

M/S Star Paper Mills Limited vs M/S Beharilal Madanlal Jaipuria Ltd. on 16 December, 2021

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Bench: V. Ramasubramanian, Hemant Gupta

REPO

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4102 OF 2013

M/S STAR PAPER MILLS LIMITED

.....AP

VERSUS

M/S BEHARILAL MADANLAL JAIPURIA LTD. &
ORS.

.....RESP

JUDGMENT

HEMANT GUPTA, J.

1. The present appeal is directed against an order passed in an intra-

court appeal by the Division Bench of the High Court of Delhi at New Delhi on 28.5.2012 whereby the judgment and decree passed by the learned Single Bench of the High Court was set aside and the suit filed by the appellant-plaintiff was dismissed. The learned Single Bench decreed the suit of the appellant for a sum of Rs.96,41,765.31 along with simple interest @ 15% p.a. from the date of institution of the suit i.e., 5.10.1987, till the date of payment, on the principal amount of Rs.71,82,266/-.

2. The appellant filed a suit for recovery of Rs.96,41,765.31 on the ground that appellant is a manufacturer of various varieties of Kraft, writing and printing papers which are sold to customers through wholesalers. The appellant sells its products through direct payment or payment against hundies payable on due date with the bank by such wholesalers. Respondent-defendant No. 1 was a wholesale dealer of the appellant company in the territory of Delhi since 1984 and was purchasing paper from the Delhi Sales Office of the appellant as well as from its mills situated at Saharanpur.

The tentative stock lifted by respondent no. 1 was worth Rs.15-20 lakhs per month. The respondents were making regular payments and were enjoying immense confidence of the appellant. The appellant further explained the terms of the payment in the plaint filed. The terms of the sale of paper to respondent No. 1 were stated to be through limited credit of 45-60 days as well as through hundi documents. Fifteen days interest-free credit facility from the date of delivery was available and thereafter interest was charged. Any default of payment carried interest @ 21 % p.a. from the date of delivery till the date of payment and further penal interest @ 3 %.

3. The Respondent No. 1 lifted huge stocks in the month of November 1985 to January, 1986 but did not make the due payments. Even some of the hundi documents were dishonored. The appellant supplied goods worth Rs.72,27,079/- by 189 consignments against the term of direct payment. The goods were duly received by respondent no.1 with the signatures of respondent no. 2, its director, but they defaulted in making the payments. The respondents made a payment of Rs.2,99,480/- for 9 consignments by hundi documents but the hundi documents were also returned by the bank unpaid. It was pointed out that since respondent No. 1 was a wholesaler, they were getting trade discount of Rs.700-750 per ton. Thus, the appellant claimed the following amount:

Principal amount Rs.71,82,266.00 Interest on outstanding Bills Rs.24,59,499.31 Total Rs.96,41,765.31

4. In the written statement, it was alleged that the appellant company was owned and controlled by the family of Bajoria headed by S.S. Bajoria prior to May 1986. The said family was closely connected to the respondents. The appellant installed a paper manufacturing mill at Saharanpur in 1935-36 and offered dealership to the respondents for Delhi and Bombay markets. The dealership of Bombay was given up in or about 1955-56. The management of the appellant changed in May, 1986. It was asserted by the respondents that the appellant has not rendered true and proper receipts and a sum of Rs.45 lakhs are due from the appellant. It was also alleged that the bills raised by the appellant are based on fictitious transactions which are tainted with fraud, deceit and circumvention of law. Such transactions are therefore against public policy and void ab initio. The respondents further alleged that in 1972-73, the Managing Director of the appellant approached Shri Nagarmal Jaipuria and suggested that the respondents should receive certain bills drawn on them inasmuch as the appellant intended to sell certain quality of paper in open market at prices higher than the Mill price. The goods could not be taken out from the Mill unless accepted by one of the wholesalers or dealers. At the threat of termination of the wholesaler agreement, the respondents agreed for such proposal. The respondents averred as under:

“10. Near about the same time, the plaintiff, in addition to the selling of papers in cash in open market, also indulged in tax evasion the sales tax on direct sale from Saharanpur was 4%. The sales tax if the goods were transported to Delhi Depot of the plaintiff and sold from the said depot was Nil. Thus, there was a net tax saving of the value of the goods sold in the open market at Delhi. There is no sales tax leviable on the sale of paper from the Dealer to Dealer at Delhi. If the sales were made directly from Saharanpur the Sales Tax leviable was 4%. The dealer to dealer transaction of sale did not attract payment of any sales tax whatsoever at Delhi. The Plaintiff in

addition to making profit by sale of paper in the open market at the price higher than the Mill price also wanted to pocket the sales tax which would have ordinarily been payable had the sales been made from their Mills at Saharanpur. This whole ingenious scheme and device was tainted with fraud and the Jaipuria under undue influence and coercion were made to submit to the illegal transactions which were indulged in by the Bajorias/Plaintiff."

