

IN THE HIGH COURT OF DELHI AT NEW DELHI

RFA No.218/2003

Judgment delivered on: 08.12.2010

M/s KLA Bharat Cottage Industries Appellant
Through: Mr. Arvind Kumar Sharma,
Adv.

Versus

U.P. Cooperative Federation Ltd. & Anr. Respondent
Through: Mr. J.N. Aggarwal with
Mr. Mayank Joshi, Advs.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

1. By this appeal filed under Section 96 read with Order 41 Rule 1 of the Civil Procedure Code, 1908 the

appellant seeks to challenge the judgment and decree dated 26.11.2002 passed by the learned Trial Court whereby the appellant's suit for recovery was dismissed.

2. Brief facts of the case according to the appellant and relevant for deciding the present appeal are that the respondents failed to supply the goods i.e 43.2 metric tones Rosin (N Grade) @ Rs. 6.72 paisa per kg. to the appellant despite of an agreement between the two parties. Consequently the appellants had to purchase the product from the open market and hence suffered damages for which they filed a suit for recovery of Rs. 2,59,200/- which vide judgment and decree dated 26.11.2002 was dismissed. Feeling aggrieved with the same, the appellants have preferred the present appeal.

3. Mr. Arvind Kumar Sharma, learned counsel for the appellant submits that the suit filed by the appellant was dismissed by the learned Trial Court on technical grounds without appreciating the pleadings of the parties and the evidence adduced by the parties in support thereof. The

contention of the counsel for the appellant is that the appellant was duly registered under the Indian Partnership Act, 1932 but due to some bona fide mistake the appellant could not place on record certified copy of Form A and had the appellant been given a further opportunity to place on record the said certified copy of Form A, the appellant would have certainly produced the same. Counsel also submits that the appellant has separately filed an application under Order 41 Rule 27 read with Section 151 CPC so as to place on record copy of Form A for consideration of this Court. Counsel for the appellant also submits that the learned Trial Court has also committed further error in observing that the appellant failed to produce any evidence to prove that it had suffered loss on account of breach of the contract by the respondents. The contention of counsel for the appellant is that the appellant had adduced PW1 Shri Jitender Nath, who duly proved on record the price of Rosin at the end of year 1982 and also its price in March and April, 1983. Counsel thus submits that the said evidence of PW 1 was sufficient enough to prove that the

appellant had to purchase the said product of 'Rosin' from the open market at a higher rate due to the failure of the respondents to supply the same on the agreed rates. Elaborating his arguments further, counsel contended that the appellant was not to prove actual damage or loss as it was sufficient for the appellant/plaintiff to prove on record that the appellant was forced to purchase the goods in question at a higher rate. In support of his arguments, counsel for the appellant placed reliance on the following judgments:-

1. *Maula Bux vs. Union of India AIR 1970 SC 1955.*
2. *M/s Skytone Electricals (India) vs. Union of India & Anr ILR (1982) I Delhi 788.*

4. Counsel for the appellant also submits that the learned Trial Court has failed to give any specific finding on issues No. 2,3,5 and 6 and has decided the said issues based on the view taken by the Court on issue No. 1 and 4. The contention of counsel for the appellant is that such a course adopted by the learned Trial Court is impermissible in the eyes of law.

5. Refuting the said submissions of counsel for the appellant, Mr. J.N. Aggarwal, counsel for the respondent argued in support of the findings arrived at by the learned Trial Court and contended that the appellant has failed to point out any illegality or infirmity in the said findings.

6. I have heard learned counsel for the parties at considerable length and gone through the records.

7. The appellant in the recovery suit has claimed breach of contract on the part of the respondents in not supplying 43.2 metric tones of Rosin (N Grade) despite the appellant having deposited a sum of Rs. 7,000/- by two bank drafts of Rs. 3,500/- each towards the earnest money. As per the appellant the said supply of Rosin (N Grade) was to be made by the defendants/respondents at the rate of Rs. 6.72 paisa per Kg and the said breach on the part of the defendants/respondents forced the appellant to purchase the said Rosin from the open market at a higher rate i.e. @ Rs. 12.60 per Kg. The appellant thus claimed an amount of Rs. 2,59,200/- towards the differential price of the said item i.e.

