

Appellant Vs. Respondent

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Court : Kolkata

Decided On : May-06-2013

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

CP No.248 of 2012 IN THE HIGH COURT AT CALCUTTA ORIGINAL JURISDICTION IN THE MATTER OF: PAULMECH INFRASTRUCTURE PVT.LTD.AND RAMANUJ SINGH BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

6. h May, 2013.

Appearance: Mr.Ajay Krishna Chatterjee, Sr.Adv.Mr.K.C.

Das, Adv.Mr.S.N.

Dutta, Adv..for the petitioning-creditor Mr.Mukul Lahiri, Sr.Adv.Mr.Anindya Lahiri, Adv..for the company The Court : The companys defence appears to be utterly dishonest and without any basis and to compound matteRs.despite the document put up by way of defence having been questioned, the original document is not available in Court at the time of hearing.

The claim of the petitioning creditor is on account of goods delivered or services rendered under an agreement for conversion of coking coal to beehive hard coke.

According to the petitioner, there was a sum in excess of Rs.1.18 crore due as at June 15, 2009, but the parties entered into an agreement on June 16, 2009 by which the company agreed to pay a sum of Rs.98 lakh in full and final settlement of the petitioners claim within July 15, 2009.

The petitioner says that since the entirety of the payment was not forthcoming and only an amount of Rs.16 lakh had been paid by September, 2009, the petitioner issued a demand on January 16, 2010 seeking the balance payment of Rs.82 lakh.

The petitioner has also relied on another reminder of June 9, 2010.

According to the petitioner, a payment of Rs.20 lakh was made by the company to the petitioner between June, 2010 and October, 2011 whereupon the petitioner issued a further demand of October 8, 2011 claiming the balance amount of Rs.62 lakh within a week from the date of issuance of the letter along with interest thereon.

The letter dated October 8, 2011 is annexure D to the petition and is referred to at paragraph 20 of the body of the petition.

Paragraph 20 of the petition is dealt with in the affidavit-in-opposition at paragraph 13(a).The company has asserted in its affidavit that the allegations in paragraph 20 are irrelevant and totally beside the point.

However, the validity of the demand of October 8, 2011 has not been questioned not has the company disputed the fact that it received such demand.

The company appears to have affixed its rubber stamp on the copy of the demand with an officer of the company initialling it.

The letter of October 8, 2011 is of immense significance in the context.

According to the companys affidavit and the fiRs.annexure thereto, the parties entered into an agreement on September 22, 2010 by which the petitioner acknowledged having received a payment of Rs.15 lakh by way of a demand draft issued on September 30, 2010 in full and final satisfaction of his balance claim against the company.

The petitioner has, however, questioned the veracity of the rubber stamp affixed on the document dated September 22, 2010 and has denied his signature thereon.

In such circumstances, the company ought to have had the original document ready for the Courts verification of the signature thereon at the time of hearing.

The company has sought time to produce the document but such indulgence is not warranted.

If the parties had, indeed, agreed that the final payment of Rs.15 lakh made in September 30, 2010, by the company to the petitioner reflected the conclusion of the transaction between the parties, the company ought to have challenged the petitioner upon receiving the letter of October 8, 2011.

That the company received the letter of October 8, 2011 is beyond question since a categorical assertion to such effect is made in the petition and such minor matter is glossed over in the relevant paragraph of the companys affidavit.

In the circumstances, particularly, since the rubber stamp of the petitioner appearing on the questioned document of September 22, 2010 is at variance with the impression of the petitioners rubber stamp in the documents elsewhere, the companys defence appears to be without basis and the petitioner appears to be justified in his assertion that the company has fabricated the document or brought the same into existence for the purpose of resisting this claim.

There is a further tell-tale sign of the company having no defence to the claim in the company having received the statutory notice and not replying thereto.

If a company had squared off a transaction by payment in the year 2010, it would defy logic and reason that it would receive the statutory notice demanding

payment in respect of such transaction but would not reply thereto.

The company's affidavit makes out a simplistic story of some person in the company having questioned the petitioner or an associate and it having been agreed between such persons that the statutory notice would not be proceeded with.

The explanation by the company as to why the statutory notice was not replied to, is not worthy of belief.

In the light of the company not demonstrating any plausible defence to the claim and since it did not reply to the statutory notice and it received demands later than the date of the document which it relies on in its defence, the petition should be admitted.

However, the company is afforded a chance to defend the claim by way of a regular action, if the company furnishes security in cash with the Registrar, Original Side, of the principal sum of Rs.62 lakh together with interest at the rate of 15 per cent per annum on the principal sum reckoned from March 28, 2012, which is the date of the statutory notice, and costs of 5000 GM in addition.

In the event such security is furnished with the Registrar, Original Side, within a fortnight from date, the petition will remain permanently stayed.

The Registrar will invest the money by way of a fixed deposit in any nationalised bank having a branch within the vicinity of this Court.

In default of the entire amount of security being furnished, the petitioner will be at liberty to advertise the petition once in The Statesman.

and once in Bartaman.

newspapers indicating that the matter will appear before Court at the post-advertisement stage 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.

In the event the security is furnished and contemporaneous intimation thereof is issued by advocate representing the company to advocate representing the petitioner within three days of the security being furnished with the Registrar, Original Side, the claim of the petitioning creditor will stand relegated to a regular action, be it a suit or by way of an arbitral reference.

In the event, however, the security is furnished and an intimation thereof is given to advocate representing the petitioner but no suit is lodged or arbitration is commenced within a period of six weeks from the date of the intimation being given, the company will be at liberty to take back the entire security without any reference to Court.

It must be recorded that an utterly irrelevant issue as to the original agreement between the parties containing an arbitration clause was referred to on behalf of the company.

It is elementary that an arbitration clause does not stand in the way of a company petition being filed or being adjudicated on merits.

In any event, the agreement that is asserted by the petitioner in this case is the settlement agreement of June 16, 2009 which does not contain any arbitration clause.

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

(SANJIB BANERJEE, J.) bp./kc.

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