

Kamal Sahdev Vs. M/S. Grid India Power Cables Pvt. Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/1126744

Court : Delhi

Decided On : Jan-21-2014

Judge : G. S. Sistani

Appellant : Kamal Sahdev

Respondent : M/S. Grid India Power Cables Pvt. Ltd. and anr.

Judgement :

\$~F-2 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: January 21, 2014 + CS(OS) 1858/2009 KAMAL SAHDEV Through: Mr.Atul Batra, Adv. ...Plaintiff Versus M/S. GRID INDIA POWER CABLES PVT. LTD. & ANR. Through: None. ...Defendants CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S. SISTANI, J.

(Oral) 1. Plaintiff has filed the present suit for recovery of Rs.85,97,286/-. On 07.12.2009, the defendants entered appearance and sought time to file the written statement. Pursuant to the order dated 07.07.2010 neither the written statement was filed nor the defendants were represented in the Court. Thereafter, due to nonappearance of the defendants on various dates, the defendants were proceeded ex-parte by an order dated 07.07.2010.

2. The plaintiff has led ex-parte evidence and has examined three witnesses. PW-1 Shri Kamal Sahdev has testified on the lines of the plaint. PW-1 has testified that he is the sole proprietor and is carrying on his business from 60 Okhla Industrial

Area, Phase-III, New Delhi. The defendant No.1 is a private limited company engaged in the manufacture and trading of cables including electricity cables. Defendant No.2 is the Managing Director and is responsible for the day to day affairs of the company. Defendant No.1, vide communication CS(OS) No.1858/2009 No.4231/PVVNL-MT/MM/208(S)-2006 Page 1 of 8 dated 12.05.2006, received an order for manufacture and supply of LT Ariel Bunched Cable (3x120+1x95+IX16 against tender specification No.PVVNL-Mt/208(S)-2006 and an agreement dated 12.05.2006 was entered into between M/s.Grid India Power Cables Pvt. Ltd. (defendant No.1) and The Pashchimanchal Vidyut Vitran Nigam Ltd., Meerut (hereinafter referred to as the Nigam). The plaintiff was informed by defendant No.2 that the value of the order was about Rs.1,99,00,670.25 which included excise duty @16.48% and CST @4% and freight. The basic value of the order was Rs.1,64,50,533/-. The defendant No.2 further projected that the total profit would be of approximately 12% (on the entire supplied value being approximately Rs.19.74 lakhs) on the basic value i.e. Rs.1,62,50,533/-. It was further represented by defendant No.1 that the payments would be made by the Nigam latest by 30.09.2006. The defendant No.2 sought financial assistance from the plaintiff as the order received from the Nigam was to be executed within the time fixed. The financial assistance of Rs.40 lakhs was sought up to 30.09.2006 for execution of the work. A return of 6% was offered as consideration on the total value of the order. The offer of the defendants was accepted and two cheques drawn on HSBC, Nos.107639 and 107640, dated 29.06.2006 and 05.07.2006 respectively, in sum of Rs.15,00,000/- and Rs.25,00,000/- respectively, were handed over to the defendants. The terms of the agreement were reduced in writing in the form of agreement dated 20.07.2006. The agreement has been exhibited as Ex.PW-1/27. PW-1 has also identified the signatures of defendant No.1 on the agreement Ex.PW-1/27. It has further been deposed by PW-1 that the defendant No.1 agreed to give 6% of the Order Value as consideration to CS(OS) No.1858/2009 his proprietorship concern Page 2 of 8 investing the aforesaid sum of Rs.40,00,000.00 (Rupees Forty Lacs only) in the project/order and with a view to impress upon the plaintiff their sincerity and genuineness of the terms of the agreement, the defendants, issued the following cheques in favour of the proprietorship concern of the plaintiff in order to secure

