

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Sep-17-2013

Judge : Sanjib Banerjee

Appellant : Appellant

Respondent : Respondent

Judgement :

CP No.433 of 2013 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction
ORIGINAL SIDE IN THE MATTER OF: TITAGARH WAGONS LTD.-And
MAHENDRA KR JHUNJHUNWALA Appearance: Mr.Anirban Roy, Adv.Mr.Sachin
Shukla, Adv...for the petitioner.

Mr.Reetoborto Mitra, Adv.Ms.Radhika Singh, Adv.Ms.Sayani Chatterjee, Adv...for
the company.

BEFORE: The Hon'ble JUSTICE SANJIB BANERJEE Date :

17. h September, 2013.

The Court : The petitioning creditor claims on account of price of goods sold and
delivered.

The petitioner has relied on the particulars of the outstanding bills at Annexure-A
to the petition.

The company says that the claims in respect of all but the last three bills in the chart at Annexure-A to the petition are barred by the laws of limitation.

This petition was presented on June 19, 2013.

All bills raised prior to June 19, 2010 may be barred by limitation unless the petitioner can rely on the exceptions to the rule as recognised in the statute.

The petitioner contends that paragraph 16 of the affidavit filed by the company would not permit the company to assert the point of limitation.

At paragraph 16 of the companys affidavit, it has claimed that a meeting was held towards the end of 2010, whereat it was agreed between the parties that the claims in respect of the bills raised by the petitioner till then, would be set off against the compensation due to the company from the petitioner.

The company suggests that if the objection as to limitation is sought to be countered by referring to the admission at paragraph 16 of the companys affidavit, it is elementary that the entirety of the admission has to be accepted or none at all.

Since the very averment that the petitioner may rely on for the purpose of saving limitation would not permit the petitioner to pursue the claim in respect of the bills thus saved from limitation, such aspect of the petitioners claim cannot be conveniently assessed on affidavit evidence in this summary determination.

Accordingly, the claim of the petitioning creditor in respect of the bills detailed in the list at Annexure-A to the petition upto May 18, 2010 is relegated to a suit.

The balance claim of the petitioner is admitted as the company cannot demonstrate any material to suggest that the petitioner had given up such claim or even that there was any meeting as alleged at paragraph 16 of the companys affidavit.

Accordingly, C.P.No.433 of 2013 is admitted for the principal sum of Rs.39,936/- covered by the bills dated July 15, 2010, August 9, 2010 and August 9, 2010, together with interest thereon from the respective dates of the bills at the rate of 10% per annum till payment.

If the entire amount, inclusive of interest and costs assessed at 200 GM is not paid by the company to the petitioner within four weeks from date, the petitioner will be at liberty to advertise the petition once in The Statesman and once in Aajkal.

The advertisements should indicate that the matter will appear before Court on the first available working day after the expiry of a period of four weeks from the date of the publication thereof.

Publication in the official gazette shall stand dispensed with.

No observation in this order should affect either party in respect of any future claim that either may bring against the other.

The self-injunction obtained by the petitioner will stand vacated after a period of four weeks from date.

Certified website copies of this order, if applied for, be urgently supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.) Bp.

A.R.(C.R.)

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