
M/s. Superior Crafts and Others Vs Sudhir Gupta

Regular First Appeal 56 of 2005 and CM No. 1546 of 2005

Court: Delhi High Court

Date of Decision: Oct. 8, 2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 41 Rule 27#Evidence Act, 1872 " Section 62, 65, 65B

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: Ravi Kant Chadha and Mr. R.K. Gautam, for the Appellant; Sunil Goyal and Ms. Ankita Bharadwaj, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Sahai Endlaw, J.

The appeal impugns the judgment and decree dated 5th November, 2004 of the Court of the Addl. District Judge,

Delhi (in Suit No. 197/00/03 filed by the respondent/plaintiff against the appellants/defendants) of recovery of Rs. 17,07,700/- together with

interest @ 9% per annum on the principal amount of Rs. 10,30,016.97p w.e.f. the date of filing of the suit i.e. 13th March, 2000 till realization.

The appeal was admitted for hearing and vide order dated 1st February, 2005 subject to the appellants/defendants depositing Rs. 10 lacs in this

Court, the operation of the impugned judgment and decree was stayed. The said amount was deposited and vide subsequent order dated 13th

January, 2006, out of the amount deposited, a sum of Rs. 5 lacs was permitted to be withdrawn by the respondent/plaintiff subject to furnishing a

Bank Guarantee and the balance of Rs. 5 lacs was ordered to be kept in a fixed deposit. The said amount of Rs. 5 lacs was withdrawn by the

respondent/plaintiff against furnishing a Bank Guarantee and which was renewed from time to time. The appeal was on 15th April, 2013 dismissed

in default and the balance amount of Rs. 5 lacs lying deposited in this Court together with interest accrued thereon was ordered to be released to

the respondent/plaintiff and the Bank Guarantee was discharged. The appellants/defendants applied for restoration, which was allowed on 21st

May, 2013. The counsel for the respondent/plaintiff on enquiry informs that in accordance with the order dated 15th April, 2013 the balance

amount of Rs. 5 lacs with interest accrued thereon has been received by the respondent/plaintiff and the Bank Guarantee earlier furnished by the

respondent/plaintiff duly discharged has also been returned to the respondent/plaintiff.

2. The senior counsel for the appellants/defendants and the counsel for the respondent/plaintiff have been heard.

3. The respondent/plaintiff had instituted the suit for recovery of a principal amount of Rs. 10,30,016.97p jointly and severally from the

appellant/defendant no. 1, a partnership of the appellants/defendants no. 1 to 4, towards balance price of the goods i.e. fabric sold, supplied and

delivered by the respondent/plaintiff to the appellants/defendants, together with interest till the date of institution of the suit i.e. for a total sum of Rs.

17,07,700/-.

4. The appellants/defendants in their written statement did not dispute that a sum of Rs. 10,30,016.97 was the balance due to the respondent/plaintiff; their defence was that they had in accordance with the agreement with the respondent/plaintiff raised debit notes of Rs.

10,25,694/- on the respondent/plaintiff and after adjusting the value of the said debit notes, a sum of Rs. 4,254.25p was due from the

respondent/plaintiff to the appellants/defendants.

5. In view of the aforesaid nature of the dispute, need is not felt to consider the other defences raised by the appellants/defendants or the issues

framed in as much as the senior counsel for the appellants/defendants has confined his arguments on the findings of the Addl. District Judge with

respect to the said adjustment only.

6. The respondent/plaintiff did not controvert the receipt of the debit notes. It was however the plea of the respondent/plaintiff that no amount

under the said debit notes was due and the respondent/plaintiff was thus entitled to the balance Rs. 10,25,694/- due to him.

7. The senior counsel for the appellants/defendants has further contended that the debit notes of the total value of Rs. 10,25,694/- fall into two

categories. First, debit notes of the total value of Rs. 5,15,527/- towards excess rate billed by the respondent/plaintiff and second, the debit notes

for the balance amount towards the air freight charges. It is argued, that the appellants/defendants are exporters of garments and had placed the

order on the respondent/plaintiff for purchase of fabric for fabrication of garments/products for export; that the respondent/plaintiff however

delayed the delivery of the fabric; that though the appellants/defendants were entitled not to so accept the delayed delivery of the fabric but

accepted the same from the respondent/plaintiff on the understanding that the respondent/plaintiff will bear the charges of air freight of the

fabricated garments/goods so as to reach the same to the buyers of the appellants/defendants within time.

