

indore Rolling Mills and anr. Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-01-2007

Reported in : 2007(2)MPLJ64

Judge : Arun Mishra, J.

Appellant : indore Rolling Mills and anr.

Respondent : The State of M.P.

Disposition : Appeal dismissed

Judgement :

ORDER

Arun Mishra, J.

1. This appeal has been preferred by the defendant aggrieved by the judgment and decree passed by the Trial Court dated 5-4-1995 in C.S. No. 18-B/91.

2. The respondent State of M.P. Irrigation Department through Executive Engineer filed a civil suit for recovery of a sum of Rs. 98,249.80 along with interest on account of 55.629 MT iron rods which were not returned after rerolling to the State of M.P. as per agreement (Ex. P-1), dated 21-9-1971. Plaintiff State of M.P. used to send iron for the purpose of rerolling to the defendant, however, defendants obtained the iron for the purpose of rerolling but did not return it back in the form of

rods. 7% wastage was allowed to the defendant. On different dates total 65.547 MT iron was supplied after wastage of 7%. Defendant had to supply 60.959 MT rerolled iron rods, however, defendants supplied only 9.22 MT. A sum of Rs. 1,00,132.20 was due as value of goods not supplied. In spite of notices and acknowledgment made in the various communications particularly dated 28-7-1973, in which it was stated that remaining goods shall be returned, three tons per month. Ultimately, in all a sum of Rs. 98,249.80 remained due, for the recovery of same the suit was filed.

3. The defendants in the written statement contended that Bal Kishan did not execute an agreement in the capacity of Managing Partner. New iron was to be supplied, however, old scrap was supplied, thus instead of wastage of 7%, it ought to have been allowed at 15%. The Chief Engineer has admitted the said fact. After 15% wastage nothing was to be returned by the defendants. Value of the goods was not worth Rs. 1800/MT. The earnest money and security deposit was already with the plaintiff as such no amount was due. As the transaction had taken place at Indore, Court at Hoshangabad was not having jurisdiction. Shri Balchand Jain, Executive Engineer was not authorized to present plaint on behalf of State of M.P. as such prayer was made to dismiss the suit.

4. The Trial Court as per order dated 31-7-1981, decided the preliminary issue as to territorial jurisdiction and rejected the objection raised by the defendant as to jurisdiction of the Court. The Trial Court framed as many as nine issues. It has been found that suit has been filed within the period of limitation. In all 65.547 MT of mild steel bars were supplied to defendant No. 1. Defendants supplied 9.224 of finished goods. Balance of 55.629 MT of MS bars remained to be received by the plaintiff. Rate of MS bars was Rs. 1800/MT. The defendants committed breach of the contract. Defendant No. 2 was the Managing Partner of defendant No. 1. Suit has been decreed for a sum of Rs. 98,249.80 after deduction of labour charges out of a sum of Rs. 1,00,132.20 along with interest @ 12% per annum w.e.f. 21-11-1971 along with proportionate goods.

5. Shri K.B. Bhatnagar, learned Counsel with Shri K.G. Gupta, and Hemant Chouhan, Advocate appearing for the appellants has raised following six

submissions so as to assail the judgment and decree passed by the Trial Court:

(i) Executive Engineer was not empowered to file suit as provided under Order 27 Rule 1, thus it was not properly filed.

(ii) The Court at Hoshangabad had no jurisdiction to try the suit. Order dated 31-7-1981 deciding the issue No. 1 in favour of plaintiff is bad in law.

(iii) Agreement was entered into on 21-1-1971, the suit was filed in the year 1976, it was barred by limitation.

(iv) Old material was supplied for the purpose of rerolling whereas new material was to be supplied as per condition in the agreement.

(v) Security in deposit ought to have been adjusted.

(vi) The supply as per indents P-24 and P-26 has not been proved as such the decree passed with respect to the goods supplied as per aforesaid indents is bad in law.

6. Shri Om Namdeo, GA has refuted the submissions and has supported the judgment and decree passed by the Trial Court.

7. Coming to the first submission raised by Shri K.B. Bhatnagar that Executive Engineer was not empowered to file the suit. It is clear from the statement of Balchand Jain (P.W. 1) Executive Engineer of Tava Project District Hoshangabad that he was an authorised Officer-in-Charge to file the suit on behalf of State meaning thereby he had competence to file the suit. He has not been cross-examined on the said aspect as such statement has not been challenged. This submission was not raised before the Court below as such it has not been dealt with in the impugned judgment. Thus, I find that the objection raised by the defendant to be baseless. Cross-examination is not mere form of procedure but is a matter of substance. Party is required to put its version in the cross-examination to assail the correctness of the statement made. The statement of the Executive Engineer has remained unchallenged, thus in my opinion there is no merit in the first submission raised by the appellant.

