

Appellant Vs. Respondent

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Court : Kolkata

Decided On : May-10-2013

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

CP No.206 of 2013 IN THE HIGH COURT AT CALCUTTA ORIGINAL JURISDICTION IN THE MATTER OF : STONE INDIA LTD.-ANDVIJAYA INDUSTRIES BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

10. h May, 2013.

Appearance Mr.Rajarshi Dutta, Adv.Mr.Siddhartha Banerjee, Adv.The Court :
Leave is given to the petitioner to use a supplementary affidavit.

A copy of such supplementary affidavit has been served earlier on the company.

The company has no defence to the claim on account of balance price of goods sold and delivered.

The companys stand in the affidavit-inopposition is at gross variance with its reply to the statutory notice.

The petitioner claimed in the statutory notice of July 12, 2012 that a balance sum of Rs.16,72,283.44 remained due and owing from the company to the petitioner in respect of the bills raised by the petitioner on the company between March and August, 2011 on account of goods supplied by the petitioner to the company.

The statutory notice detailed the bills, the dates thereof and the amounts claimed thereunder.

The statutory notice gave credit to the company for a sum of Rs.3 lakh that had been paid by the company on December 13, 2012 and called upon the company to pay the balance sum together with interest thereon.

The company replied on July 31, 2012.

In the opening paragraph of the companys reply, the company admitted that due to temporary financial constrains (sic., constraints) the payment could not be made against your supplies.

The company also forwarded a payment of Rs.3,18,936.80 to the petitioner under cover of the said reply.

In the final paragraph of the short letter of July 31, 2012, the company claimed that there are few mismatch of bills.

and required the petitioner to get in touch with the accounts department of the company to resolve the matter.

The petitioner claims that after deducting the sum of Rs.3,18,936.80 paid by the company by its letter of July 31, 2012, a balance sum of Rs.13,53,346.46 is due and payable by the company to the petitioner.

The company refers to the terms of the agreement between the parties and says that the goods supplied by the petitioner did not adhere to the specifications and there is a huge pile of rejected goods in the companys manufacturing facility which the petitioner ought to take back.

The company, however, admits that the company did not write any letter to the petitioner prior to the present petition being filed, informing the petitioner of any substandard quality of goods supplied by it or of any goods rejected by the company.

Indeed, the tenor of the company's response to the statutory notice, indicates that the petitioner had not been paid because the company was not being able to meet its debts.

The mismatch that the company referred to in the third paragraph of its reply to the statutory notice cannot be twisted out of context, as the company has attempted to in its affidavit and at the final hearing, to suggest that the supply of the goods did not match the specifications of the goods that the parties had stipulated in the written document executed by them.

It is inconceivable that a purchaser would have rejected the goods supplied to it and not intimated the supplier.

It is difficult to accept, given the tenor of the company's response to the statutory notice, that the company had any reservations about the outstanding amount claimed by the petitioner in the statutory notice.

CP No.206 of 2013 is admitted for the principal sum of Rs.13,53,346.46 together with interest thereon at the rate of 15% per annum from the respective dates of the bills till payment.

If the company pays off the entire amount, inclusive of interest and costs assessed at 1500 GM, to the petitioner within a week from date, the petition will remain permanently stayed.

In default, the petition will be advertised once in The Statesman and once in Bartaman.

The advertisements should indicate that the matter will appear before Court on the first available working day after the expiry of four weeks from the date of the publications being made.

Publication in the Official Gazette will stand dispensed with.

Urgent certified photocopies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.) sg.

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