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(1999) 09 DEL CK 0055

In the Delhi High Court

Case No : Suit NO. 2021/97

T.T.K. Biomed Limited APPELLANT

Vs

M/s. Japna Exports and Another RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Citation : (1999) 6 AD 132 : AIR 2000 Delhi 62 : (1999) 82 DLT 317 : (1999) 51 DRJ 340

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. D. Krishnan and Mr. Ajit Warrier, for the Appellant; Mr. Ishwar Singh Advocate, for the Respondent

Judgement

Mukul Mudgal, J.—In response to the Order xxxvII suit, filed by the plaintiff, the leave to defend by way of an affidavit on behalf of defendant No. 2 has been filed on 23.3.1998.

2. The plaintiff''s case is that the contracted goods were supplied to the defendants on 3.1.1996 and shipped by the defendants to its eventual destination in Moscow as per the Bill of Lading dated 22.1.1996. The defendants had deposited a sum of Rs. 3,00,000/- by bank draft and post dated cheques for Rs. 2,00,000/-, Rs. 3,00,000/- and Rs. 3,25,000/-. The first cheque bearing No. 769514 dated 29.12.1995 was cleared on 4.1.1996 and at the request of the defendant No. 1/firm, the plaintiff delivered the goods through a clearing Agent. Thereafter there was some dispute regarding export documents and on 8th February, 1996, the defendants informed the plaintiff that they have instructed their bank to stop payment of the remaining post dated cheques without the obtaining of export documents.

3. The plaintiff''s case is that there was no mention in the contract or any other document about any obligation on the part of the plaintiff to supply any export documents to the defendants and the only contractual obligation of the plaintiff was merely to deliver the goods to defendant No. 1.

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4. In spite of the fact that the plaintiff was not obliged to send any export documents but with a view to maintain good business relations the plaintiff sent the following documents to defendant No. 1:

"(a) Bill of Lading.

(b) Customs Attested Invoice.

(c) Exchange control declaration No. 079027.

(d) Clearing Agent''s Bill for Rs. 9,424.50.

(e) Central Excise Invoice."

5. The plaintiff''s case is that thereafter the defendants raised a demand for the shipping bill and thereupon the shipping bill was also sent by the plaintiff in order to maintain good business relations. Thereafter the defendant No. 1/Firm again raised a demand for an advance license endorsement. The plaintiff thereafter was compelled to send a legal notice to the defendants on 11th May, 1996 asking for the balance payment of the out-standing amount of Rs. 5,25,000/- Along with interest. The reply dated 10th June, 1996 of the defendants to the plaintiff''s notice was that the amount due was not paid due to the non-production of the endorsement of the export license entitlement.

6. Accordingly, the present suit was filed by the plaintiff under Order xxxvII which is based on a written contract between the parties as per the Proforma Invoice dated 15.12.1995 (At page No.1 of the List of Documents/Part III). There is, however, no dispute as to the fact that goods have been received by the defendants'' consignee in Moscow.

7. Accordingly the suit was filed under Order xxxvII CPC on behalf of the plaintiff claiming Rs. 6,98,643.75 which amount was arrived at by adding interest on the aforesaid amount at the market rate i.e. 21 per cent from 3.2.96 till 30.8.97.

8. The leave to defend on behalf defendant No. 2 in the form of an affidavit has not denied to the receipt and export of the goods at the plaintiff''s behest but merely stated that due to the non-production of the export documents, the defendants suffered a loss of Rs. 4,50,000/- which could have been claimed by the defendants under the "Advance license Scheme".

9. The defendants also pleaded that they had made out a Demand Draft of Rs. 5,25,000/- on 28.2.1996 and were prepared to make the payment upon plaintiff''s fulfilling its contractual obligations which were the furnishing of the export documents inclusive of the export license endorsement.

10. There is no denial of the debt due to the plaintiff but the only claim made is a loss of Rs. 4,50,000/- to the defendants on account of the non-furnishing of the export documents to the defendants. However, the defendants had not been able to show from any of the documents or correspondence how the contract between the parties put such an obligation on the plaintiff. There is no averment by the

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defendants that it has not realised the price of the said goods from the consignee in Moscow (Russia). In fact the contract dated 15.12.95 in the form of the Proforma Invoice and all the correspondence cited by the plaintiff shows that there was no obligation upon the plaintiff to deliver the export documents/ endorsement pleaded by the defendants.

11. In fact the plaintiffs have been helping the defendants by giving the documents though not bound in law to do so. Even during the hearing of the application for leave to defend the plaintiff''s counsel reiterated the offer of not only a settlement but all help to the defendants in securing the endorsement even though not bound in law to do so. However, the defendant has declined to accept this offer.

12. In this view of the matter, I am of the view that the defendants should be granted leave to defend upon their deposit of Rs. 5,25,000/- in this Court being the Principal amount in respect of which the goods have been consigned at the defendant''s behest to Moscow.

13. The amount of Rs. 5,25,000/- to be deposited in this Court within eight weeks from today.

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