Punjab Urban Planning & Dev. Authority vs M/S Shiv Saraswati Iron & Steel ... on 24 March, 1998

Author: K. Venkataswami

Bench: K. Venkataswami, A.P. Misra

PETITIONER:
PUNJAB URBAN PLANNING & DEV. AUTHORITY

Vs.

RESPONDENT:
M/S SHIV SARASWATI IRON & STEEL RE-ROLLING MILLS

DATE OF JUDGMENT: 24/03/1998

BENCH:
K. VENKATASWAMI, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. Venkataswami, J.

Special leave granted.

Heard counsel on both sides.

The appellant filed a suit for specific performance of the contract in question by returning (delivery) the goods weighing 124.255 Metric Tonnes rail/blooms or in the alternative to direct the defendant to pay a sum of Rs. 2 lacs against the non-delivery/Supply of the said goods. Brief facts are the following:-

> According to the appellant, it was agreed between the parties that the respondent herein accepted the offer for re-rolling of M.S. bars out of rails and blooms for all dias, i.e. 10 MM to 20 MM on certain conditions. The relevant conditions as given in

the plaint are the following:-

Steel will be supplied weight to weight.

The firm will be responsible for the quality of steel out of the material supplied by the Board.

The supplier shall be responsible for the safe custody of the material supplied by the Board to them.

About 2000 Mts. of rail or bloom shall be got re-rolled from you during 1976-77.

The admitted facts are that the appellant supplied 1992.745 Matric Tonnes rail/blooms in 1997 for re-rolling to the defendant. The respondent, however, returned 1869.490 Metric tonnes of re-rolled materials as against the supply of 1992.745 Metric Tonnes rail/blooms. The respondent by its letter dated 16.11.78 informed the appellant that a balance of 18.765 Mt. of rail/blooms, in addition to Rounds weighing

2.299 Mt., were lying in its stock and the balance of the material was burnt while re-heating in the furnace in the process of re-rolling. According to the appellant, as per the terms and conditions of the contract, the respondent was liable to return the entire/equal quantity of the rail/blooms supplied for re-rolling. As the respondent failed to return the entire quantity supplied for re- rolling, the filing of suit became necessary.

The respondent not only resisted the suit but also filed a counter-claim stating that it has over supplied the re-rolled material as such it was entitled to recover a sum of Rs.1,15,735/- on account of wastage of raw material.

The suit and the counter-claim were tried together. The plaintiff examined one witness to prove Exh. P1, a letter (offer) written by the appellant to the respondent. The Trial Court framed as many as six issues and found that Exh. P1 (letter) could not be said to be a valid agreement since it lacked the signatures of the representatives of the defendant and in the light of the plaintiff's (appellant) failure to place all the relevant documents before the Court, the terms and conditions of the alleged contract had not been proved. On the basis, the Trial Court partly decreed the suit of the appellant to the extent of the admission made by the respondent in its correspondence about the balance of rail/blooms available with it after re- rolling. As regards the counter-claim, it was dismissed on the ground of failure on the part of the defendant to substantiate the same. It may be noted that the defendant has examined any witness.

Aggrieved by the partial decree of the suit, the appellant preferred an appeal to the Appellate Court. The Appellate Court carefully considered the matter and found that the Trial Court was not fully right in holding that all the terms and conditions of the Agreement were not proved inasmuch as certain terms and conditions extracted in the Plaint were admitted by the respondent in the written

statement. Nevertheless, the Appellant Court dismissed appeal observing as follows:-

> "Apparently, the defendant had carried out work for the plaintiff Board but in the absence of the prior correspondence relating to the offer made by the defendant Mill as also response given by the Mill to the letter dated 13.5.1976 Ex. P1. It would be difficult for the court to gauze conclusively as to what were the exact terms and conditions on which the defendant had agreed to carry out the work.
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> Further more, from a perusal of Ex.
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> D1 a notice which was sent on behalf of the defendant company, it is apparent that there is some dispute regarding the interpretation which the parties were putting on condition No.2 which says that steel will be supplied weight to weight inasmuch as according to the defendant this term made allowance for the wastage which according to the plaintiff's own witness necessarily took place on account of re-rolling process.
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> Since on behalf of the plaintiff, Gurdial Singh PW1 has only produced the copy of the agreement which was exhibited as P1 and no effort has been made to explain what according to business terminology was meant by supply of the steel weigh to weight. It can't by any stretch of imagination be held that the terms and conditions of the agreement that was finally entered into between the parties has been duly proved on the record."

As against the said judgment of the Lower Appellate Court, a Second Appeal was preferred to the High Court and it was dismissed in limine. The present appeal by special leave has been filed in these circumstances.

Ms. Rachna Joshi Issar, counsel for the appellant, vehemently contended before us that the Trial Court as well as the First Appellate Court ignored the settled proposition of law that facts admitted need not be proved. According to the learned counsel, in the absence of any evidence of the side of the defendant and more so when the defendant's counter-claim was dismissed, the plaintiff's suit must have been automatically decreed as prayed for and the partial decree was not adequate on the facts of this case. learned counsel again and again laid stress on the terms and conditions set out in the Plaint which have not been controverted in the written statement and also the absence of evidence on the side of the defendant to drive home her point.

It must be remembered that Exh. P1 is only an offer made by the appellant/plaintiff, which was preceded by certain correspondence emanating from the respondent and it can reasonably be presumed that subsequent to Exh. P1 there must have been some response from the respondent to the offer of the appellant. All those documents were not placed before the Court to appreciate correctly and completely the transactions

between the parties. Further, as rightly pointed out by the Trial Court and the First Appellate Court that Gurdial Singh PW1 was examined only to prove Exh. P1 and he was not in a position to explain the intricacies thereon, in particular, the relevant Condition No.2, which relates to supply and return of material. The language used, namely, 'weight to weight', was not at all explained by PW

1. The whole evidence of PW1 has also not been placed before us. We are of the view that the Lower Appellate Court was quite justified in observing that the appellant-Board, for reasons best known to it, had not placed all materials and no effort has been made to explain what according business terminology was meant by supply of the esteem weight to weight. We cannot take exception to the conclusion taken as above by the Lower Appellate Court. The plaintiff/appellant must succeed or fail on his own case and cannot take advantage of weakness in the defendant/respondent's case to get a decree.

Therefore, on the facts as found by the Trial Court and the Lower Appellate Court, we do not think that any question of law arises for our consideration, as contended by the learned counsel, in this appeal. the appeal fails and is dismissed accordingly with no order as to costs.