

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 21st November, 2011
Judgment Delivered On: 23rd November, 2011

+ RFA(OS) 57/2011

S.V.ELECTRICALS LTD. ...Appellant
Through: Mr.P.S.Bindra, Advocate

versus

SYLVANIA & LAXMAN LTD. ...Respondent
Through: Mr.Harish Malhotra, Sr.Advocate
with Mr.Rajender Agarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE S.P.GARG

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

PRADEEP NANDRAJOG, J.

1. Vide impugned judgment and decree dated 31.11.2010, the suit filed by the plaintiff for recovery of ₹48,89,814/- together with pendente lite and future interest @ 21% per annum has been dismissed with costs in sum of ₹75,000/- against the plaintiff.

2. It is the case of the plaintiff that on orders being placed from time to time it supplied goods to the defendant at a credit of 45 days and raised 31 invoices which were accepted. Since sales tax was not to be paid by the defendant

and in lieu thereof it had to issue 'C-Forms' after obtaining the same from the Sales Tax Department, three C-Forms were issued in respect of the goods supplied and this was evidence of acknowledgment of the liability. Pleading that from one unit of the plaintiff goods worth ₹25,21,285/- were supplied under 10 invoices between the dates 08.03.1995 to 09.08.1995 and goods worth ₹7,94,985/- were supplied from the other unit and for which 21 invoices were raised between the dates 25.03.1994 to 24.06.1995; suit amount claimed was ₹25,21,285/- + ₹7,94,985/- along with interest in sum of ₹11,79,168/- and ₹3,94,376/- for the supplies effected by the two units. Pre-suit interest @ 21% per annum was calculated.

3. In support of the plea that the goods were delivered it was stated that the transporter 'Jet Roadlines Corporation' had delivered the goods.

4. The defendant denied the claim as pleaded but stated that some goods were received from the plaintiff between May 1995 to 20.9.1995 and for which four cheques were issued as under:-

Cheque No.	Date	Amount
511645	1.5.1995	₹3,39,395/-
926007	27.5.1995	₹1,75,000/-
643655	31.5.1995	₹1,77,901/-
51152	20.9.1995	₹1,90,000/-
Total		₹8,82,296/-

5. It was further pleaded by the defendant that as per practice between the parties the plaintiff would get the

documents retire through its banker i.e. State Bank of India Indore to whom the original invoice, along with the goods receipt were handed over with the clear instructions that the documents should be presented to the banker of the defendant against money being realized against the invoice. This not being done, it was pleaded, that the same was proof of the falsity of the case pleaded in the plaint. As regards the three C-Forms referred to in the plaint, the defendant pleaded that during the period in question, there was labour and staff unrest at its factory and office and that some disgruntled employee of the defendant had picked up the said three C-Forms and manipulated the same to the benefit of the plaintiff.

6. The learned Trial Judge has found complete inchoateness, inconsistencies and irreconcilable documentary evidence placed on record and has thus dismissed the suit.

7. At the forefront of the proof led by the plaintiff were three C-Forms Ex.P-5(1), Ex.P-5(2) and Ex.P-5(3).

8. The C-Form Ex.P-5(1) has been issued by the Sales Tax Department on 27.8.1997 but bears the date 15.12.1995 as the date of it being issued by the defendant. At the rear are mentioned seven bills No.20, 21, 27, 46, 47, 70 and 71 out of which only four bills being No.27, 47 dated 8.3.1995, 70 dated 31.3.1995 and 71 correspond to the bill number on which the suit is based. It may be highlighted here that two bills relied upon in the plaint are stated to bear No.47 and two bills are stated to bear No.70. The C-Form Ex.P-5(2) has been issued on 18.09.1997 by the Sales Tax Department but bears the date 28.05.1996 as the date of it being issued by the

defendant. At the rear are mentioned eight bills No.59, 60, 79, 80, 81, 82, 153 and 215. Except bill No.153 and 215 the remaining bills have corresponding number of the invoice of the bill relied upon by the plaintiff. The C-Form Ex.P-5(3) has been issued by the Sales Tax Department on 18.09.1997 but bears the date 28.05.1996 as the date of it being issued by the defendant. At the bottom against the column of particulars of bill is mentioned bill No.47 value of which corresponds to the value of the invoice relied upon by the plaintiff. In other words the three C-Forms have a reference to only eleven out of the thirty one invoices/bills raised by the plaintiff and yet the claim in the suit is that the three C-Forms were issued with reference to the goods supplied under the thirty one bills. In the next paragraph we would be putting in tabular forms a graphic reflection of the stated bills raised and as find a reflection in the C-Form.

