

Eastern Comnets Ltd. and Ors. Vs. Kaustav Ray and Ors.

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Court : Kolkata

Decided On : Aug-17-2015

Judge : Soumen Sen

Appellant : Eastern Comnets Ltd. and Ors.

Respondent : Kaustav Ray and Ors.

Judgement :

ORDER

GA No.3586 2014 CS No.163 of 2013 IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction EASTERN COMNETS LTD.& ORS.Versus
KAUSTAV RAY & ORS.BEFORE: The Hon'ble JUSTICE SOUMEN SEN Date:
17th August 2015.

Appearance: Mr.Jishnu Chowdhury, Adv.Mr.Rupak Ghosh, Adv.Mr.Aritra Basu,
Adv.Mr.Dwipraj Basu, Adv.Mr.Sarathi Dasgupta, Adv.Ms.Ahana Sikdar, Adv.This
is an application attachment before judgment.

for judgment upon admission and The respondent No.2 is a manufacturer of
computers and allied products.

The respondent No.3 is carrying on business as a system integrator and software
developer.

The respondent No.3 is also a supplier of computers to various big corporate houses and government organizations.

The respondent No.2 was looking for a distributor for its product.

During such enquiry, the respondent No.2 came across the petitioner No.1 and a mutual agreement was entered into between the petitioner No.1 and the respondent No.2 on 16th November 2010 to remain valid till 31st March 2013.

In terms of the said agreement, the petitioner No.1 was appointed as a distributor.

The arrangement pleaded by the petitioners is that the respondent No.2 would regularly supply computers and accessories to the petitioner No.1 which the petitioner No.1 in turn would sell and deliver to the respondent No.3.

This arrangement is rather unusual, having regard to the fact that the petitioner No.1 has pleaded that the respondent No.3 is in control of the respondent Nos.1 and 2.

be in dispute that the petitioner distributor by the respondent No.2.

No.1 However, it cannot was appointed as a For the sales to be made by the petitioner No.1, the petitioner No.1 would pay appropriate VAT after adjustment of input credit and would keep a margin of 1% intended to be distributorship compensated expenses.

by the The petitioner petitioners No.1 have for its disclosed particulars of the goods purchased by the petitioner No.1 from the respondent No.2 and thereafter sold to the respondent No.3 along with sale of other goods.

The petitioners claim that the practice followed by the petitioner No.1 and the respondent Nos.1 and 3 in respect of their dealings and transactions would be that the petitioner No.1 would issue postdated cheques for the supplies made by the respondent No.2.

Similarly, the respondent No.3 would also issue postdated cheques in favour of the petitioner No.1 against supplies made by the petitioner No.1 to the respondent

No.3, which goes to show that there may be situations where cheques were issued even before supplies were to be effected.

The claim in the petition is made on the basis of two letters dated 10th April 2013 and 22nd April 2013 purported to have been issued on behalf of the respondent No.3 at pages 57 and 58 of the petition in which the author of the letters appears to have confirmed and accepted an outstanding balance as on 31st March 2013 for a sum of Rs.42,95,98,906/-.

The petitioners have relied upon five postdated cheques dated 16th July 2014 for a sum of Rs.59,04,298/-, dated 21st July 2014 for a sum of Rs.55,01,733/-, dated 4th August 2014 for a sum of Rs.57,70,110/-, dated 16th July 2014 for a sum of Rs.55,77,624/- and dated 21st July 2014 for a sum of Rs.52,42,546/-.

Mr.Jishnu Chowdhury, learned counsel appearing on behalf of the petitioners submits that in view of the admission contained in the said two letters coupled with issuance of the five postdated cheques, which were dishonored on presentation, a decree is required to be passed in favour of the plaintiffs/petitioners at this summons stage.

It is submitted that in the affidavit in opposition there is hardly any denial of the averments made in the petition inasmuch as the petitioners have indicated and have given a Schedule of the supplies effected, to which there is no denial by the respondent No.3.

