

Muralidhar Jalan Vs. Paresh Chandra Chatterjee

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SooperKanoon Citation : sooperkanoon.com/851240

Court : Kolkata

Decided On : Apr-18-1946

Reported in : AIR1947Cal14

Appellant : Muralidhar Jalan

Respondent : Paresh Chandra Chatterjee

Judgement :

1. This appeal is on behalf of the plaintiffs in a suit for damages for alleged breach of contract. The plaintiffs state that there was a contract between them and the defendant by which the latter agreed to supply both Finland and Japanese tea chests of different sizes at different rates. The total quantity of Finland chests which the defendants under, took to supply was 4975 and the total quantity of Japanese chests was 8125. The defendant failed to supply 1700 Finland chests and 1450 Japanese chests of different sizes towards the end of November, to be more precise, refused to supply them on 28-11-1939. Their further case is that at the date of the anticipatory breach on the part of the defendant the market for tea chests was very high and they claimed the difference between the alleged contract prices and the prices then prevailing as damage.

2. They say in their plaint that the contract was concluded through correspondence and the letter written by them to the defendants on 16-2-1939, which has been marked as Ex. Q, the letter of the defendant to them dated 7-3-1939, which has been marked as Ex. 63 and the further letter of the defendant to them dated 13-3-

1939 which has been marked as Ex. 64 constituted the contract. There was further correspondence between the plaintiffs and the defendant before 16-2-1939, but those letters are not material except one which has been marked as Ex. 1 and an annexure to Ex. 1 which has been marked as Ex. 71. It is the common case of the parties that about 10,000 chests were supplied to the plaintiffs or to the plaintiffs' order by the defendant from time to time. The plaintiffs paid most of the bills, but at the date of the suit, it is admitted by the plaintiffs that bills amounting to Rs. 4000 odd had not been honoured by payment by the plaintiffs. The main defence of the defendant was that there was no contract as alleged in the plaint. In his written statement the defendant prayed for a decree for the sum of Rs. 4300 odd in respect of which his bills had not been honoured by the plaintiffs. The plaintiffs were given the opportunity to reply to the cross-claim of the defendants. They availed themselves of that opportunity and filed statements in answer to the defendant's cross-claim on 16-12-1940. That document is printed at pp. 18 and 23 Part I of the paperbook. The learned Subordinate Judge held, that there was no contract as alleged by the plaintiffs but there was only a standing order on the defendant to supply chests, meaning thereby that the defendants were entitled to charge for the chests supplied by them, prices according to the market. He further held that the evidence to prove the amount of damages was insufficient. The plaintiffs have preferred the appeal to this Court.

3. In the view that we are taking it is not necessary to consider whether the evidence given in support of the claim for damages is satisfactory or not, because we are of opinion that there was no contract between the defendant and the plaintiffs as alleged in the plaint. It appears from the evidence that there were no dealings between the plaintiffs and the defendant before 1939. On 28-1-1939 the defendant wrote a letter, Ex. 1, to the plaintiffs. In that letter the defendant gave certain rates for some sizes of Finland chests and Japanese chests. A copy of their price list was also enclosed with that letter. That price list has been marked Ex. 71. The rates quoted by him in the letter Ex. 1 were lesser than the prices mentioned in the price list Ex. 71. The negotiations started from this letter. It is not necessary to refer to all the correspondence which followed after this letter. The most important letter to notice is the letter of the plaintiffs dated 16-2-1939. That letter has been marked as Ex. Q. It is the common case of the parties that the

proposal which must be taken to have come from the plaintiffs-is contained in this letter Ex. Q read with Ex. 1. We do not mention Ex. 71 in this connection, but we will have to refer to a portion of that, exhibit later on. The letter runs thus:

Dear Sirs,

'We thank you for your letter of the 11th instant. We are sending herewith the indents of the following concerns for total 4975 Finland chests (Elephant or Golden) and 8125 Japanese chests as follows:

Finland Chests	Japanese Chests	Dinjoye	2000	500	Chota Tingri	...	2000
Ballacherra	...	3600	Noarbund	...	500	Rukong	700
300	Madarkhat	975	525	Sadasiva	600	350	Kailashpur
525	225	Parbatipur	175	125	_____	_____	4975
8125	Please charge your ordinary rates in the bills and send a credit memo for the difference of the amount which is with your special quotation as written in your letter of the 28th ultimo.						

Deliveries:--Should be made in the months as per requirement and per the route as written in detail in each of the indent. The Madarkhat, Parbatipur, Sadasiva and Kailashpur have intended 19x19x22 size Finland chests, but we had no quotation from you for this size, so if your manufacturers do not manufacture this size, please supply 19 x 19 x 24 instead of 19 x 19 x 22.

R/R or B/L and bills to be sent direct to us for payment.

Quality of shooks and fittings: Quality of shooks should be as per sample given to us, fittings should be as better as possible (detailed cballan for fittings should accompany each consignment to enable the Estate Managers to verify the sample).

Marks:--If you cannot arrange for our marks on the first consignment, please have it from next consignment.

Payment at 60 days sight.