the principal amount of Rs.40.00 lacs paid by the plaintiff, to secure the principal amount of Rs.40 lacs paid by me issued the following cheques in favour of my proprietorship concern:Sl.No.Cheque No.Drawn on (i) Canara Bank 25,00,000.00 Returned for 977771 Amount Remarks insufficient funds (ii) 977770 Canara Bank 15,00,000.00 Payment stopped (iii) 387141 Canara Bank 12,00,000.00 Payment stopped 3. PW-1 has deposed that the cheques at Sl.No.(i) & (ii) above were issued towards the return of principal amount and the cheque at Sl.No.(iii) above was issued towards the share of part profit of the proprietorship concern of the plaintiff as envisaged under the agreement dated 20.07.2006 and it was so written on the said cheque on its reverse side by the defendant No.2. The said cheques were undated. That after 30.09.2006, the defendant No.2 stated that there had been delay in release of payment by Pashchimanchal Vidyut Vitran Nigam Ltd.

and as such asked the plaintiff to bear with him.

4. That after 30.09.2006 the defendant sought extension of time as payments had not been released by the Nigam in favour of the defendants. The defendants vide letter dated 26.03.2007 (Ex.PW1/1) asked the plaintiff to deposit the cheque No.977771 in the sum of Rs.25 lakhs on 05.04.2007. However, the aforesaid cheque was returned with the mark insufficient funds. Copy of the cheque has been exhibited as Ex.PW-1/2. A return memo has been exhibited as Ex.PW-1/3. The aforesaid cheque was again represented at the request of the defendants on 09.10.2007. However, the same was returned with the mark exceeds arrangement. The return memo has been exhibited as Ex.PW-1/3.

5. That thereafter the plaintiff after taking consent of defendant No.2 presented for encashment the two cheques being No.977770 and 387141 on 03.04.2008. However, both the cheques were returned with the remarks Payment Stopped by Drawer.

6. The plaintiff thereafter sent a legal notice dated 07.11.2007 to the defendants; a copy of which has been marked as Ex.PW-1/4 and original postal & UPC receipts are exhibited as Ex.PW-1/5 to Ex.PW1/9. The defendants refused to accept the notices and the envelopes were returned with the marks refused. memo has been exhibited as Ex.PW-1/10 and The return Ex.PW-1/11. Subsequently, the reply to

the legal notice Ex.PW-1/12 was issued and the envelope of the reply has been exhibited as Ex.PW-1/13. It is also the case of the plaintiff that on enquiries the plaintiff learnt that the defendants did not execute the order of the Nigam in full and the money of the plaintiff was diverted. The remainder two cheques bearing No.977770 and 387141 in the sum of Rs.15 lakhs and Rs.12 lakhs respectively were returned by the bankers of the defendants with the endorsement payment stopped. The return memos are exhibited as Ex.PW-1/14 and Ex.PW-1/15 and the aforesaid cheques have been exhibited as Ex.PW-1/16 and Ex.PW1/17. The plaintiff concerned also gave an additional amount of Rs.6 lakhs to the defendant vide cheque No.107637 dated 02.06.2009 drawn on HSBC Bank.

7. That for the payment of aforesaid amount, defendant had issued a cheque bearing No.977778 dated 28.04.2008 for the sum of Rs.6 lakh drawn on Canara Bank, however, the same was returned unpaid with the comment Exceeds Arrangement. That the original of the cheque bearing No.977778 dated 28.04.2008 for Rs.6 lakhs drawn on Canara Bank along with the cheque returning memo of Canara Bank dated 30.04.2008 have been exhibited as PW-1/18 and PW-1/19 respectively. That out of the said Rs.6,00,000/- (Rupees Six Lacs only), the defendant returned the sum of Rs.5 lakhs on 07.11.2007 vide cheque/Pay Order No.028346 dated 07.11.2007 drawn on Canara Bank. That from the additional loan of Rs.6 lakhs the balance principal of Rs.1 lakh is yet to be received by the plaintiff.

8. That the plaintiff issued another legal notice dated 07.11.2007. That the plaintiff received a false and frivolous reply from the advocate of the defendants vide letter dated 22.11.2007 wherein the defendant took a false and frivolous stand. However, the defendants admitted the agreement dated 20.07.2006 and also their liability.

