

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) No.2643/1998**

% **4th October, 2012**

M/S. STANDARD CASTINGS (P) LTD. Plaintiff
Through: Mr. Y.P. Chandna, Advocate with Mr.
Pankul Nagpal, Advocate.

VERSUS

THE GENERAL MANAGER NORTHERN RAILWAY
HEADQUARTERS & ANR. Defendants
Through: Mr. A.S. Dateer, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The subject suit has been filed by the plaintiff-M/s. Standard Castings (P) Ltd. for recovery of ₹ 1,07,19,963/- against the defendants.

This amount is broken up as under:-

“29. Thus now the Plaintiff is entitled to recover the following amount, which is due and payable by the Defendants jointly and severally:-

1. Principal Amount (Surplus amount which was withheld by the Defendants without any legal	₹ 21,23,033.00
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justification)	
2. Interest on the above amount(calculated at the Prevailing rate charged by the Nationalized Banks from time to time w.e.f. 16.11.90 to 19.11.98	₹ 72,90,876.00
3. Interest on the delayed payment of ₹ 1,87,617/- (The refund amount) Calculated at the prevailing rate of interest charged by the Nationalized Banks from time to time	₹ 03,06,054.00
4. Damages on account of harassment embarrassment for withholding the surplus and loss of business due to financial constraints	₹ 10,00,000.00
	₹ 1,07,19,963.00

RUPEES ONE CRORE SEVEN LACS NINETEEN THOUSAND NINE HUNDRED AND SIXTY THREE ONLY”

2. The cause of action for filing of the subject suit is that the plaintiff claims that it placed orders on the defendant No.1 for 26 wheel sets of 20.3T capacity as per drawing No.WD-5-7216-S/30 in terms of the plaintiff's letter dated 4.12.1989, Ex.P-3. It is further the case of the plaintiff that alongwith Ex.P-3, the plaintiff had attached its earlier letter to the defendant No.1 dated 27.12.1985, Ex.P-4 and as per which the diameter of the wheel was to be 915mm. Plaintiff has further pleaded that plaintiff was to supply the roller bearings and other components for axle boxes for fitment on the wheel sets and which it supplied to the defendant No.1.

Plaintiff has further pleaded that the defendant No.1 however failed to supply the wheel sets as ordered of 915 mm dia but supplied wheels only of 866 mm dia. It is pleaded that wheels supplied by the Jagadhri workshop of the defendant No.1 had very little life and only scrap value. The suit therefore came to be filed for recovery of the surplus amount paid by the plaintiff of ₹ 21, 23,033/- for the 26 Nos. of wheel sets supplied by the defendant No.1 and which were not of 915 mm dia but 866 mm dia.

3. The defendants contested the suit by pleading that it was never agreed that new wheel sets would be supplied. It is further pleaded that plaintiff by its own letter dated 13.11.1990, Ex.DW1/P1 clearly admitted that plaintiff did not want to use new wheel sets manufactured by SAIL but actually the plaintiff had only requested for worn out wheel sets which would serve the plaintiff's purpose without affecting the railway supplies. The defendants therefore claimed that there was no request for replacing the wheel sets and axels and there arose no question of refund of ₹ 24,57,290/- alongwith interest on the same as claimed in para 18 of the plaint. It was further denied in the written statement that the wheel sets were of scrap value as pleaded in the plaint. It is further the case of the defendant No.1 in the written statement that plaintiff had accepted and utilized wheel sets given

to its full satisfaction and therefore the claim is not maintainable inasmuch as if the wheel sets did not suit the purpose of the plaintiff, then the plaintiff, which itself came for taking delivery from the Jagadhri workshop of the defendant No.1, should have rejected the wheel sets and should have neither taken delivery nor utilized the wheels. It is further pleaded that if the plaintiff would not have taken the 26 wheel sets, the defendant No.1 would have used the same in their open lines.

4. The following issues were framed in this suit on 9.7.2004:-

- “1. Whether the plaintiff is entitled to the refund of the deposited amount? OPP
2. Whether the plaintiff is entitled to claim any interest, if so, at what rate? OPP
3. Whether the suit is time barred? OPD
4. Relief.”

Issue No.1

5. Learned counsel for the plaintiff has relied upon various letters sent by the plaintiff to the defendant No.1 including letters dated 4.12.1989(Ex.P-3), 27.12.1985(Ex.P-4), 17.1.1986(Ex.P-5) and defendant No.1's letter to its Jagadhri workshop dated 9/10.1.1990(Ex.P-7), letter dated 2.11.1990 (Ex.P-9) from the plaintiff to the Jagadhri workshop and

letters dated 15.11.1990(Ex.P-13) showing deposit of ₹ 24,51,290/- and other similar letters from Ex.P-15 to Ex.P-27, Ex.P-29, Ex.P-32 and so on.