8. The learned Addl. District Judge in the impugned judgment, in this regard has found/observed/held:-

(a). that it was not in dispute that the appellants/defendants had received the legal notice dated 10th January, 2000 got served by the

respondent/plaintiff demanding the balance amount of Rs. 10,30,016.97p due;

(b). that the appellants/defendants in their written statement had pleaded having sent a reply dated 9th February, 2000 (wrongly mentioned in the

impugned judgment in para 19 as 9th July, 2000) to the said notice;

(c). that the respondent/plaintiff had disputed receipt of any such reply dated 9th February, 2000;

(d). the appellants/defendants had not proved the said reply dated 9th February, 2000 and had also not placed any copy of the same on record;

(e). therefore an adverse inference had to be drawn against the appellants/defendants that either reply had not been sent or if sent did not contain

the defence as taken in the written statement;

(f). that the appellants/defendants had not filed any claim/counter claim for recovery of Rs. 4,254.25p which according to them was due from the

respondent/plaintiff;

(g). that neither the purchase orders placed by the appellants/defendants on the respondent/plaintiff nor the confirmation letters issued by the

respondent/plaintiff to the appellants/defendants mentioned that the goods thereunder were to be delivered by end of November, 1996, as was

pleaded by the appellants/defendants;

(h). that the appellants/defendants had not proved that the respondent/plaintiff was to supply the fabric by November, 1996;

(i). that the debit notes did not pertain to the transactions in question; and,

(j). that the sole witness of the appellants/defendants had admitted that the debit notes did not have any concern with the transactions in question

for the balance price of goods whereunder the suit was filed; and,

(k). that the appellants/defendants had not produced any statement of their accounts and it was unbelievable that they did not maintain any

accounts and adverse inference had to be drawn against the appellants/defendants for the said reason also.

It was accordingly held that the appellants/defendants were not entitled to raise debit notes on the respondent/plaintiff; that if the debit notes were

to be excluded, it was not in dispute that the principal amount claimed in the suit was due; accordingly the suit was decreed.

9. I have perused the affidavit by way of examination-in-chief of the sole witness of the appellants/defendants and have not found any particulars of

the agreement alleged with the respondent/plaintiff, of the respondent/plaintiff, for the reason of having delayed the delivery of goods/fabric to the

appellants/defendants, having agreed to bear the air freight charges.

10. The senior counsel for the appellants/defendants also admits that such an agreement on the basis whereof debit notes were raised was not in

writing and has fairly admitted that no evidence of any oral agreement was led by the appellants/defendants.

11. I may record that though the appellants/defendants in the affidavit by way of examination-in-chief of their sole witness in handwriting had added

that the copies of the airway bills, invoices etc. were Ex. DW1/1 collectively, but while tendering the said affidavit into evidence, the counsel for the

appellants/defendants agreed to the deletion of the said part and the said documents were also not tendered into evidence. There is thus no

evidence on record of the appellants/defendants having incurred air freight charges for which the debit notes were raised on the respondent/plaintiff.

12. At this stage notice may be taken of the application filed by the appellants/defendants under Order 41 Rule 27 of the CPC. The appellants/defendants along with the said application have filed a photocopy of the reply dated 9th February, 2000 stated to have been got sent by

the appellants/defendants to the legal notice dated 10th January, 2000 got signed by the respondent/plaintiff and the photocopy of the postal

receipt under which the said reply was sent.

13. The senior counsel for the appellants/defendant has contended that the said reply though pleaded, remained to be filed before the Trial Court

and now tenders the same into evidence. It is contended that since the learned Addl. District Judge, in the impugned judgment, has drawn adverse

inference for non-production of the said reply, it is deemed expedient to prove the same.

14. The counsel for the respondent/plaintiff has argued that though he has filed a reply to the said application, opposing the same, and even though

no office copy of the reply or original of the postal receipt under which the same is alleged to have been sent have been filed, but even if the said

reply is to be perused, the same does not contain any plea, of the respondent/plaintiff for the reason of having delayed the delivery of goods/fabric

having agreed to bear the air freight charges. It is argued that the said defence taken in the written statement and in the suit is thus clearly an

afterthought.

15. The senior counsel for the appellants/defendants has contended that though the appellants/defendants in the said reply have not stated that the

respondent/plaintiff had agreed to bear the air freight charges, but have nevertheless stated that the said air freight charges had to be incurred by

the appellants/defendants for the reason of the respondent/plaintiff having delayed the supplies.

16. I have perused the said reply dated 9th February, 2000. The same undoubtedly does not contain the version taken by way of defence to the

suit, that the debit notes for air freight charges were in accordance with the agreement arrived at with the respondent/plaintiff of the respondent/plaintiff bearing the said air freight charges. Once there was no such agreement, the appellants/defendants even if were to be entitled to

the same from the respondent/plaintiff, could not have raised debit notes for the same and were required to make a claim therefor before the Court

and only if the said claim were to be allowed, could have adjusted the same against the admitted dues of the respondent/plaintiff.
No such claim

has been made. Accordingly it is held that the debit notes raised by the appellants/defendants on the respondent/plaintiff towards the air freight

charges are of no avail and the appellants/defendants are not entitled to adjustment of the amounts towards the air freight charges, which also have

not been proved, from the dues of the respondent/plaintiff.

