
(2011) 03 DEL CK 0457

Delhi High Court

Case No: Regular Second Appeal No. 154 of 2008

Narender Kumar Gupta

APPELLANT

Vs

Vijay Pal Singh and Another

RESPONDENT

Date of Decision: March 14, 2011

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: P.D. Gupta, B.L. Garg and R.B. Bansal, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

This appeal has impugned the judgment and decree dated 24.01.2008 which has endorsed the finding of the trial judge dated 03.05.2005 whereby the suit filed by Sh. Vijay Pal Singh for recovery of Rs. 1,86,377.40 paise had been decreed with interest at the rate of 24% per annum. The impugned judgment had modified the decree of the trial judge to the extent that although the trial judge had decreed the suit against both the Defendants namely Shri. Roshan Lal Gupta and Shri. Narender Gupta, the impugned judgment had modified it and had decreed it against Shri. Roshan Lal Gupta alone. Shri. Narender Gupta had been excluded.

2. This appeal has been filed by Sh. Narender Gupta. He had filed a counter claim before the trial judge. The trial court had framed four issues. Issue No. 2 is relevant. It reads as follows:

Whether the Defendants are entitled to the counter claim? OPP

3. Oral and documentary evidence was led by the respective parties. The finding returned by the trial court on Issue No. 2 reads as follows:

15. The onus of this issue was upon the Defendants and they have to prove that they are entitled to relief of counter claim. Counter claim as per written statement is that

the Plaintiff contacted the Defendant No. 1 for supply of raw material so that the order placed by the Defendant No. 1 could be manufactured and the Defendant No. 2 supplied him the material and as such the Defendant No. 2 has supplied the material to the Plaintiff i.e. raw material consisting of jute yarn (bleached) 410 kg @ Rs. 60 per Kg and cotton HL 5048 @ Rs. 38/- per Kg which was duly received by the Plaintiff on 16.06.1999. Thereafter, the Defendant raised the bill No. 500 & 501 against the Plaintiff for sum of Rs. 24,910/- and Rs. 1,92,214/- respectively which the Plaintiff has not paid and actual amount recoverable from the Plaintiff was Rs. 2,17,124/- and since the Plaintiff has failed to make the payment to this amount, the Defendants are entitled to the amount with interest @ 24% per annum and accordingly the total amount of Rs. 2,60,500/- is due against the Plaintiff which he has not paid.

16. To prove this, the Defendants have deposed in his evidence that the Plaintiff approached the Defendant No. 2 for purchasing the raw material for manufacturing and supplying the goods as ordered by the Defendant No. 1 and raw material was supplied vide bill No. 017 dated 09.06.1999 which consisted of jute yarn (bleached) 115 bundles weighing 5458 Kg, out of which 410 Kg was jute yarn (bleached) @ Rs. 60/- per Kg and 5048 was jute yarn (Bhogla Panchranga) cotton HL 5048 @ Rs. 38/- per Kg and the said challan was duly signed by the Plaintiff which is Ex. DW 1/2. He has also produced the original bill book i.e. Bill No. 500 & 501. Copy of the same are Ex. DW 1/ 6. He further deposed that the Defendant demanded this amount, and the Plaintiff got issued a frivolous notice which was replied accordingly and the notice of the Plaintiff is Ex. DW 1/5 and reply thereof is Ex. DW 1/6. There is another notice received by the Defendants from the Plaintiff which is Ex. DW 1/7 and reply thereof is Ex. DW 1/8. It is stated that the Plaintiff has not made the payment and he is liable to make the payment. This witness was cross examined by the Plaintiff and in cross examination, he stated that he cannot say that who has signed the Ex. PW 1/1. Ex. PW 1 / 4, Ex. PW 1/5, Ex. PW 1/6, Ex. PW 1/7 and Ex. PW 1/8. He further stated that Vijay Pal has signed the receipt of the challans in token of having received the goods from the firm of his son. Ex. DW 1/ 2 is the said challan. He denied the suggestion that Ex. DW 1/ 2 is not signed by the Plaintiff or that the signature on Ex. DW 1/ 2 are forged one. He also denied that he has not supplied any material to the Plaintiff. He stated that he issued a notice dated 10.09.1999 which is Ex. PW 1/3. He denied the suggestion that he is liable to pay Rs. 1,86,377/- to the Plaintiff. It is argued by Ld. Counsel for the Defendant that Ex. DW 1/ 2 is the delivery challan by which material has been supplied. However, no clarification was given as to why the bill has been prepared on 30.03.2000 if the goods have been supplied on 16.06.1999. The contention of Ld. Counsel for the Plaintiff is that by date 30.03.2000, the notices were already and reply was given and just to prepare the defence, this document has been prepared and bills has been prepared on second last working day of financial year so as to create evidence in favour of the Defendant and the signatures on these documents is not of the Plaintiff at all. It is urged by Ld. Counsel for the

Plaintiff that no such material was received by the Plaintiff and signature on the said documents are forged one.

