

(2002) 11 DEL CK 0097

Delhi High Court

Case No: Regular First Appeal No. 178 of 2001

Exfin Shipping (India) Ltd.

APPELLANT

Vs

Haryana Minerals Ltd.

RESPONDENT

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 pendentile 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.