

**Appellant Vs. Respondent**

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**SooperKanoon Citation :** [sooperkanoon.com/1061091](http://sooperkanoon.com/1061091)

**Court :** Kolkata

**Decided On :** Jun-05-2012

**Judge :** Sanjib Banerjee

**Appellant :** Appellant

**Respondent :** Respondent

**Judgement :**

CP No.657 of 2011 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction In the matter of :KOHINOOR STEEL PVT.LTD.And NEOCARBONS PVT.LTD.Appearance Mr.A.Mitra, Advocate Ms.Manju Agarwal, Advocate BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

5. h June, 2012.

The Court : The claim is on account of price of goods sold and delivered.

The petitioner issued a statutory notice on or about June 30, 2011 claiming a sum in excess of Rs.11 lakh on account of petroleum products that had been supplied pursuant to a purchase order issued by the company.

The company replied to the statutory notice on July 18, 2011.

Though there is no reference to the reply to the statutory notice in the petition, the petitioner not admits that such reply was, indeed, received by the petitioner.

The submission made on behalf of the petitioner is, however, a climb-down from the stand taken in the affidavit-in-reply on behalf of the petitioner that the reply of July 18, 2011 was not received.

The letter of July 18, 2011 is significant since it refers to several other letters exchanged between the parties.

The July 18, 2011 reply to the statutory notice refers, inter alia, to letters dated May 18, 2010 and May 24, 2010, issued by the company to the petitioner, complaining of the goods supplied not adhering to the specifications stipulated in the purchase order.

It is the company's stand in the reply to the statutory notice that despite such complaints and despite the petitioner being put on notice that the goods supplied by it did not adhere to the material bargained for by the company, the petitioner demanded payment without choosing to replace the goods.

The petitioner claims that the several letters that have been relied upon by the company in its affidavit were never issued to the petitioner.

The petitioner says that the letters dated May 2, 2010 (appearing as Annexure-E at page 23 of the opposition), May 5, 2010 (appearing as Annexure-G at page 24A of the opposition), and, May 18, 2010 (appearing as Annexure-H to the opposition at page

25) were not issued to or received by the petitioner.

The petitioner says that it has no officer or employee by the name of Pannalal Dey or Sanjay Singh or Ria.

Such persons appear to have received the letter on behalf of the petitioner as would be evident from the copy letters appended to the company's affidavit.

There is an arguable defence made out by the company and a triable issue raised as to the veracity of the several letters. The company responded to the statutory notice within a reasonable time and the company referred to some of the letters which the petitioner not questions.

It is possible that the company may have manufactured the letters prior to issuing the reply, but an assessment to such effect cannot be made on affidavit evidence given the scanty material available to Court at this stage.

CP No.657 of 2011 is permanently stayed and the claim of the petitioning creditor relegated to a suit.

There will be no order as to costs.

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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