.3.2000. These cheques were returned unpaid to the plaintiff vide bank memo dated 1.6.2000. The copies of bank memos in this regard are at Pages 137 and 139 of the document file. I am of the considered view that the limitation would commence to run from the date when the cheques in question were returned unpaid to the plaintiff. Since in this

case the cheques in question were admittedly returned unpaid to the plaintiff on the ground ''not arranged for'' on 1.6.2006, the present suit filed on 23.5.2003 is to be taken as filed within limitation. Hence, the objection regarding limitation taken by the defendants has no merit.

19. The defendant No. 1 is the principal borrower in the sense that the goods were purchased by defendant No. 1 company from the plaintiff from time to time. Defendants No. 2 to 5 have been sued in their capacity as guarantors. The copy of personal guarantee executed by defendants 2 and 3 in favour of the plaintiff on 20.5.1997 is at Page 8 and the copy of personal guarantee executed by defendants 4 and 5 in favour of the plaintiff on 29.4.1998 is at Pages 9 and 10 of the document file. These guarantees have been perused by me. Since defendants No. 2 to 5 had stood personal guarantee on behalf of defendant No. 1 for repayment of its dues to the plaintiff, their liability to pay is co-extensive, joint and several with the liability of defendant No. 1.

20. In view of the above, I am convinced with the plaintiff''s contention that the defence as disclosed by the defendants in their leave to defend application is sham and illusory and in my considered opinion the defendants are not entitled for leave to defend the present suit and the plaintiff is entitled to have the judgment signed. Accordingly, the application under Order XXXVII Rule 3(5) CPC of the defendants is held to be devoid of any merit and the same is hereby dismissed.

21. It is contemplated under Order XXXVII Rule 3(5) CPC that if an application for leave to defend the suit has been made by the defendants and the same is refused, the plaintiff shall be entitled to have the judgment signed forthwith. In the present case, since the application of the defendants under Order XXXVII Rule 3(5) CPC has been dismissed as the defendants have failed to raise any triable issue or disclose any defence in their application, in my considered opinion, the plaintiff has become entitled to have the decree for the suit amount forthwith. Accordingly, suit of the plaintiff is hereby decreed with costs. The plaintiff is held entitled to a decree in the sum of Rs. 5,51,74,220/- against the defendants. However, since the plaintiff has failed to establish its claim of interest at 25% p.a which he has claimed at the market rate for commercial transaction, I am inclined to award interest at the prevalent rate only at 12% p.a on the decreetal amount from the date of institution of the present suit till realization. Decree sheet be prepared. Needless to say that the defendants shall be entitled to the adjustment of Rs. 35 lacs paid by them to the plaintiff during the pendency of the suit or to any other amount that they might have paid to the plaintiff after the filing of the present suit.

