

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Jun-30-2014

Judge : Nadira Patherya

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET CP NO.145 OF 2014 IN THE HIGH COURT AT CALCUTTA Original Jurisdiction ORIGINAL SIDE IN THE MATTER OF: MAHESHWARY ISPAT LTD.AND IN THE MATTER OF : GAJANAN ORES PVT.LTD.BEFORE: The Hon'ble JUSTICE PATHERYA Date : 30th June, 2014.

MR.PRITHWIRAJ SINHA, MR.S.GHOSE, MR.A.BASU MULLICK ADVOCATES FOR PETITIONER MR.SWATARUP BANERJEE, MR.S.SENGUPTA, ADVOCATES FOR COMPANY The Court : In this winding up petition a claim has been made on account of price of goods sold and delivered.

The case of the petitioning creditor is that goods were supplied and bills raised.

In spite of receipt of bills by the company no payment has been made.

Therefore, a statutory notice was issued on 8th June, 2013 for payment of sums on account of price of goods sold and delivered and furnishing of Form-C or equivalent suMs. A reply has been given to the said statutory notice wherein the company has raised a dispute with regard to goods being rejected by letter dated 30th April, 2011.

The said goods rejected was replaced and the said replaced goods also were found to be of inferior grade because of which the company suffered loss and damage.

As the goods were not supplied, therefore, the question of furnishing Form-C did not arise.

To the reply, the petitioning creditor has categorically stated that the goods which, according to the company, had been replaced were goods supplied under an independent purchase order.

Therefore, the question of replacement does not arise.

The seal of the company varies from the original seal and documents have been manufactured only for the purpose of this winding up petition.

Reliance has been placed on AIR1966 Andhra Pradesh 285 for the proposition that besides affidavit evidence oral evidence can also be taken in winding up proceeding.

Therefore, the winding up petition be admitted.

Counsel for the company submits that by letter dated 30th April, 2011 goods were rejected and this letter has been received by the petitioning creditor.

The goods rejected were replaced.

The said replaced goods were also of inferior grade for which the company has suffered loss.

Therefore, no sum need be paid by the company to the petitioning creditor.

As goods were not supplied the question of furnishing Form-C did not arise.

The purchase order dated 9th May, 2011 has also not been annexed to the petition.

The issue raised with regard to addressing the letter at one address and receipt at Jamshedpur is not germane as in the past also letters have been received by the Jamshedpur Branch of the petitioning creditor.

Therefore, this application merits no order and be dismissed.

In reply counsel for the petitioning creditor submits that rejection letters dated 30th April, 2011 and 11th July, 2011 were never received by the petitioning creditor and have been manufactured for the purpose of this application only.

Having considered the submissions of the parties, while payment on account of supply is sought by the petitioning creditor, the company has relied on the letter dated April 30, 2011 whereby goods had been rejected.

It is the company's own case that the said rejected goods were replaced with goods which were of inferior quality.

While by letter dated April 30, 2011 goods had been rejected, the letter of July 11, 2011 does not speak of rejection of goods.

All that it complained of was goods of inferior grade for which the company had suffered loss.

The loss or damage suffered must be a sum quantified; but in the instant case the company took it upon itself to complete this exercise which it was not entitled to do.

In the reply given by the petitioning creditor, the goods which according to the company had been replaced were in fact given pursuant to a fresh purchase order dated May 9, 2011 but such purchase order has not been annexed to the winding up petition.

Therefore, in the absence of the basic document of purchase and rejection of invoices dated April 25, 2011 and April 27, 2011, the claim of the petitioning creditor cannot be admitted in this winding up petition and accordingly this application merits no order and is accordingly dismissed.

The petitioning creditor itself has alleged that the seal of the company and documents have been manufactured.

Although oral evidence is sought, a proper case must be made out to warrant oral evidence which is lacking in the instant case.

Therefore, this is another reason for not passing an order in this application.

This, however, will not prevent the petitioning creditor from taking steps in accordance with law.

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

(PATHERYA, J.) sb/tk

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