

Binatone Computers (P) Ltd. Vs. Setech Electronics Ltd.

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Court : Delhi

Decided On : Aug-20-1997

Reported in : 1997VAD(Delhi)374; AIR1998Delhi1; 71(1998)DLT114; 1998(44)DRJ432; (1998)118PLR16

Judge : K.S. Gupta, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 38, Rule 8

Appeal No. : Interim Application Nos. 4460 and 2036 of 1996 and Original Miscellaneous Petition No. 5 of 1996

Appellant : Binatone Computers (P) Ltd.

Respondent : Setech Electronics Ltd.

Advocate for Pet/Ap. : A.C. Jain, Adv

Judgement :

K.S. Gupta, J.

(1) M/S.BINATONE Computers (P) Ltd. has filed I.A.No.2036/96 under Order xxxviii, Rule 5 & Section 151, Code of Civil Procedure read with Section 41 and Second Schedule of the Indian Arbitration Act, 1940, alleging that M/s. Setech Electronics Ltd., respondent entered into an agreement with it on March 18,1993, at New Delhi. Under the aforesaid agreement respondent was permitted to

manufacture and sell in India audio systems under the brand name 'Binatone' on the terms and conditions noted in the agreement itself. One of the terms of the agreement was that the respondent would pay a minimum royalty of Rs.16,00,000.00 per annum for the period March 18, 1993 to March 31, 1994 with minimum increase of 20% every year over the immediately preceding year. In consideration of the payment of the royalty the petitioner was to make arrangement for the import of Tdm and for that purpose petitioner also made certain advances to the respondent. Raw material, work in progress and the finished goods belonging to the petitioner and lying with the respondent were taken over by the latter. It is alleged that as on March 31, 1995, respondent was liable to pay to the petitioner a sum of Rs.34,73,963.57P towards payment of advance and the royalty and the respondent has failed to make payment thereof to the petitioner. It is further alleged that with intent to obstruct and delay the execution of the award likely to be made against the respondent the respondent is likely to dispose of properties situated at A-30, Sector 16, Noida and A-14, Sector 7, Noida (U.P.) and the other movable properties as detailed in Annexure 'A' filed Along with the application. It was prayed that an order of attachment before judgment of the movable and immovable properties belonging to the respondent may be passed.

(2) Instead of filing a reply the respondent filed I.A.No.4460/96 for vacation of the order dated February 29, 1996, made in said I.A.No.2036/96. It is alleged in the application that property No.A-14, Sector 7, Noida (U.P.), does not belong to the respondent and is owned by M/s.Hitachi Electronics Private Limited. Interim order of attachment has eroded the credibility of the respondent in the commercial market. No amount is due from the respondent nor has it any intention to dispose of any of the assets owned by it.

(3) On August 8,1997, on which date both the I.As. were listed, none put in appearance on behalf of the petitioner. So, I heard Mr.Atul Jain for the respondent alone.

(4) Order dated February 29, 1996, which is sought to be vacated by the respondent reads thus:

'Issue attachment of the property situated at A-30, Sector 16, Noida, U.P. and A-14, Sector 7, Noida, U.P., on the condition that if the defendants happened to furnish a security for the amount of Rs.35 lacs then the said attachment should not be effective.

Issue show cause notice to the defendant to show cause as to why the said attachment should not be made absolute till the final disposal of the suit.

Notices and suit summons returnable on March 26,1996.'

(5) Submission advanced by Mr.Jain was two fold--(1) that one of the attached property No.A-14 belongs to M/s.Hitachi Electronics Private Limited and not the respondent and (2) that the aforesaid order has eroded the credibility of the respondent in the commercial market and the respondent is ready to furnish an undertaking to this Court that it would not dispose of another property No.A-30 pending O.M.P.No.5/96.

Rule 8 of Order xxxviii, which is relevant, provides as under :

'Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudication of claims to property attached in execution of decree for payment of money.'

(6) This rule was incorporated by Code of Civil Procedure (Amendment) Act, 1976, with effect from February 1, 1977. Since as per the said Rule a claim preferred to property attached before judgment is to be decided in the manner prescribed under Order Xxi, Code of Civil Procedure, objection that order dated February 29, 1996, is liable to be rescinded insofar as it pertains to aforesaid property No.A-14, should have come from the owner of that property instead of the respondent.

(7) Turning to the next submission, referred to above, it may be noticed that the aforesaid order is not sought to be revoked on the ground of the petitioner having not made out a case for attachment before judgment but on the basis of the credibility of the respondent having been eroded thereby in the commercial market. In my view, it is not a sufficient ground for vacating the aforementioned order. Order dated February 29,1996 is, thus made absolute.

(8) Both the I.A.S. are disposed of accordingly.

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