

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Nov-30-2012

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

CP No.183 of 2012 IN THE HIGH COURT AT CALCUTTA ORIGINAL JURISDICTION IN THE MATTER OF: INDO OCCIDENTAL SYMBIOSIS PVT.LTD.AND DARSHAN MEKANI BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

30. h November, 2012.

Mr.Debnath Ghosh, Adv.Mr.A.K.Hazra, Adv.The Court : The company has no defence to the claim of the petitioning creditor on account of price of goods sold and delivered.

The petitioner supplied garments to the company.

The bills raised by the petitioner appear to have been received by the company and there is no dispute as to the supply having been affected.

The petitioner has also relied on a written confirmation of accounts which appears to have been signed on behalf of the company.

The petitioner issued a statutory notice on February 17, 2012 claiming a sum of Rs.4,14,600/- on account of the balance principal since a sum of Rs.2 lakh had been paid by the company to the petitioner against the bills of a total value of Rs.6,14,600/-.

Despite due receipt of the statutory notice, the company did not reply thereto.

The statutory notice appears to have been sent all over again to the company on February 29, 2012.

Again the company received the statutory notice at its registered office but did not respond thereto.

The company has used an affidavit.

It is the companys stand that the principal person in control of the petitioner introduced herself to the cultural works conducted by the company and, in couRs.of time, obtained an order for supply of garments to the company for use for a specific purpose.

It is also the companys case on affidavit that the garments were unsuitable for the purpose and were otherwise improperly stitched and ill-fitting.

As to why the garments were not befitting the purpose is not indicated in the affidavit.

The company claims that it rejected the goods and that the petitioner was immediately made known of the companys rejection of the goods.

However, there is no evidence in support of such assertion that the company has been able to carry.

The company does not rely on any document by which it had made a claim on the petitioner or any document by which the company had rejected the goods supplied

by the petitioner.

Though the company has sought to question the confirmation of the accounts on the ground that the person who executed the document did not have any authority to bind the company to the confirmation, it does not appear that the company has any defence to the claim as the company admits to have received the goods and consumed the same without making the entire payment due on such account.

CP No.183 of 2012 is admitted for the principal sum of Rs.4,14,600/- together with interest at the rate of 12% per annum from February 29, 2012, which is the date of the second statutory notice.

If the company pays off the entire sum, inclusive of interest and costs assessed at 1200 GM, within a fortnight 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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