War risk or any other accident risks: Please see that on apprehension of such occurrence, you would adjust the supply accordingly; there would be nothing

irregular if you would supply the whole of balance monthly requirement at a time, whenever you would have much apprehension, but you would get our confirmation before doing so. We would have, placed a bigger indent, but only with the apprehension of troubles in regular supply due to the factors written here in above, we are taking about 1/4 requirement from elsewhere.

We hope out this new business with you would develop more satisfactory to our mutual interest, which only depends on your good quality and regular supply be completed during this year.

Further, you should promise that you would not quote directly or take the order from any of our constituents in future or in the present without consulting us. We think we are fully clear in this matter.

Kindly acknowledge receipt of the above at an early date and oblige.

One paragraph of this letter which is of importance runs thus:

War risk and any other risks: Please see that on apprehension of such occurrence you would adjust the supply accordingly; there would be nothing irregular if you would supply the whole of balance monthly requirement at a time, whenever you would have much apprehension, but you would get our confirmation-before doing so.

This clause seems to have been put in view of the postscripts, in Ex. 71. That postscript runs thus:

Though we expect to deliver the goods timely against contract, we shall not be responsible for failure to deliver or for late delivery of goods due to consequences of war or warlike operations.

4. We have no doubt that the plaintiffs had in mind the contingency that there may be war etc. and wanted to modify this term. The letter Ex. 63 dated 7-3-1939, from the defendant to the plaintiffs is of no importance because it is only an acknowledgment of the receipt of the letter Ex. Q. But the next letter Ex. 64 from the defendant to the plaintiffs dated 13-3-1939 is very important. The material

portion runs as follows:

Dear Sirs,

We understand from our Tinsukia representative that you are very much anxious for the confirmation letter of your order No. TC/G 301 dated 16-2-1939. (Exhibit Q). As I wanted to send the confirmation letter under my own signature, there has been some delay in sending you a confirmation as I was absent from the Station and was ill in my garden.

However the necessary confirmation has been sent by a letter yesterday and we beg to confirm again of your order dated 16-2-1939. Though we add a clause stating that we shall not hold ourselves liable for delayed delivery if a major war breaks out or in case of sudden strike etc. we have tried our best to guard ourselves against all possible risks and expect to deliver the goods quite in time....

5. In the plaint the plaintiffs treat this letter as being an unqualified acceptance of the proposal contained in their letter Ex. Q read with Ex. 1. This letter shows that the defendant had sent to the plaintiffs a letter a day previous, namely, on 12-3-1939, and in that letter he had added a clause, a part of which appears in this letter. One of the plaintiffs examined himself and in his deposition he says that they never received the letter of 12-3-1939. We are not satisfied with this statement and we hold that the plaintiffs did receive the letter posted by the defendants to them on 12-3-1938, and are suppressing that letter. In these circumstances, the defendants wanted time from the lower Court to produce a copy of the letter of 12-3-1939. The lower Court, however, did not give them opportunity to produce that copy. An application for additional evidence was made to us for the reception of the copy of that letter and that application has been allowed by us. The copy has been marked as Ex. H.C. 2 and the book in which the copy appears as Ex. H.C. 1. There has however been a comment by the learned Advocate for the plaintiffs to the effect that Ex. H.C. 2 is not a true copy of the letter that was sent by the defendant to the plaintiffs on 12-3-1939. It is not necessary for us in the view that we are taking to decide whether Ex. H.C. 2 is the true copy of the original letter of that date or not. The letter Ex. 64 which has been produced by the plaintiffs shows that the defendant did not accept the proposal of

the plaintiffs as made in Ex. Q. He wanted to add a clause which was a material one. The letter Ex. 64, therefore, contained a counter proposal from the defendant to the plaintiffs, the counter proposal being the addition of a clause providing for non liability for delayed delivery at least, if a major war broke out or if there was a sudden strike. It is not the case of the plaintiffs that this counter proposal had been accepted by them. In fact, in para. 12 of the written statement which they filed in answer to the defendant's cross claim they say that there was no clause in the contract relating to delayed delivery in case a major war had broken out. As this counter proposal was not accepted by the plaintiffs, there was no concluded contract between the plaintiffs and the defendant to supply the tea chests as per specification in the different indents which accompanied the letter Ex. Q and at prices mentioned in Ex. 1. We accordingly hold that the plaintiffs are not entitled to claim damages on the basis of the contract that they had pleaded, inasmuch as there was no such contract between the plaintiffs and the defendants. The position in law of the parties was that the defendant was not bound to sell to the plaintiffs at the prices mentioned in Ex. 1. He had no doubt supplied goods and submitted bills for them, but he was entitled to charge at rates different from the rates contained in Ex. 1. It was for the plaintiffs to accept those goods at those rates or not. By their acceptance of the goods they must be taken to have accepted the goods at the rates at which the bills had been made by the defendants. In this view of the matter it is not necessary for us to consider whether the evidence as to the market rate in November, December, 1939, is satisfactory or not. We may say that the evidence given by Mr. Roy does not impress us. The result is that this appeal is dismissed with costs.