5. One of the issues framed after completion of pleadings was whether the alleged bills forming the claim in the suits have been raised on the basis of the fictitious and fraudulent transactions. The suit has been dismissed by the Division Bench on such issue inter-alia on the ground that documents had not been proved by summoning the person, who had issued such large number of documents (Ex-P1 – Ex-P976).

6. The appellant filed an affidavit of Shri A.S. Bhargava, Retainer, formerly General Manager-Management Services on 8.12.2003. In such affidavit, the appellant has produced 976 documents including copies of all the invoices, debit notes, delivery challan, ST-1 Form, interest debit notes, letter of the respondents, credit notes and the statement of accounts. All the invoices are stamped and signed by the respondents. The appellant also produced ST-1 Form in respect of each of the invoices stamped and signed by respondents. In the cross-examination, the witness stated that in case of sale transaction by the company/manufacturer with any wholesaler, the sales tax can be avoided against ST-1 Form. However, if the manufacturer would sell these goods directly to any retailer or consumer, sales tax would be payable. He further deposed that he has not placed on record the copies of the books of accounts and that the Bills-cum-Challans have not been acknowledged by the respondents in their presence. He stated that the respondents used to lift the material from their godown. He further deposed that sales tax number is given on the top of the invoices though he could not say if the sales tax number is not of Delhi but of Calcutta. He further stated that the transactions in the suit were from Delhi and no transaction took place from Saharanpur. The suggestion that the suit transactions are fictitious was denied.

7. The respondents produced an affidavit of Shri R.C. Jaipuria in evidence. It was stated that the books of accounts were not produced for the reason that the office of the respondents was reconstructed during the period 1993-1995 when there were torrential rains and the records kept on the open roof got spoiled and eaten by pests. Though, it is averred that income tax, sales tax returns of these years have been finalized on the basis of destroyed books of accounts. The respondents have denied the receipt of goods and produced documents Ex. DW-1/1 to Ex. DW- 1/5. He accepted his signatures on the invoices, ST-1 Form and the debit notes but denied signatures on the delivery challans as not of any of the employee of the respondents. It was stated that signatures got signed from him on large number of documents under pressure and duress in the circumstances stated in his affidavit. He admitted that books of accounts pertaining to transactions in question have not been filed. He denied that the respondents had not paid a sum of Rs.2,72,08,398.29 to the plaintiff between the period 1.5.1985 to 19.3.1987. In respect of signatures on ST-1 Form, he deposed that he used to sign such forms under duress and bear his signatures.

8. On the basis of the evidence led, the learned Single Bench decreed the suit. However, the first appeal was accepted inter alia on the ground that the appellant has failed to prove that it was registered as a dealer with the Sales Tax Authorities in Delhi and it failed to prove having any godown in Delhi. Since the appellant has failed to prove that it was a registered dealer, it could not effect any sale of paper at Delhi without paying Central Sales Tax. The Division Bench of the High Court held as under:

“31. We may summarize. The respondent No.1 has failed to prove that it was registered as a dealer with the Sales Tax Authorities in Delhi. It failed to prove having any godown at Delhi. As per the laws applicable to Sales Tax, unless respondent No.1 proved being a dealer registered at Delhi, it could not effect any sale of paper at Delhi without paying Central Sales Tax. It is obvious that respondent No.1 surreptitiously removed its goods from its mill at Saharanpur not under the cover of the invoices raised in favour of the appellant, for the reason these invoices show an intra-city sale and not an inter-city sale. The respondent No.1 has not led any evidence with respect to goods receipts pertaining to movement of goods from its mill at Saharanpur to Delhi and much less shown delivery by any transporter to the appellant. The aforesaid has been totally ignored by the learned Single Judge and therefrom it is apparent that the sales were fictitious i.e. appellant was shown as a name- lender. Respondent No.1 managed to cheat the revenue.”

