

Cygnnet India Pvt. Ltd. Vs Sporeimex PTE Ltd.

Court: Calcutta High Court

Date of Decision: Feb. 14, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) - Order 8 Rule 5

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: Rishad Medora, Mr. Meghajit Mukherjee, Mrs. Koeliya Banerjee, for the Appellant;

Judgement

Soumen Sen, J.

The suit is instituted for recovery of price of goods sold and delivered by the plaintiff to the defendant No. 1. In spite of repeated opportunities being given to the defendant No. 1 to appear and contest the suit, the said defendant No. 1, has failed to enter appearance.

The defendant No. 2 appeared and produced certain documents in this proceeding in order to enable the Court to adjudicate issues involved in

this suit. Although, in view of Order 8 Rule 5 of the Code of Civil Procedure, the plaintiff is otherwise entitled to a decree since the defendant No.

1 although had the opportunity to appear and contest the proceeding did not enter appearance, however, the plaintiff has produced one witness to

give evidence in support of its claim in the suit.

2. The case of the plaintiff as it appears from the Plaint is that the plaintiff has been a regular supplier of diverse quantities and qualities of tea to the

defendant No. 1, the mode of payment appears to be by way of bills of exchange drawn by the plaintiff on the defendant No. 1. The plaintiff used

to ship such quantities and qualities of tea to the defendant No. 1. The plaintiff would send the documents in respect of such shipment including the

Bill of Lading and the Invoice through the defendant No. 2 to the banker of the defendant No. 1 in Singapore. The invoice used to be sent by the

plaintiff through the defendant to the banker of the defendant No. 1 which would contain the payment and collection terms which varied from 90 to

180 days on ""documents against acceptance"" basis. The defendant No. 1 in the past had made payment in terms of the aforesaid arrangement.

Between January, 2001 and February, 2002, the defendant No. 1 placed diverse orders on the plaintiff for supply of diverse quantities and

qualities of tea. Pursuant to such order, the plaintiff sold and delivered to the defendant No. 1 the said qualities and quantities of tea particulars

whereof are set out hereinbelow:--

3. Following the arrangement alluded to above, the documents were sent to the defendant No. 1 in respect of such consignments from the office of

the defendant No. 2. The said documents were duly accepted by the defendant No. 1 and the said consignments were duly received and/or taken

delivery of by the defendant No. 1 at Singapore in connection with the aforesaid sale of tea, the plaintiff drew several bills of exchanges on the

defendant No. 1 which were duly accepted by the defendant No. 1. The plaintiff got the said bills discounted through the defendant No. 2 and

received payment of the discounted value thereof from the defendant No. 2. The defendant No. 1, however, has failed, neglected and/or refused

to honour its obligation under the said bills and to make payment thereunder on the due dates mentioned in such bills. The defendant has failed,

neglected and refused to honour any of the 14 bills of exchange, although, the due date of amounts of such bills had expired.

4. The defendant in admission and acknowledgement of its liabilities and indebtedness to the plaintiff, requested the plaintiff to extend the due date

of payment of the sum of the said bills and on the basis of such request, the plaintiff had extended due dates in respect of 5 bills as mentioned in

Paragraph 15 of the plaint. In spite of extending the due dates of the said bills, the defendant No. 1 expressed its inability to make payment of the

said 5 bills within the extended due dates thereof and requested for further extension which the plaintiff had refused to grant. The defendant No. 1

has failed to make payment of the price of the aforesaid consignments of tea in spite of having received the said consignments without objection

and having appropriated the same. The plaintiff has examined one Mr. Sujit Bhattacharya being one of the directors of the company. Mr.

Bhattacharya in his evidence has corroborated the statements made in the Plaint, in fact, the witness is the person who has verified the Plaint. The

said witness has produced three sets of documents, namely, Invoice and Bill of Lading, an application filed u/s 19 of the Recovery of Debts due to

Banks and Financial Institutions Act, 1983 and 14 bills of exchange. In respect of some of the bills of exchange, the due date for making payment

was extended. The bills of exchanges would show that the defendant No. 1 had accepted the said bills of exchange and in most of the bills of

exchange there are endorsement of Hongkong and Shanghai Bank. The plaintiff attempted to produce the original documents before the Court. The

HSBC of the Singapore Branch, however, has refused to produce the original of the said documents on specious plea that they are not bound to

produce such documents before an Indian Court. The witness, however, produced duplicate copies of the bills of exchanges and submitted that a

set of such documents have been given to the defendant No. 2 for being presented to the defendant No. 1 for realization of the amount covered

under the said bills of exchange. Since the HSBC, Singapore refused to produce the original, a subpoena was issued to the defendant No. 2 to

produce copies of the 14 bills of exchanges drawn by the plaintiff on the defendant No. 1 consequent whereupon Mr. Kamal Pal, Assistant

Manager, Asset Recovery Management Branch appeared and filed such documents. The witness of the plaintiff has duly identified the said

documents and submitted that these are the said bills of exchange that have been exhibited earlier as Exhibit "c" collectively. The witness has

categorically stated that these are the copies of the bills of exchange that the plaintiff had submitted to the Indian Bank. The Exhibit "B", namely, an

application filed by the bank before the Debt Recovery Tribunal also refers to the same set of 14 bills of exchange which were presented to the

defendant No. 1 through HSBC, Singapore and it was due to such failure on the part of the defendant No. 1 to make payment even after the

expiry of the due dates, such bills were presented for payment on the defendant No. 1 which were dishonoured by nonpayment by the said

defendant No. 1 upon presentation. The defendant No. 2 in the said proceeding had claimed US \$ 676465.71 amounting to Rs. 3,01,16,540/-.

5. The plaintiff in the suit has prayed for a decree for US \$ 543810.11. The principle amount issued as claimed in the Plaint is US \$ 498816.84.

The aggregate value of the 14 bills of exchange is US \$ 67,6465.71 and the amount received by the plaintiff upon discount is US \$ 498816.84.

6. The defendant No. 1 being the acceptor of the bills of exchange is liable to make payment to the defendant No. 2. In any event, the position of

the plaintiff being a surety, vis-à-vis the defendant No. 2 and the fact remains that due to such acceptance of the bills, the defendant No. 1 is

principally liable to make payment of the values mentioned under 14 several bills of exchanges, the plaintiff is entitled to get a decree against the

defendant No. 1 due to such dishonour of the 14 bills of exchange.

7. In view of the materials and evidence on record, in my view, the plaintiff has been able to establish its claim and has proved all the documents on

which the case made out in the plaint of the plaintiff is based and founded. Considering the nature of the evidence and the documents produced

during evidence on behalf of the plaintiff, in my view, the plaintiff has been able to prove and establish its claim.

8. The plaintiff is, accordingly, entitled to a decree for US \$ 498816.84 against the defendant No. 1. However, there is no agreement between he

parties with regard to the interest. Since the transaction is commercial in nature and the goods were not supplied gratuitously, in my view, the

plaintiff would be entitled to interest at the rate of 10 per cent per annum on US \$ 498816.84 till realization. The plaintiff shall also be entitled to

costs of the litigation assessed at Rs. 10,000/-. The plaintiff shall hold the amount to the credit of the defendant No. 2 and on realization of the

decretal sum shall deposit the same with the defendant No. 2 who shall appropriate the same to the satisfaction of its claim as made against the

plaintiff in OA 31 of 2005. The department is directed to draw up the decree as expeditiously as possible. The urgent xerox certified copy of this

judgment, if applied for, be given to the parties on usual undertaking.