the agreed rate and the rate on which the appellant had purchased the said item from the open market. Defendants on the other hand seriously refuted the claim of the appellant and took a stand that there was no concluded contract between the parties to effect supply of 43.2 MT Rosin (N Grade) @ Rs. 6.72 paisa per Kg and, therefore, there was no breach on their part. The defendants/respondents, however, did not dispute the first supply made by them to the appellant at the said rate. The respondents had also seriously refuted the market rate of said Rosin @ Rs. 12.60 pr Kg. at the time of alleged breach of the contract. The respondents in the written statement also disputed credentials of the person, who has signed the plaint as one of the registered partners and also registration of the appellant firm. Based on the pleadings of the parties, the learned Trial Court framed the following issues:-

- "1. Whether the plaintiff is a firm duly registered under the Partnership Act and Mr. B.L. Khurana who has signed the plaint is one of its registered partners?
2. Whether the plaintiff has no locus standi to file the suit?

3. Whether the contract entered into between the parties vide letter dated 26.7.1982 was not valid for reasons mentioned in the written-statement?
4. Whether the contracts entered into between the parties before 26.7.1982 and which were fulfilled, have any effect on the contract subsequently entered into between the parties on 26.7.1982?
5. What amount of damages, if any, is the plaintiff entitled to recover from the defts?
6. Relief."

8. The appellant had examined Shri Jitender Nath as PW1 while the respondents/defendants had examined three witnesses in support of their defence. Before carrying the discussion further it would be relevant to reproduce the statement given by the sole witness adduced by the appellant in his examination-in-chief and the same is reproduced as under:-

"I am dealing in purchase and sale of Rosin. At the end of 1982, its price was between Rs. 11/- to 1.50 per Kg. In March and April, 1983, its price was Rs. 12, 13 & 14 per Kg. I have conducted the sales at this price."

9. Based on this sole testimony of PW 1 the submission of counsel for the appellant is that the said

evidence is sufficient enough to make the respondents liable for payment of differential amount of Rosin i.e. Rs.2,59,200/-. Although the finding of the learned Trial Court on issues No. 3 and 4 cannot be appreciated on account of the fact that no specific finding in detail was given by the Trial Court on the said issues. Failure of the appellant to prove its locus standi would not have any bearing on issues No. 3 and 4, which were to be decided by the learned Trial Court independent of the findings given by the learned Trial Court on issues No. 1 and 2. Be that as it may, the learned Trial Court while carrying on the discussion on Issue No.3 and 4 did observe that nothing material was deposed by PW1 in his examination-in-chief, therefore, the appellant/plaintiff was found to have failed to prove that any contract was executed between the parties by letter dated 26.7.82. Even in the absence of any detailed findings given by the learned Trial Court, can the appellant by any stretch of logic say that it had proved the said issues No. 3,4 and 5 based on the sole and brief testimony of PW-1. Indisputably, the appellant firm or any of the partners failed to

adduce any evidence to prove their case on the said issues. Because of the serious disputes raised by the respondents it also cannot be said that the respondents had admitted the claim of the appellant.

10. The two judgments relied upon by counsel for the appellant in the case of *Maula Bux (supra)* and *M/s. Skytone Electricals (India) (supra)* would be of no help to the case of the appellant as for claiming damages, the prerequisite is to first establish breach of contract on the part of the respondents. No damages can be awarded by the Court without coming to the conclusion that there was a legal, valid and binding contract between the parties and then there was a breach on the part of the defendant which resulted in causing loss to the plaintiff. In the present case, the respondents have seriously disputed the existence of a contract itself and, therefore, it was obligatory on the part of the appellant to have first established the existence of a valid and legal contract between the parties and then the breach of the contract. But, since no evidence was led by the appellant to establish the

said prerequisites to claim damages, therefore, the said two judgments cannot be of any assistance to the case of the appellant. The deposition of PW-1 is only confined to the disclosure of the rates of the item 'Rosin' in the open market during the relevant period and merely proving the said rate of item 'Rosin', the learned trial court could not have accepted the amount of damages as claimed by the appellant in the suit. This Court, therefore, does not find any infirmity or illegality in the said finding arrived at by the learned trial court on the failure of the appellant to lead any evidence to prove the issues No.3 & 4. The appellant would have been in no better position even if the Form A, now placed on record by the appellant along with the application moved by the appellant under Order 41 Rule 27, is accepted by this Court.

11. There is no merit in the present appeal, the same is hereby dismissed.

December 08, 2010
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KAILASH GAMBHIR, J