

## Exfin Shipping (India) Ltd. Vs Haryana Minerals Ltd.

**Court:** Delhi High Court

**Date of Decision:** Nov. 11, 2002

**Hon'ble Judges:** Usha Mehra, J; Om Prakash Dwivedi, J

**Bench:** Division Bench

**Advocate:** Maldeep Sidhu, for the Appellant; Laxmi Kant Pandey, for the Respondent

**Final Decision:** Partly Allowed

### Judgement

Usha Mehra, J.

M/s. Haryana Minerals Limited, the defendant/respondent herein appointed the plaintiff/appellant as their Cargo Clearing

and Forwarding Agent for handling their shipments of exports to various countries. The terms and conditions offered by the plaintiff/appellant were

acceptable to the defendant/respondent. Concluded contract was entered into between them at New Delhi in August, 1992. plaintiff started

handling the shipments of the defendant. plaintiff raised debit notes for the charges and expenses incurred by it. Running account was maintained in

regular course of business. plaintiff as per its books of accounts found that a sum of Rs. 84,820/- was outstanding against the defendant as on 9th

April, 1994 which in spite of repeated reminders and legal notice had not been paid. Hence the suit.

2. The suit was contested by this respondent inter-alia, on the ground that the appellant/plaintiff delayed the transportation of material from mines to

I.C.D. Pragati Maidan, New Delhi. Consequently the movement of material from I.C.D. Bombay was delayed. Due to delay caused by the

appellant/plaintiff the L.C. expired. Moreover, the foreign buyer refused to accept the containers unless the price was reduced. Forced by the

circumstances the material was sold on reduced price in order to avoid damage and other losses. As a consequence, the respondent suffered loss

to the tune of Rs. 64,218/- beside suffered loss of rupees one lacs on account of supplying the material at reduced price, in future, and further loss

of rupees one lacs on account of loss of reputation and goodwill. Thus, the respondent claimed a sum of Rs. 2,64,218/- as damages in its counter-

claim filed with the written statement. Issues were framed on the claim and the counter claim.

3. That after analysing the evidence, the learned Trial Court came to the conclusion that since the appellant/plaintiff did not produce the original

books of accounts in the court hence no reliance could be placed on the mere statement of account produced by plaintiff i.e. Ex.PW1/2. Trial

court, Therefore, concluded that in the absence of original books of accounts having been produced, plaintiff's suit must fail. That copy of the entry

contained in those books of accounts was not relied upon. However, relying on the admission made by Balam Singh, DW-1, the court decreed the

suit for Rs. 10,400/- against invoices No. 39, 73 & 164. The fact that the respondent/defendant deducted an amount of Rs. 60,000/- from the bills

of the appellant/plaintiff on account of delay in lifting the goods was admitted by the defendant's witness Balam Singh DW-1. Trial Court also

awarded interest @24% per annum on the sum of Rs. 10,400/- from 9th April, 1994 till the institution of the suit, further pendente and future

interest at the same rate has also been awarded. All other issues including institution and filing of the suit have been decided in favor of the

appellant/plaintiff. The issues framed on the counter claim of the respondent/defendant have been decided against the respondent/defendant.

4. The main challenge raised by the appellant in this appeal is that the learned trial court after having given finding which finding having attained

finality that the delay was not attributable to plaintiff but was on account of the natural calamity i.e. due to rain and flood hence people of mines

could not load the trucks, Therefore, the truck had to come back empty twice. Having held so the trial court could not have brushed aside the

claim of the plaintiff for the refund of rs. 60,000/- illegally deducted from the bills of the plaintiff. Having held that delay was due to the Act of God

and natural calamity this respondent could not have been permitted to deduct and withhold the amount of Rs. 60,000/-. This fact that there was

heavy rains and the material could not be loaded from the site has been established on record. Moreover, this fact has been accepted by the trial

court when it negated the objection of the respondent while deciding Issue No. 5. If the contention of the respondent is accepted that there was

delay in executing of the work and loading could not be done in time due to the fault of the plaintiff then the question arises what prompted this

respondent/defendant to renew the contract of the plaintiff/appellant for another period of one year. The very fact that respondent renewed the

contract in spite of the alleged delay shows that defendant/respondent had accepted that the delay was not attributable to the plaintiff/appellant.

The delay in handling the shipment was thus neither intentional nor attributable to the plaintiff as rightly held by the Trial Court. Since the delay if

any was due to the Act of the God or due to natural calamity, Therefore to our mind, respondent/defendant was not justified in deducting the

amount of Rs. 60,000/- from the bills of the plaintiff/appellant.

5. Ms. Maldeep Sidhu, Advocate appearing for the appellant/plaintiff rightly contended that having known that delay in loading and shipping was

not due to the fault of the plaintiff, there was no reason or justification to deduct and then withhold the sum of Rs. 60,000/- from the invoices raised

by the appellant/plaintiff. We are in agreement with the observation of the learned trial court made in Para 28 of the impugned judgment which had

been made while deciding Issue No. 7 & 8. He observed as under:-

Of course, there is material to show that there was some delay in handling the shipment but, admittedly, there was no contract between the parties

that if there would be any delay, the plaintiff would be liable to account for the loss.

When there was delay in handling the shipment, due to natural calamity, no one can be blamed. Even otherwise, if the defendant-company was

dissatisfied with the work of the plaintiff, why it opted to renew the contract for another one year. This rather shows that the work of the plaintiff-

company was quite satisfactory which prompted the defendants to renew the contract for another year.

6. These observations have been assailed nor countered by the respondent. To our mind, Ms. Maldeep Sidhu is right in contending that deduction

of Rs. 60,000/- from the bills of the appellant/plaintiff by the respondent/defendant on account of alleged delay and latches was not justified. Balam

Singh (DW/1) appearing for the respondent/defendant admitted that a sum of Rs. 60,000/- was deducted from the bills of the appellant/plaintiff

due to alleged delay in lifting the goods under the heading ""Recovery Account"". Since we are of the view that this deduction from the bills of

appellant/plaintiff was not justified because the delay was not attributable to the plaintiff/appellant, hence deduction was not justified. Deduction to

the tune of Rs. 60,000/- being not justified is hereby set aside. The decision of the trial court on this count, Therefore cannot be sustained.

7. Having held that deduction of Rs. 60,000/- on account of alleged delay was not justified, we accordingly modify the decree and order that the

appellant herein would be entitled beside decree of Rs. 10,400/- to a sum of Rs. 60,000/- which appellant would get with interest @ 12% from

the date this amount was due till payment. The appeal is partly allowed. Decree to this extent is modified. The appeal in terms of above

observation stand disposed off. Parties are left to bear their own costs.