9. Learned counsel for the appellant argued that the finding of the High Court is patently erroneous as the respondents have not denied that the appellant is a dealer in the State of Delhi which is evident from Para 10 of the written statement reproduced above. It was further pointed out that the respondents have not disputed the registration of the appellant in the written statement nor any issue was framed about the appellant being a registered dealer in Delhi. Therefore, the High Court had made out a new case for the respondents when such case was not even referred to in the written statement filed.

10. The appellant had filed a registration certificate as the reseller dealer in Delhi as Annexure P/12 along with an application to produce such certificate. The said certificate shows that the appellant was registered as a Dealer under Section 14 of the Delhi Sales Tax Act, 1975. The nature of business being Reselling of Paper and Boards only. There is a mention of godown in the registration certificate as well.

11. Learned counsel for the respondents supported the judgment of the learned Division Bench and relied upon judgment of this Court reported as Subhra Mukherjee and Another v. Bharat Coking Coal Ltd. and Others¹ to contend that the onus of proof whether transactions were genuine and bonafide has to be discharged by the appellant. Learned counsel for the respondents also relied upon the judgment of this Court reported as Ishwar Dass Jain v. Sohan Lal² to contend that the appellant has not produced account books but only extracts which are not admissible in evidence and hence suit was rightly dismissed by the High Court in appeal.

12. We have heard learned counsel for the parties and find that the Division Bench of the High Court has gravely erred in law in accepting the appeal of the respondents on wholly erroneous and untenable grounds. Each of the invoices produced bears the registration No. S.T. No. 36/102499/08/84 and also bears the stamp and signatures of the Managing Director/ Director of the respondents. Apart from such invoice, the appellant has proved the debit note which has also been stamped and signed by the Managing Director/ Director. The ST-1 Form also bears the stamp and signature of the Director of the respondents. Such ST-1 Form 1 (2000) 3 SCC 312 2 (2000) 1 SCC 434 bears the invoice number and the date as well as the value of the goods. The witness of the respondent has admitted his signatures on the ST-1 Form, invoice and debit notes. The respondent company has only denied the signatures of its representative only on the Delivery Challan.

13. The judgments referred to by the learned counsel for the respondents are not applicable in the present case. The respondents have alleged that the alleged bills have been raised on the basis of fictitious and fraudulent transactions. Since such stand was of the respondents, the onus of proof of such issue was on the respondents. Such issue necessarily implies that the raising of the invoices is not in dispute but it was alleged that such bills are fictitious and fraudulent. The onus of proof of issue no. 4, whether the defendant no.1 accepted the bills without actual delivery of goods to it is also upon the respondents as it is their stand that the bills were accepted without actual delivery of goods.

14. The reasoning of the Division Bench that the witness examined by the appellant was not in Delhi when the transactions took place is wholly irrelevant to determine whether the invoices, debit notes and ST-1 Form are proved or not. It is not a case of mere exhibition of documents. Such documents were proved by a witness as such documents were kept by the appellant in their ordinary course of business. All these documents are stamped and counter-signed by the representatives of the respondents. Such documents have come from the records of the appellant. It is not necessary for the witness to be signatory of such documents or such documents were executed in his presence. The documents were maintained in the regular course of business of the appellant. In fact there is no dispute about the maintenance and production of such documents. The witness of the respondent has admitted the execution of all the invoices, debit notes and ST-1 Form which bear their stamp and also the signatures of the authorized representative. Therefore, the reasoning given by the High Court is bereft of any merit.

15. The judgments referred to by the learned counsel for the respondents are not applicable to the facts of the present case at all. In Subhra Mukherjee, it was held that a person who attacks a transaction as sham, bogus and fictitious must prove the same. It is the respondent, who have alleged the transaction as fraudulent. In fact, in the aforesaid case, the transaction of sale was found to be bogus and appeal of the alleged purchasers was dismissed. Thus, the onus of proof was on the respondents but the respondents have failed to discharge the same.

16. In Ishwar Dass Jain, it was suit for redemption of usufructuary mortgagee which was dismissed by the High Court. The appellant before this Court was the plaintiff. The defence of the respondent was that there was no relationship of mortgagor and mortgagee between the parties but that the relationship was as landlord and tenant. It was the defendant who has not produced his books of

accounts to show that he was paying various amounts as rent to the appellant every month. In these circumstances, the extract of accounts produced by the respondent was found to be unbelievable and the suit decreed. In fact, the respondents in the written statement itself denied that they do not have the account books as they got damaged in rain and eaten by pests when they were kept on the roof of a building during the process of reconstruction. Such defence on the face of it appears to be made up defence. The account books were not produced by the respondents to discharge the onus on them. Therefore, the adverse inference had to be drawn against the respondents rather than against the appellant who are not relying upon the entries in the account books alone to maintain suit but reliance is on the invoices, debit note as well as ST-1 Form which had been issued only after the receipt of goods. Though the respondents have denied the receipt of goods but the receipt of goods is proved by numerous documents stamped and signed by the respondents.