9. The plaintiff has claimed the following amounts:Sl.No.Particulars Amount in Rs.

1. Principal to be returned as on 40,00,000.00 30.09.2006.

2. Share CS(OS) No.1858/2009 of profit as per 12,00,000.00 Page 5 of 8 agreement dated 20.07.2009 3. Interest as on 01.09.2009 32,37,160.00 calculated

@18% p.a. (as per agreement dated 20.07.2006) compounded annually on principal and the share of profit.

4. Balance amount of principal 1,00,000.00 due from the additional loan 5. Interest as calculated on 01.09.2009 60,126.00 @18% p.a. compounded annually.

10. That a sum of Rs.85,97,286.00 is due from the defendants as on 01.09.2009 along with interest (as calculated up to 01.09.2009) as per the agreement. That the defendant No.2 had personally took guarantee for the defendant No.1 for the aforementioned amount.

11. That the plaintiff issued a further notice dated 10.09.2009 which is exhibited as Ex.PW-1/20, the UPC receipt is Ex.PW-1/21, Postal receipts are exhibited as Ex.PW-1/22 and Ex.PW-1/23, proof of dispatch of notice to defendant by e-mail is Ex.PW-1/24 and A/D cards are Ex.PW-1/25 and Ex.PW-1/26.

12. Shri Kamal Sahdev PW-1 has deposed on the lines of the plaint. Additional evidence was led by PW-1 wherein he testified that the original agreement has been misplaced and a certified copy has been filed as during the pendency of proceedings under Section 138 of the Negotiable Instruments Act 1881, the original agreement was produced before the concerned Court which was seen and returned and at that stage agreement was misplaced. Certified copy was produced on record of this Court. Evidence is also being filed of Shri Ramesh Sapra DW-1 and Manoj Kapoor DW3 have identified their signatures on the agreement as one of the witnesses to the agreement who are both the witnesses to the agreement.

13. Mr.Batra, learned counsel for the plaintiff submits that the agreement Ex.PW-1/27 entered into between the parties would show the terms and conditions of the agreement. He submits that the cheques handed over by the defendant Ex.PW-1/2, Ex.PW-1/15 and Ex.PW-1/16 would show that the defendants not only received the amount of loan but to secure the payment of the plaintiff they had issued post-dated cheques. The aforesaid cheques were either dishonoured or the payment was stopped. Counsel submits that legal notices were issued, the postal receipts and legal notices have been duly exhibited.

14. I have heard learned counsel for the plaintiff and examined the evidence and the documents which have been placed on record. The agreement entered into between the parties Ex.PW-1/27 details the terms and conditions of grant of loan in the sum of Rs.40 lakhs. This sum of Rs.40 lakhs was paid by the plaintiff to the defendant in the form of two cheques which were duly encashed. To secure the loan the defendants issued post-dated cheques to the plaintiff which on presentation were either dishonoured or the payment was stopped. Plaintiff was also forced to initiate proceedings under Section 138 of the Negotiable Instruments Act 1881. As per the terms of the agreement the plaintiff was to get a return of 6% on the ordered value up to 30.09.2006 on the sum of Rs.40 lakhs and thereafter in case of non-payment the loan was to carry the interest @18% per annum.

15. Accordingly, the present suit is decreed in favour of the plaintiff and against the defendants in the following manner:Sl.No.1. Interest Particulars Amount in Rs. as 32,37,160.00 on 01.09.2009 (calculated @18% p.a. (as per agreement dated 20.07.2006.) compounded annually on principal the of and share profit.

2. Principal to be returned as on 40,00,000.00 30.09.2006 3. Share of profit as per 12,00,000.00 agreement dated 20.07.2009 4. Balance amount of principal 1,00,000.00 due from the additional loan 16. The plaintiff would be entitled to pendente lite interest @8% from the date of filing of the suit till the date of decree and from the date of decree till payment. JANUARY21 2014 dkb CS(OS) No.1858/2009 (G.S.SISTANI)

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