

Otis Elevators Co.(i) Limited Vs. M/S Skipper Construction Co.(Pvt.) Ltd.

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Court : Delhi

Decided On : Mar-09-1998

Reported in : 1998IIAD(Delhi)722; 1998(45)DRJ140

Judge : C.M. Nayar, J.

Appeal No. : Suit No.2069 of 1986

Appellant : Otis Elevators Co.(i) Limited

Respondent : M/S Skipper Construction Co.(Pvt.) Ltd.

Advocate for Pet/Ap. : Mr. Atul Kumar, Adv

Judgement :

ORDER

C.M.Nayar, J.

1. Plaintiff has filed the present suit against the defendant for recovery of Rs.3,03,960.21 with costs and pendente lite and future interest.

2. Plaintiff is a company incorporated under the Companies Act, 1956 and has its registered office at 61, Gateway Building, Apolo Bunder, Bombay 400039 and its regional office for Northern India at 11th floor, Himalaya House, 23, Kasturba Gandhi Marg, New Delhi. Shri A.S. Herwadkar is the Regional Manager of the plaintiff company at the said regional office and is conversant with the facts of the

case and is duly authorised and competent to sign and verify the plaint and to institute the present suit. He also holds a power of attorney from the plaintiff in this regard. Plaintiff carries on the business of manufacture, maintenance, installation of elevators and other such materials and devices.

3. Defendant is a registered private limited company within the meaning of Companies Act, 1956, and has its registered office at Skipper Bhawan, 22 Barakhamba Road, New Delhi-110001 and it carries on the work of construction of multi-storeyed and other buildings.

4. It is alleged that Defendant negotiated with the plaintiff for installation of two electric traction elevators for their building at plot No.88, Nehru Place, Ne Delhi. Pursuant to the said negotiations an agreement was entered into between the plaintiff and the defendant for the supply of two electric traction elevators vide proposal/agreement dated December 22, 1980 made by the plaintiff to the defendant which was duly accepted by the defendant on 28.2.81 and a duly concluded contract bearing No.52 NE 6867/8 was entered between the parties. The price agreed for the said two elevators was Rs.4,03,280/- at the rate of Rs.2,01,640/- per elevator and it was exclusive of excise duty and any sales-tax which may be payable. In pursu-ance of the said order the plaintiff undertook the work of making ready the necessary equipment for installation of the elevators and thereafter the elevators were finally installed. However, there was a delay in payment by the defendant since the very inception of the contract.

5. Defendant was required to pay 10 per cent of the total contractual amount as advance payment but there was a considerable delay in the payment of the said amount despite repeated requests. The defendant assured that the payments would be made shortly by their letters. The plaintiff in the meantime kept on sending various invoices and intimated to the defendant the various amounts which had become subsequently due thereafter and various telegrams were also sent to the defendant for expeditious payment of the amounts due from the defendant to the plaintiff.

6. It is further alleged that plaintiff clearly brought to the notice of the defendant vide letter dated December 16,1982 that the plaintiff had gone ahead with the

manufacture of the materials in view of the urgency for dispatch of the material expressed by the defendant and on the assurance of the defendant that the payments would be released by them to the plaintiff in time. It was brought to the notice of the defendant that as on December 16, 1982, a total amount of Rs.3,38,827.76 was due and outstanding from the defendant to the plaintiff. Defendant by letter dated March 26, 1983 acknowledge the delay in payments and admitted the outstanding debit balance of Rs.3,38,827.76 against the contract for supply and installation of two elevators. The defendant by the said letter proposed that a sum of Rs.1 lakh would be paid immediately to the plaintiff by a Bank Draft and the balance amount would be paid by cheques of Rs.25,000/- each per week commencing from 11.4.83 till such time as the balance amounts would be cleared. However, the plaintiff received only the amount of Rs.1 lakh and one Installment of Rs.25,000/- but thereafter the payments from the defendant to the plaintiff again ceased. This fact was brought to the notice of the defendant by the plaintiff vide various letters and telegram sent by the plaintiff to the defendant.

7. It is averred in the plaint that plaintiff sent registered AD letter dated 2nd July, 1983 explaining the complete position to the defendant and again requested them for expeditious payment specially in view of the fact that the plaintiff had commenced the work even without full material payment as a gesture of goodwill. Further facts are stated in paragraphs 11,12 and 13 which may be reproduced as below:

'11. That the plaintiff continued to sent various letters telegrams as reminders to the defendant but to no avail. The plaintiff received a letter from the defendant dated 14.2.84 informing the plaintiff that the pending items of work had been cleared which the defendant was required to do for completion of the installation of the elevators. The plaintiff sent registered AD letter dated 28th March, 1984 to the defendant informing that two elevators had been completed and handed over to the defendant in February, 1984 and enclosed two invoices in respect of the amounts payable on completion and the price adjustment claimed and requested for expeditious payment. The plaintiff also informed the defendant thereafter by registered AD letter dated April 13, 1984 for balance central excise duty payable by defendant in terms of the contract.