17. I now take up the other head, of rate difference.

18. The senior counsel for the appellants/defendants has invited attention to the challans, both dated 15th January, 1997, of delivery of goods by

the respondent/plaintiff to the appellants/defendants, in which the rate of ""S. Jersey Pin Strip Blue/ECRU (Washed and Calendered)"" is first

mentioned as Rs. 265/- which is deleted and re-written as Rs. 290/-. It is argued, that the rate difference is on account of such over cutting by the

respondent/plaintiff on his copy of the challans produced before the Court.

19. I have enquired from the senior counsel for the appellants/defendants whether the appellants/defendants have produced the originals of the

challans which should be in possession of the appellants/defendants, as delivery of goods in pursuance to the said challans is not disputed.

20. The senior counsel for the appellants/defendants has fairly conceded that the appellants/defendants have not produced the originals or their

copy of the challans. Once that is so, the mere fact that there is a cutting, cannot ipso facto lead to an inference that the re-written rate is not the

agreed rate. It is well nigh possible that the deleted rate was written by mistake and the correction is as per the agreement.

21. It has next been enquired from the senior counsel for the appellants/defendants whether there is any other document from which it can be

gathered that the rate agreed was of Rs. 265/- and not of Rs. 290/-.

22. It is candidly stated that there is none.

23. The senior counsel for the appellants/defendants has lastly contended that the respondent/plaintiff did not prove its ledger account which was in

computerized form, in accordance with Section 65B of the Indian Evidence Act, 1872.

24. The said argument was raised before the learned Addl. District Judge also, who has in the impugned judgment held that the same was

irrelevant since the respondent/plaintiff had admitted the receipt of debit notes. The learned Addl. District Judge further held that if according to the

respondent/plaintiff the debit notes were not as per the agreement, the respondent/plaintiff was not required to enter the said debit notes in its

accounts.

25. However finding that the respondent/plaintiff has proved, the purchase orders received from the appellants/defendants, the confirmation letters

issued by the respondent/plaintiff and the challans of delivery of goods, it has been enquired from the senior counsel whether not the transaction has

been proved by primary evidence/document and how the non-proof in accordance with law of the ledger maintained in computerized form is of

any effect. I may record that entries in a ledger are made from the primary documents i.e. purchase orders, confirmation letters, delivery challans,

invoices etc. and thus it is the said documents which are primary evidence/documents in accordance with Section 62 of the Indian Evidence Act

and the ledger prepared on the basis of the said primary evidence/documents would fall in the category of secondary evidence within the meaning

of Section 65 of the Indian Evidence Act.

26. The senior counsel for the appellants/defendants has been unable to contradict the aforesaid position in law.

27. The counsel for the respondent/plaintiff, from the evidence led has shown that the sole witness of the appellants/defendants in his cross

examination had stated that the contradiction in rate was in the last transaction only; that the last transaction was of Rs. 17,331/- only; that the

challans in which overwriting is argued were otherwise unconditionally admitted by the appellants/defendants before the Trial Court on 16th April,

2002 and the argument of over-writing/cutting now raised is a bogey. He has further contended that the debit notes filed by the

appellants/defendants on the Trial Court file are all fabricated as has been expressly admitted by the sole witness of the appellants/defendants in his

cross examination by stating that the invoice numbers to which the debit notes pertain are not of the transactions pertaining to the

appellant/defendant no. 1 but pertaining to some other concern though also of the appellants/defendants no. 2 to 4. He has thus contended that the

debit notes of the transactions with other concerns could not have been the basis of adjustment of dues owed by the appellant/defendant no. 1

concern to the respondent/defendant.

28. The senior counsel for the appellants/defendants has in rejoinder invited attention to the answer at internal page 4 of the cross examination of

the sole witness of the appellants/defendants to the effect that whenever the order for the supply of goods is such that the goods cannot be supplied

by the appellant/defendant no. 1 concern, it takes help from its sister concerns to make up the deficiency and in this way the goods are supplied.

29. In my view, the said explanation does not meet the argument of the counsel for the respondent/plaintiff. The sole witness of the appellants/defendants in the same breath had also admitted that the debit notes on the basis of which the payments admittedly due to the

respondent/plaintiff were sought to be avoided had no concern with the transactions between the respondent/plaintiff and the appellant/defendant

no. 1. It was for the appellants/defendants to plead and prove the constitution of the other concerns and an agreement with the respondent/plaintiff

of adjustments of dues of one concern against the dues of the other. Neither any such plea has been taken nor any such evidence led.

30. No other argument has been raised. There is thus no merit in the appeal which is dismissed with costs. Decree sheet be drawn up.