9. At the trial the plaintiff proved the 'Way Bills' issued by the courier agency 'ELBEE' through which the invoices were statedly sent as also the bills raised by the transporter 'Jet Roadlines Corporation' and if we may put, in a tabular form, the thirty one bills under which goods were statedly supplied, reflection thereof in the C-Forms and the corresponding 'Way Bills' and bills raised by the carrier the same would be as under:-

Bills	Date	Amount	Shown in the C-form or not.	Carrier Bills (tallied by date)
1	7.4.1995	23,378/-	No	Way Bill Ex.P4(1)@ page 54 part III

5	18.4.1995	20,572/-	No	Way Bill Ex.P4(2)@ page 56 part III Way Bill Ex.P4(3)@ page 59 part III
14	24.4.1995	23,378/-	No	
16	24.4.1995	23,378	No	
26	3.5.1995	18,702/-	No	Way Bill Ex.P4(4)@ page 62 part III
27	8.5.1995	46,754/-	Yes but amount being ₹2,79,509/- and date 14.2.1995	Way Bill Ex.P4(5)@ page 65 part III
36	31.1.1995	23378/-	No	
38	11.5.1995	50,795/-	No	Way Bill Ex.P4(6)@ page 68 part III
47	8.3.1995	3,59,506/-	Yes	Receipt Code No.19124 Ex.P2(1) @p.10
47	17.6.1995	1,70,931/-	Yes	Code No.30811 Ex.PW2/8 @ p.198
50	25.5.1995	50,795/-	No	
59	4.7.1995	3,78,708/-	Yes	Code No.30833 Ex.P2(5) @ p.30 [original at p.200]
60	4.7.1995	3,78,708/-	Yes	Code No.30834 Ex.P2(6) @ p.34 [original at p.201]
62	3.6.1995	50,795/-	No	Way Bill Ex.P4(7)@ page 74 part III
63	3.6.1995	50,795/-	No	Way Bill Ex.P4(8)@ page

				77 part III
64	5.6.1995	50,795/-	No	Way Bill Ex.P4(9)@ page 80 part III
65	6.6.1995	50,795/-	No	Way Bill Ex.P4(11)@ page 84 part III
68	9.6.1995	50,795/-	No	Way Bill Ex.P4(10)@ page 82 part III
69	13.6.1995	51,303/-	No	
70	14.6.1995	50,795/-	No	
70	31.3.1995	3,59,506/-	Yes	Code No.18309 Ex.P2(2) @ p.14 [Original at p.191]
71	31.3.1995	3,59,506/-	Yes	Code No.18310 Ex.P2(3) @ p.18
72	16.6.1995	50,795/-	No	
78	24.6.1995	50,795/-	No	
79	9.8.1995	1,89,355/-	Yes	Code No.19852 Ex.PW-2/4 @p.194
80	-do-	-do-	Yes	Code No.19853 Ex.PW-2/5 @p.195
81	-do-	-do-	Yes	Code No.19854 Ex.PW- 2/6@p.196
82	-do-	-do-	Yes	Code No.19855 Ex.PW- 2/7@p.197
100	13.10.1994	46,754/-	No	
150	13.12.1994	4,676/-	No	
205	25.3.1994	33,334/-	No	

10. We have noted hereinabove the exhibit marks of the related documents and the page number in the record of the learned Single Judge because appeal paper books have not been prepared.

11. The forwarding letters, one of which has not been exhibited, and the others exhibited as Ex.P-1(3), Ex.P-1(6), Ex.P-1(11), Ex.P-1(14) and Ex.P-1(16) are identically worded save and except the reference to the invoice number, the Hundi Number and the lorry receipt number. We note only one of them i.e. Ex.P-1(3). It reads as under:-

“To
The Branch Manager
State Bank of Indore
Amana Branch
Dewas: 455 001

REG. BILL PURCHASED DA/DDR

Dear Sir,

We are enclosing the following documents drawn on Sylvania and Laxman Ltd., 68/1-3, Najafgarh Road New Delhi.