12. That since the payments were not being made by the defendant the plaintiff sent a registered AD letter dated 10.9.84 to the defendant requesting them to expedite the balance payment of Rs.1,86,175.40 Along with interest charges of Rs.47,023.51 as per the statement enclosed with the said letter and again requested for expeditious payment of the amounts overdue from the defendant to the plaintiff. The plaintiff thereafter sent registered letter dated 12th November, 1984 enclosing the invoices for the balance central excise duty payable amounting to Rs.506.66 and requested for expeditious payment of the already existing balance Along with The said amount payable totalling to Rs.1,86,682.06.

13. That the defendants sent a letter dated 10th December, 1984 to the plaintiff wherein they objected to the charging of interest by the plaintiff. The plaintiff sent a reply dated 23rd December, 1984 clearly explaining the situation and drew the attention of the defendant to clause 6 of the proposal dated 22.12.80 accepted by the defendant on 28.2.81 which clearly stipulated that any payment not made at due date, would bear interest at bank rate plus 6 per cent. The rest of the claims of the plaintiff are also explained in the said letter. The plaintiff received a letter dated 8.4.85 from the defendant wherein the defendant admitted its liability for balance amount.'

8. The plaintiff sent registered AD notice dated 26th December, 1985 Through their Advocate asking the defendant to make payment of sum of Rs.1,86,682.06 Along with interest of Rs.91,827.00 totalling to Rs.2,78,508.06 as on the date of notice within 15 days of the receipt of notice. The notice was duly served on the defendant. The defendant did not reply to the said notice.

9. It is stated that a sum of Rs.1,86,682.06 Along with interest at the rate of 18% per annum from October, 1982 till August 15,1986 amounting to Rs.1,17,278.15 totalling to Rs.3,03,960.21 is due and owing from the defendant to the plaintiff as per the statement of account annexed to the plaint as Annexure A.

10. Summons in the suit were issued and they were duly served. Vide Order dated February 13, 1998 the defendant was directed to be proceeded against ex parte. The defendant filed the written statement in which the averments made in the plaint were controverted. The plaintiff filed replication in which the averments as

made in the plaint were reiterated. Evidence by way of affidavit has been filed on behalf of the plaintiff. On the pleadings of the parties the following issues were framed on August 29, 1988 :-

1. Whether the suit has been instituted and plaint signed and verified by a duly authorised person
2. Whether the suit is within time (O.P.D.)
3. Whether the plaintiff is entitled to any interest, if so at what rate
4. Whether the plaintiff is entitled to recover any exciseable duty from the defendant (O.P.D.)
5. Whether the price for supply and installation of the lifts was to be fixed after the installation
6. Relief.

ISSUE NO.1 :

11. The suit has been filed by Shri A.S. Herwadkar, Regional Manager of the plaintiff company. To prove this issue the statement of Shri A.S. Herwadkar, Regional Manager has been recorded on October 13, 1993 in which he has stated that the suit has been signed, verified and filed by him on behalf of the plaintiff company. He has also stated that in terms of the power of attorney he is duly authorised to file, sign and verify the plaint on behalf of the plaintiff. The certified copy of the Power of Attorney is placed on record which is Exhibit PW 1/1. In his statement he has proved the resolutions dated January 13, 1979 and October 28, 1983 passed by the Board of Directors in this regard. The certified true copies are filed and exhibited as PW 1/2 AND PW 1/3 respectively. There is no evidence to rebut the same. It is, accordingly, held that the suit has been instituted and plaint is signed and verified by a duly authorised person. This issue is, accordingly, decided in favor of the plaintiff and against the defendant.

ISSUE NOS.2,3,4,5 and 6

12. The plaintiff has placed the documents on record and filed evidence by way of affidavit. The plaintiff sent to the defendant a proposal for two electric traction elevators vide letters dated December 22, 1980 which is signed by Mr. K.K. Dhar on behalf of the plaintiff. The same is marked as Exhibit PAW 2/2. Exhibit P-1 is the contract entered into between the plaintiff and the defendant for supply and installation of two electric traction elevators in the building of the defendant. The contract was thereafter sent to the defendant vide letter dated June 4, 1981 (Exhibit PW 2/3). Exhibit PW 2/4 is the office copy of letter dated July 3, 1981. Exhibit PW 2/5 is the copy of invoice dated June 6, 1981 signed by Shri A.K. Shirazi on behalf of the plaintiff company. Exhibit PW 2/6 and PW 2/7 are copies of the letters dated September 16, 1981 and September 9, 1982 respectively.