In an application for judgment upon admission, the Court under the amended provisions is required to find out if there is an admission of fact either in the pleading or otherwise, whether orally or in writing.

If there is an admission on a fact, then the Court can immediately pass a decree on the basis of such admission.

The Code of Civil Procedure does not define admission.

Under Section 17 of the Indian Evidence Act, an admission is a statement, oral or documentary, which suggests any reference as to any fact in issue or relevant fact

and which is made by any of the persons and under the circumstances hereinafter mentioned.

In deciding whether there is any admission made on behalf of a party, the Court is not precluded by reason of Order 12 Rule 6 of the Code of Civil Procedure read with Section 17 of the Indian Evidence Act, 1872 from considering any documents and/or material on record in order to find out whether there is in fact any admission.

This was precisely the reason for which the expression or otherwise was introduced in Order 12 Rule 6 of the Code of Civil Procedure.

In considering the prayer for attachment before judgment, the Court is required to be satisfied if the defendant with intent to obstruct or delay the execution is about to dispose of the whole or any part of the property or to remove the whole or any part of the property from the local limits of the Courts jurisdiction, the Court being satisfied that such circumstances exist could pass an order for furnishing security and attach such properties that might satisfy the decree.

In the affidavit in opposition, there is no denial of the issuance of the five postdated cheques nor any explanation has been offered either in the affidavit or during the submissions made before this Court for issuance of the said cheques.

after the contract period was over.

These cheques were all issued There is also no dispute that materials worth Rs.2,79,96,311/- was received by the respondent No.3.

The indebtedness of the respondent No.3 at least for the said sum of Rs.2,79,96,311/- is established.

Mr.Dasgupta would submit that so far as the balance payments are concerned, those are dependent upon the petitioner No.1 being called upon by the other respondents to pay for the sums against supplies effected and in absence of any material on record to show that any demand was raised by such defendants, the claim of the petitioner No.1 is premature.

However, on the question of reconciliation of the accounts during the course of submissions it appears that even if a charitable view is taken with regard to the sums due and payable, there appears to be a claim of Rs.17 crore which possibly could not be avoided by the defendant No.3.

that the transaction in fact had taken place between the petitioner No.1 and the respondent No.3 and the jural relationship between the parties is established notwithstanding a cloud sought to be created with regard to the nature of the arrangement between the petitioner No.1 and the respondent No.2.

The respondent No.3 also does not deny that the respondent No.3 has no connection with the respondent nos.1 and 2.

Under admission such circumstances, for a sum of Rs.2,79,96,311/-.

be a judgment upon For the remaining balance of Rs.14,20,03,689/-, the bank accounts of the respondent No.3 shall stand attached.

This order is passed having regard to the conduct of the respondent No.3 during the pendency of this proceeding where it appears that notwithstanding an order passed on 4th February 2015, some amounts were allowed to be withdrawn from the said accounts, to which Mr.Dasgupta hardly could offer any explanation.

Mr.Dasgupta in his fairness has submitted that these transactions ought not to have taken place, having regard to the order passed by this Court on 4th February 2015.

This conduct of the respondent appears to be contumacious, but having regard to the fact that this Court passes an order of attachment before judgment for the remaining balance, the said respondent No.3, in the event pays 300 GMs to Ram Krishna Vivekananda Mission, 7 River Side Road, Kolkata, within two weeks from date, shall be purged for contempt as the act of contempt is self-evident and clear.

shall be furnished within a period of four weeks from date, failing which there shall be a decree for the remaining balance of Rs.14,20,03,689/-.

would be open for Similarly, in default of payment of costs, it the petitioners to initiate the contempt proceeding for violation of the order dated 4th February 2015.

The statement of accounts furnished to this Court is kept with the record.

This application, accordingly, stands disposed of.

However, there shall be no order as to costs.

(SOUMEN SEN, J.

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Kumar A.R.(CR)

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