17. Ld. Counsel for the Defendant has further argued that Ex. DW 1/2 is only a challan and it reflects that jute yarn (bleached) 115 bundles weighing 5458 Kg, out of which 410 Kg was jute yarn (bleached) @ Rs. 60/- per Kg and 5048 was jute yarn (Bhogla Panchranga) cotton HL 5048 @ Rs. 38/- per Kg have been taken by the Plaintiff. No explanation has ever come on record as to why the bill has been prepared on 30.03.2000 and further if the challan Ex. DW 1/2 of the Defendant is believed then there is no explanation with respect to Ex. PW 1/6 dated 05.07.1999 i.e. Reply given by the Defendant to the Ld. Counsel for the Plaintiff in which he has claimed an amount of Rs. 1,04,160/- from the Plaintiff is due, and the Defendant in the said notice says that the raw material consisting of jute yarn (bleached) 115 bundles weighing 5458 Kg, out of which 410 Kg was jute yarn (bleached) @ Rs. 60/- per Kg and 5048 was jute yarn (Bhogla Panchranga) cotton HL 5048 @ 38/- per Kg has been supplied to him by the Defendant on different dates. Neither the Defendant explained what were those different dates and against what order the said material was supplied by the Defendant to the Plaintiff as admittedly neither Ex. DW 1/3 i.e. Bill No. 501 dated 30.03.2000 nor bill No. 500 dated 30.03.2000 Ex. DW 1/4 reflects these different dates and this bifurcation of amount. It cannot be believed that the Defendant had delivered the material to the Plaintiff and he is unable to remember such dates rather it reflects that either it was an oral order or it was understanding. If it was an oral order or it was understanding then Defendant must have incorporated such facts, in notice which are not there. However, in Ex. DW 1/6, the Defendant has claimed an amount of Rs. 93,520/- from the Plaintiff and further in Ex. DW 1/8 which is a reply to legal notice of the Plaintiff again of a different counsel suggests that in addition to facts mentioned in Rx. DW 1/6, the Defendant has also deliver the material as per Ex. DW 1/3 & Ex. DW 1/4. Why this amount was not mentioned in the previous reply to notice has not been explained. Admittedly, this alleged material has been supplied vide challan Ex. DW 1/2 . Ex. DW 1/2 is dated 16.06.1999 and reply to notice Ex. DW 1/6 is dated 05.07.1999 and reply dated 10.09.1999 is Ex. DW 1/8, therefore, those figures as mentioned in the challan must have been incorporated in the reply to the notice of the Plaintiff which is Ex. DW 1/6 dated 05.07.1999. This fact has only been mentioned in Ex. DW 1/8 only.

18. Further the Defendant in this reply has submitted that the Plaintiff has not supplied the finished goods despite the fact that it was mentioned in the order that due date for supply of finished goods is specific and it was to be exported but no evidence on record is filed neither any order has been placed on record not it has been shown on the record as to what was the exact date of supplying the material by the Plaintiff to the Defendants and who were the so-called exporter to whom the goods has to be supplied by the Defendant and which order of Defendant has been cancelled by exporter. All these facts are missing in the evidence of the Defendant and there is no document on record to place corroboration of all these facts. Further

he put a specific question to Plaintiff whether the goods were amenable to sale tax in the cross examination of Plaintiff, to which reply came that goods are amenable to sale tax but while placing his own documents on record Ex. DW 1/3 no such tax has been mentioned that how much sale tax has been paid. It is also observed by the court that first legal notice issued by the Plaintiff to the Defendants on 02.07.1999 and reply thereof sent by the Defendant on 05.07.1999. The Defendant did claim an amount sent by the Defendant on 05.07.1999. The Defendant did claim an amount of Rs. 1,04,160/- from the Plaintiff but he totally failed to establish as to by which bill number, these goods were supplied to Plaintiff. The Plaintiff is giving specific number of bills against which these materials have been supplied but despite sending reply to the Plaintiff by the Defendant, he has not mentioned the fact with respect to bill number by which goods have been supplied. More so, in the written statement as well as in the evidence, the Defendant somehow stated that the goods were not upto the mark and rejected whereas this fact has neither mentioned in the reply to the notice of the Plaintiff Ex. DW 1/6 nor in the subsequent bill which the Defendant himself has exhibited as Ex. DW 1/ 8 which shows that the goods were not rejected and the defence of the Defendant was afterthought and not only afterthought even in bill dated 10.09.1999, the Defendant has not told as to against which bill number, the material was supplied to the Plaintiff by the Defendant No. 2. However, in Ex. PW 1/ 6 that is his first reply to the notice of Plaintiff by the Defendant i.e. Dated 05.07.1999, the Defendant claimed an amount of Rs. 1,04,640/- from the Plaintiff after giving him adjustment of Rs. 10,640/-, and he claimed amount of Rs. 93,520/- which shows that the goods were accepted by the Defendants at least against this bill and this material was not rejected whereas DW1, who was appearing as witness submits that the goods were not upto the mark. Perhaps this may be the reason as to why the best available witness i.e. Defendant No. 2, who has allegedly supplied the matter, is not appearing in witness box rather his attorney is appearing in witness box. Further in reply dated 10.09.1999, the Defendant has demanded an amount of Rs. 4,31,640/- was claimed by the Defendant against the raw material supplied to the Plaintiff. How these replies of the Defendant are contradictory is not explained by the Defendant at all. There is no explanation why bill has been prepared on 30.03.2000, therefore, the court is of the opinion that the Defendant has not been able to discharge the onus to the effect that he is entitled to counter claim. Therefore, the issue No. 2 is decided against the Defendants.

4. The trial judge had correctly noted that the counter claimant has relied upon the delivery challan Ex. DW 1 / 2 dated 16.06.99 but there was no explanation as to why the bills Ex. DW 1/3 and Ex. DW 1/4 were dated 30.03.2000; the intervening period between June 1999 to March 2000 remained unexplained. The oral and documentary evidence had been delved into in detail.

5. The impugned judgment had re-appreciated the evidence. The counter claim stood dismissed. Decree had however prevailed against one Defendant only i.e.

Roshan Lal Gupta.

6. This is a second appeal. This Court is not a third fact finding court. The fact findings had been gone into, in detail, by both the two courts below. No perversity had been pointed out. The substantial question of law had been embodied at page 9 of the body of appeal.

7. No substantial question of law having been arisen, the appeal is dismissed in liming.