13. The defendant vide letter dated September 27, 1982 acknowledge the ability of the outstanding payments and the same is Exhibit P-2. The invoice and the price adjustment claim dated October 11, 1982 signed on behalf of the plaintiff are exhibits PW 2/9, 2/10 and 2/11 respectively and the same were received by the defendant vide acknowledgement card Exhibit P-3. PW 2/13 is the copy of the letter dated November 4, 1982. PW 2/15 is the copy of the invoice dated November 8, 1982. The plaintiff company sent various telegrams to the defendant calling upon it to expedite the payment of the outstanding amount. The copies of such telegrams are Exhibit PW 2/16 and 2/17 respectively. The plaintiff vide letter dated December 16, 1982 has brought to the notice of the defendant that a total amount of Rs.3,38,827.76 was due and outstanding from the defendant. The same was conveyed vide letter Exhibit PW 2/18. The plaintiff again sent telegrams dated February 19, 1983 and February 28, 1983 to the defendant calling upon it to expedite the payment of the outstanding amount. The copies of such telegrams are PW 2/19 and 2/20. The same were acknowledge by the defendant vide letter dated March 26, 1983 which is Exhibit P-4. The plaintiff vide letter dated March 25, 1983 (PWA 2/21) sent to the defendant Form A & B for the signatures of the defendant and the same was received by the defendant vide A.D. card (Exhibit PW 2/22). Thereafter, the plaintiff sent various letters calling upon the defendant to make the payment of the outstanding amount and the same are Exhibits PW 2/23, PW 2/24, PW 2/27. The copies of the telegrams are exhibits PW 2/25, PW 2/26, PW 2/29 to PW 2/37.

14. It is stated in the affidavit that the defendant had to carry out certain preparatory work to enable the plaintiff to install the elevators and the defendant delayed in carrying out the preparatory work. The plaintiff vide letter dated June 19, 1984, the copy of which is Exhibit PW 2/38 informed the defendant about the pending items to be done in the elevators. The plaintiff also sent telegram dated February 3, 1984 and letter dated February 6, 1984 in this regard which are Exhibits PW 2/39 and PW 2/40 respectively. Exhibit P-6 is the letter dated February 14, 1984 received by the plaintiff from the defendant informing the plaintiff that the pending items of work had been done which the defendant was required to do for the completion of the installation of elevators. It is further stated that the plaintiff on receipt of this letter completed the aforesaid work. After completing the installation both the elevators were handed over to the defendant on February 23, 1984 and the defendant duly acknowledge the same. PW 2/41 is the copy of the letter dated February 28, 1984 and the receipt thereof is Exhibit PW 2/42. The letter dated March 28, 1984 signed on behalf of the plaintiff is Exhibit PW 2/43. PW 2/44 and PW 2/45 are the copies of invoice and price adjustment claim dated January 24, 1984. The copy of the letter dated April 13, 1984 is Exhibit PW 2/46. It is stated in the affidavit that since the payments were not being made by the defendant, the plaintiff sent a Registered A.D letter dated September 10, 1984 Ex.PW2/49 to the defendant requesting it to expedite the balance payment of Rs.1,86,175.40 Along with interest amount to Rs.47,023.51. The details of the outstanding payments are shown in Exhibit PW 2/50. The plaintiff, thereafter sent another letter dated November 12, 1984 (Exhibit PW 2/51) towards the balance Central Excise Duty payable by the defendant. Exhibit PW 2/52 is the copy of the invoice dated November 1, 1984. Thereafter, the defendant sent a letter dated December 10, 1984 (Exhibit P-7) to the plaintiff thereby objecting charge of interest by the plaintiff. The plaintiff sent a reply dated December 28, 1984 clearly explaining the situation and the copy of the same is Exhibit PW 2/53. The Exhibit PW 2/54 is the copy of the letter dated April 8, 1985 which was sent by the defendant thereby admitting its liability for the balance amount. Thereafter the plaintiff sent Regd. A.D. notice dated December 26, 1985 through Advocate asking the defendant to make the payment of the outstanding amount. The copies of the notice is Exhibit PW 2/55. The statement of account

which was duly prepared by the defendant for the purposes of suit amount is Exhibit PW 2/56 which is duly signed by Shri A.S. Herwadkar, Regional Manager of the plaintiff company.

15. The defendant, it is contended, is liable to pay the suit amount of Rs.3,03,960.21 Along with interest at the rate of 18 % per annum from the date of institution of the suit till realisation.

16. The perusal of the documents placed on record as well as the evidence produced by the plaintiff leave no manner of doubt that the defendant is liable to pay the amount as claimed in the suit. The defendant has neither appeared in Court nor led any evidence to controvert the claim of the plaintiff. The plaintiff has proved the claim in the suit and the same is supported by evidence and the documents on record.

17. Accordingly, I pass a decree in the sum of Rs.3,03,960.21 in favor of the plaintiff and against the defendant with costs. The plaintiff shall also be entitled to pendente lite and future interest at the rate of 12 per cent per annum from the date of institution of suit till realisation.