1. Invoice No.70/94-95 dated 31/03/95 for ₹359506.00
2. Hundi No.52/94-95 dated 31/03/95
3. L.No.DX-2477 dated 31/03/95 of Jet Roadlines Corporation.

Please credit proceeds to our cash credit account.

INSTRUCTIONS

1. PRESENT THE DOCUMENT TO PARTY THROUGH STATE BANK OF INDORE M-94, CONNAUGHT CIRCUS BRANCH OPP. SUPER BAZAR, NEW DELHI.
2. DELIVER DOCUMENTS AGAINST ACCEPTANCE OF HUNDI. PLEASE ALSO COLLECT CST C-FORM. IF C-FORM IS NOT GIVEN BY THE PARTY THEN COLLECT EXTRA RUPEES 27554.00.
3. ALL YOUR DISCOUNTING CHARGES TO BE COLLECTED FROM US.
4. COLLECTING BANK'S COLLECTION AND REMITTANCE CHARGES TO BE COLLECTED FROM PARTY.
5. PLEASE COLLECT INTEREST @ 21% AFTER 60 DAYS FROM DATE OF HUNDI I.E. FROM 30/05/95. THIS HUNDI SHOULD BE RELEASED ONLY AFTER COLLECTING THE PRINCIPAL WITH OVERDUE INTEREST IF NOT PAID ON DUE DATE.

THANKING YOU,

YOURS FAITHFULLY
FOR S.V.ELECTRICALS LTD.
SD/- (ILLEGIBLE) MANAGING DIRECTOR

ENCL: AS ABOVE

CC TO: M/S. SYLVANIA & LAXMAN LTD. 68/1-3,
NAJAFGARH ROAD NEW DELHI."

12. The aforesaid i.e. Ex.P-1(3) is obviously relatable to bill No.47 in sum of ₹3,59,506/- and suffice would it be to highlight that learned counsel for the appellant could only shake his head in disbelief and having no answer, ventured no reply, when asked as to how come the defendant could receive the goods without receiving the documents, after retiring the

same, from its banker to whom plaintiff's banker had sent the documents too.

13. This is the position with each and every alleged transaction.

14. As we have noted hereinabove the principal amount under the thirty one bills is ₹25,21,285/- + ₹7,94,985/- = ₹33,16,270/-. As noted hereinabove the three C-Forms, Ex.P-5(1) to Ex.P-5(3) have a reference to sixteen bills, five of which do not correspond to the number of the thirty one bills on which the suit is based. The total value of the sixteen bills referred to in the three C-Forms is ₹55,42,988/-. It is apparent that the three C-Forms do not cover the value of the goods statedly supplied under the thirty one bills. Now, it is the positive case of the plaintiff that it had received the C-Forms for all the goods supplied, a fact which is obviously incorrect. It probablizes that some disgruntled officer or employee, as claimed by the defendant, during the period of unrest in the factory and the office of the defendant had contrived to manipulate and issue in the name of the plaintiff three C-Forms, which on their face have contrived dates as noted hereinabove.

15. It may be true that the defendant has also not made good the defence that it had received goods under four bills for which payment was made in the sum of ₹8,82,296/-, but the fact of the matter remains that the plaintiff had to prove its case and cannot rest on the defence failing, in the instant case for the reason the plea in the written statement is not one of confession with avoidance. The defendant denied

having received any goods under the thirty one bills referred to in the plaint and merely because it admitted having received goods of much lesser value, under some other bills but failed to establish the same, would not mean that the positive onus on the plaintiff to prove its case has been discharged.

16. We have independently reflected, albeit briefly, as above and for the remainder reasoning by us, it be treated that the reasoning of the learned Single Judge, which could not be shaken by learned counsel for the appellant, is incorporated as our reasoning with our acceptance thereto.

17. The appeal is dismissed but we leave the parties to bear their own costs.

(PRADEEP NANDRAJOG)
JUDGE

(S.P. GARG)
JUDGE

November 23, 2011
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