8. Coming to the second objection as to territorial jurisdiction. As per order dated 31-7-1981, the District Judge, Hoshangabad has decided the preliminary issue in favour of plaintiff on the ground that finished rerolling iron bars were to be supplied at Tava Project within the territorial jurisdiction of District Court at Hoshangabad. Thus part of cause of action has arisen in the jurisdiction of the Court at Hoshangabad. Agreement was entered into with the Executive Engineer, Store Division, Tava Project, District Hoshangabad, thus in my opinion the Trial Court has rightly decided the preliminary issue in favour of plaintiff. Apart from that it is not the case of the defendants/appellants that any failure of justice has been occasioned. It is trite law that unless failure of justice has been caused due to wrong trial of the case in the Court, which had no territorial jurisdiction, no interference can be made on merit.

9. Coming to the third submission as to the limitation. Shri Bhatnagar has submitted that agreement was entered into on 21-1-1971. It was to be completed by 20-11-1971. Suit was filed in the year 1976. It was beyond period of limitation. The submission raised, though attractive is devoid of substance. The defendant has admitted in various correspondence on record the liability to return the iron obtained by them from the State of M.P. It was to be given back in the shape of finished product. The defendants have admitted their liability as per communication dated 2-8-1973. It was mentioned that 3 MT of steel was supplied in the month of July and another 3 MT of steel of August would be supplied after 20th August. The suit was filed on 26th July, 1976. It was within the period of three years from the aforesaid communication, thus suit was filed within the period of limitation. The Trial Court has correctly decided the issue of limitation.

10. Coming to the submission that supply of old material was made whereas as per agreement new iron was to be supplied, however, Shri Bhatnagar after going through the agreement has stated that there was no such stipulation in the agreement that new iron was to be supplied for the purpose of rerolling, thus, I find no merit in the submission raised by the appellants. Even otherwise this is an objection raised as an after thought. Iron supplied has been retained by defendants.

11. Fifthly Shri Bhatnagar has submitted that security was in deposit, that ought to have been adjusted. There is clear statement made by Radheshyam Mittal (P.W. 2) that no security was deposited under the agreement in question. In an earlier agreement a sum of Rs. 50,000/- was deposited by way of security. The witness was not aware whether work under first agreement was completed as he stood transferred on 6-12-1971. No material could be pointed out by Shri Bhatnagar showing that security deposited under the earlier agreement could be adjusted in the agreement in question nor he was able to point out that the work under earlier agreement was completed satisfactorily. In the absence of an agreement of adjustment of security furnished under a separate agreement in my opinion adjustment by defendant could not have been claimed under the subsequent agreement. First agreement was not in question in the instant case. It is open to the defendants to raise the dispute, if any, of the payment of security under separate agreement independently if otherwise open. I find no merit in the submission, same is rejected.

12. Lastly Shri Bhatnagar has submitted that supply as per indents P-25 and P-26 has not been proved. He has referred to the statement of Shri K.K. Purohit (P.W. 6). He has stated that indents P-25 and P-26 were in his hand writing and he had signed in A to A portion marked with red ink. As per these indents 8.26 MT and 20.80 MT iron was supplied to Indore Rerolling Mills, it was not possible to state from the photocopy that who had received the supply on behalf of Indore Rerolling Mills, however, the person who has obtained the supply, had signed both the indents, some of the portion of the indents was not in his handwriting, 'Indore Rerolling Mill' was written on the indents in his handwriting. Coupled with the statement of said witness Mr. Purohit when we consider statement of defendant No. 2 Jagannath Chouksey, Managing Partner he has not denied the receipt of the goods as per indents P-25 and P-26. In the absence of statement as to non receipt of iron by defendants, no dent is caused in the statement of Shri K.K. Purohit (P.W. 6), in my opinion, the supply as per indents P-25 and P-26 was made to defendants. In Para 4 defendant No. 2 has stated that he did not maintain any account of receipt of iron from the State. Thus, the last submission also found to be meritless

13. Shri Bhatnagar trying to catch last straw like a drowning fish has submitted that interest rate may be reduced. As it was a contractual matter, I find that rate of interest decreed is reasonable. In fact defendants have received the iron from the State and failed to supply the finished rerolled iron bars, thus, I find that rate of interest is reasonable and in such contractual matters it cannot be said to be excessive.

14. Resultantly, I find no merit in this appeal, same is hereby dismissed. No order as to costs.

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