

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Feb-04-2013

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

CP No.201 of 2012 IN THE HIGH COURT AT CALCUTTA ORIGINAL JURISDICTION IN THE MATTER OF: SURETECH INFRASTRUCTURE PVT.LTD.AND UNIT CONSTRUCTION Co.PVT.LTD.BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

4. h February, 2013.

Appearance: Mr.Mainak Bose, Adv.for the petitioner Mr.Soumava Ghosh, Adv.for the company The Court : The company does not have any defence to the claim.

The petitioner let out a vibratory hammer with all accessories for sheet piling work to the company on the terms and conditions contained in the companys written order therefor dated April 28, 2010.

The material terms of the order for hire provided for hire charges at the rate of Rs.5 lakh per month for the machine working a minimum of 26 days or 260 hours in a month and including the wages of the operator and other costs.

The company also agreed to pay service tax at the rate of 10.3 per cent on the hire charges.

The petitioner has relied on the invoices raised on the company during the period that the vibratory hammer was used by the 2 company in couRs.of a project in Delhi.

Detailed sheets are appended to the invoices, indicating the working hours of the machine and it does not appear that the company raised any objection to the invoices or questioned the particulars in support thereof.

By a letter of January 11, 2011, the petitioning-creditor demanded a payment of Rs.21,11,937/- as outstanding from the company on account of the hiring charges.

The company made substantial payments thereafter.

By a second letter of May 18, 2011 issued on behalf of the petitioner a reduced demand of Rs.8,23,482/- was made on account of the balance due under the invoices and the transportation charges that the agreement entitled the petitioner to claim from the company.

The company replied by its letter of June 8, 2011 asserting as follows: We have received your aforesaid letter and have noted the contents thereof.

Subsequent to your said letter, your client has entered into a mutual settlement with us and has received a cheque bearing number 121177 dated 31/5/2011 for Rs.4,00,000/- in settlement of their claim for the hire charges of machinery for our work.

The said cheque has to be deposited after encashment of cheque of MCD in our favour.

In view of such settlement, you are requested to withdraw the said letter, the allegations contained in your said letter are not admitted.

Despite the companys assertion in its reply that the allegations contained in the letter dated May 18, 2011 were not admitted, the company chose not to detract

from the particulars furnished and claimed that the 3 amount due to the petitioning-creditor had been settled at a consolidated sum of Rs.4 lakh.

The cheque for Rs.4 lakh was dishonoured upon presentation and the petitioning-creditor caused a further letter dated June 27, 2011 to be written, denying the settlement of the petitioners dues as suggested by the company.

The companys next letter was issued on July 20, 2011 when it repeated that the claim had been settled and pointed out that the cheque for Rs.4 lakh had been cleared.

The statutory notice of December 27, 2011 followed from the petitioner and the company replied to the same on January 19, 2012.

The company does not say that its affidavit points out any discrepancy in the invoices raised by the petitioner.

The companys stand in the affidavit is the same as indicated in its reply to the statutory notice : That the entire claim was settled for lesser sum and, upon the petitioner receiving the payment of Rs.4 lakh, no further sum remains due.

The company has not relied on any material or even a letter of confirmation or even the companys writing in support of the alleged settlement prior to any demand being made for the balance sum by the petitioner.

Indeed, upon the companys fiRs.assertion of the settlement, the petitioning creditor denied the same by insisting that the suggestion of settlement was totally false and misleading and far from any truth.

4 The company does not have any defence to the claim, yet there remains a theoretical possibility that upon oral evidence being taken, the companys defence may be found to be good.

Though there is no indication as to any basis to the companys defence, the company Court has an element of discretion between admitting a winding-up petition for the claim made therein and giving the company an opportunity to resist a regular action upon the company securing the entire claim of the petitioning

creditor.

Since there does not appear to be anything that the company has been able to cite in support of its assertion that the claim was settled for a lesser amount, there is no plausible defence indicated by the company to the claim; but the company is afforded the luxury of asserting and establishing the defence in courts of a regular action by the company being permitted to secure the entire claim of the petitioning creditor to ward off advertisements being issued.

If the company furnishes cash security for a sum of Rs.4.50 lakh in favour of the Registrar, Original Side, within a fortnight from date, the claim of the petitioning creditor will stand relegated to a suit and the deposit will stand to the credit of such suit if it is filed within four weeks of the deposit being made by the company.

Upon the deposit being made, the Registrar, Original Side, will invest the same by way of a fixed deposit in any nationalised bank having a branch within the vicinity of this Court.

In default of the security being furnished within the time permitted, the petition will stand admitted for the sum of Rs.4.50 lakh and the 5 petitioning creditor will have leave to advertise the petition in The Statesman.

and Bartaman., indicating that the matter will be returnable 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.

In case of the company depositing the security and the petitioner not instituting a suit within four weeks from furnishing the security with the Registrar, Original Side, it will be open to the company to mention the matter for the immediate release of the security.

Upon furnishing the security, advocate for the company will immediately notify advocate for the petitioner.

There will be no order as to costs at this stage.

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

(SANJIB BANERJEE, J.) kc/bp.

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