17. Section 4(2)(a)(v) of the Delhi Sales Tax Act, 1975 excludes the sale made to the registered dealer from the taxable turnover, which reads thus:

“(2) For the purposes of this Act, “taxable turnover” means that part of a dealer’s turnover during the prescribed period in any year which remains after deducting therefrom,—

(a) his turnover during that period on—

(i) sale of goods

xxx xxx

(v) sale to a registered dealer-

(A) of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for use by him as raw materials in the manufacture in Delhi of any goods, other than goods specified in the Third Schedule or newspapers,-

(1) for sale by him inside Delhi; or (2) for sale by him in the course of inter-State, trade or commerce, being a sale occasioning, or effected by transfer of documents of title to such goods during the movement of such goods from Delhi; or (3) for sale by him in the course of export outside India being a sale occasioning the movement of such goods from Delhi, or a sale effected by transfer or documents of title to such goods effected during the movement of such goods from Delhi, to place outside India and after the goods have crossed the customs frontiers of India; or”

18. Rule 7 of the Delhi Sales Tax Rules, 1975 allows the dealer to claim deduction from his turnover if he files a declaration in ST-1 Form duly filled in and signed by the purchasing dealer or a person authorized by him in writing. The said Rule reads thus:

“7. Conditions subject to which a dealer may claim deduction from his turnover on account of sales to registered dealers. – (1) A dealer who wishes to deduct from his turnover the amount in respect of sales on the ground that he is entitled to make such deduction under the provisions of sub-clause

(v) of clause (a) of sub-section (2) of section 4, shall produce-

(a) copies of the relevant cash memos or bills according at the sales are cash sales or sales on credit; and

(b) a declaration in Form ST-1 duly filled in and signed by the purchasing dealer or a person authorised by him in writing:”

19. The respondents have admitted that no sales tax is payable by a dealer to a dealer. By necessary implication, the respondents are admitting the appellant to be a dealer as also the respondents to be dealer under the Delhi Sales Tax Act, 1975. It is only on account of sales made by a dealer to a dealer that the sales tax is not be payable as the incidence of payment of tax would be when the goods are sold to a consumer. The respondents as wholesaler, were getting the benefit of trade discount, which is an agreed term of sale.

20. The High Court, in the impugned judgment erred in holding that the appellant had not examined the author of the documents. Such reasoning is absolutely erroneous as in the written statement, the respondents had not denied their signatures on the documents referred to by the appellant but pleaded duress in executing of these large number of documents. The witness examined by respondent no.1 in his cross examination admitted his signature or that of the representative of company on invoices, debit notes and on ST-1 Form. The respondent had led no evidence in respect of fraud or duress apart from self-serving statement. The consignment of goods was sent from the month of November 1985 to January 1986. The respondent had signed large number of documents during this period. However, no complaint was made to any person or authority or even to the plaintiff. It is a denial of receipt of goods without any basis raised only in the written statement filed. Such stand is wholly bereft of any truth and is thus rejected.

21. The debit notes stamped and signed by the respondents were in respect of trade discount on the wholesale price mentioned in the invoice. Having accepted the trade discount, which is evident from the stamp and signatures not only on the debit notes but also on the invoice as well as on ST-1 Form, shows that the goods were actually lifted by the respondents for which payment has not been made. The respondents have taken up wholly untenable ground that the documents were signed under duress. Large number of documents such as invoices, debit notes and ST-1 Form spread over 3 months is unbelievable to be an exercise of duress. The stand of the respondents is wholly untenable and unjustifiable in law and is only to defeat the legitimate claim raised by the appellant. The High Court in the appeal has gravely erred in setting aside the reasoned order of the learned Single Bench on the grounds which were not even raised by the respondents.

22. In view of the said fact, the order of the Division Bench of the High Court dated 28.5.2012 is set aside. The suit is decreed for recovery of Rs.96,41,765.31 and future interest on the principal sum of Rs.71,82,266/- @9% p.a. from the date of filing of the suit till realisation. The appeal is thus hereby allowed.

.....J. (HEMANT GUPTA)J. (V.
RAMASUBRAMANIAN) NEW DELHI;

DECEMBER 16, 2021.