6. The crux of the issues in the present case is as to whether the plaintiff has proved two main aspects. Firstly, the drawing has itself WD-5-7216-S/30 to show wheel dia of 915 mm and if drawing is proved whether the plaintiff having accepted the wheel sets knowing well that they were of 866mm dia yet can claim refund of the price paid.

The drawing which has been relied upon by the plaintiff being WD-5-7216-S/30 is Ex.DW1/P2. Learned counsel for the plaintiff however admits that not only the exhibition of this document was objected to but also the witness of the defendants in cross-examination dated 18.7.2008 has denied that this is the drawing of WD-5-7216-S/30. Counsel for the plaintiff admits that the subject drawing is of RDSO department of defendant No.1 and the plaintiff during its evidence has not summoned the witness from the RDSO department of defendant No.1 alongwith the certified copy of the aforesaid drawing to show that the wheel base has necessarily to be of 915 mm dia. Even Ex.DW1/P2, assuming it to be proved, states of it being a preliminary sketch. Therefore, there is nothing on record to show that

subject drawing on the basis of which the wheel sets were to be supplied stated that the wheels were to be of 915 mm dia.

7. I therefore hold that there was no contract for supply of wheel sets of 915 mm dia merely because alongwith Ex.P-3 an earlier letter of the plaintiff to the defendants Ex.P-4 dated 27.12.1985 is attached which show the diameter as 915 mm inasmuch as in none of the correspondence sent by the defendant No.1 to the plaintiff, it is admitted that wheel sets to be supplied were of 915 mm dia and what is only written is that the wheel sets have to be as per WD-5-7216-S/30 without any reference to the diameter of the wheel sets to be supplied.

8. Even for the sake of arguments, if we take that the contract between the parties was for supply by the defendant No.1 to the plaintiff of 26 wheel sets of 915 mm dia, the admitted fact however on record is that the plaintiff without any demur accepted the 26 wheel sets of 866 mm dia. The counsel for the plaintiff states that these wheel sets were accepted at the Jagadhri workshop of the defendant No.1 and therefore the plaintiff having accepted the wheel sets of 866 mm dia cannot urge to say that defendant No.1 is liable to return the value of the wheel sets which have been supplied to the plaintiff. In my opinion, even assuming the original contract was for

915 mm dia, there was a novation of contract when the plaintiff accepted wheel sets of 866 mm dia. Obviously, the plaintiff accepted the wheel sets of 866 mm dia because the plaintiff was knowing that the wheel sets of 866 mm dia would have been more or less of the same value than the wheel sets of 915 mm dia. Therefore, plaintiff had nothing to lose by accepting the wheel sets of 866 mm dia and the plaintiff accepted and utilized the same. Plaintiff therefore now cannot claim that defendant No.1 is liable to return the price of 26 wheel sets supplied to the plaintiff.

9. In order to satisfy my judicial conscience, I further went to the extent of examining that, assuming the defendant No.1 is guilty of breach of contract, has the plaintiff suffered any loss so as to entitle the plaintiff to claim back the value of the wheel sets from the defendant No.1. Counsel for the plaintiff admits that these wheel sets were fixed by the plaintiff on coaches/wagons which were supplied to the buyers of the plaintiff, and there is nothing on record of any grievance or complaints made by the customers of the plaintiff on account of any problem because of the wheel sets being of 866 mm dia and not 915 mm dia. In fact, the plaintiff, if it was aggrieved ought to have filed its contract(s) with its customer(s) to show that plaintiff had entered into contract(s) with its customer(s) and that taking the value of

the wheel sets at an amount of ₹ 24,51,290/- it suffered losses in supply of coaches/wagons to its customers on account of a lesser price received from its customer(s). Admittedly, plaintiff has led no evidence whatsoever in this regard thus clearly showing that plaintiff even if it received wheel sets in breach of contract, did not suffer any loss on account of breach of contract by defendant No.1. If breach of contract does not result in loss, the breach of contract is not actionable. If breach of contract is not actionable, and since the plaintiff has utilized the wheel sets, the plaintiff cannot get back the value of wheel sets which is prayed to be done through the present suit.

10. Finally, it was argued by the counsel for the plaintiff that since the worn out wheel sets as supplied by the defendants had very little life and only a scrap value, the plaintiff is entitled to the refund of the extra amount received by the defendant. I must say that, ex facie, I find this argument on behalf of the plaintiff as wholly misconceived and frivolous and thus liable to be rejected inasmuch as plaintiff in its letter dated 13.11.1990 (Ex.DW1/P1) itself admitted that plaintiff did not want new wheel sets and worn out wheel sets would serve the purpose of the plaintiff. The relevant portion of the letter dated 13.11.1990 (Ex.DW1/P1) reads as under:-

“XXXX XXXX XXXX XXXX

We did not want to use new wheel sets manufactured by SAIL, since such new wheel sets can be used by Railways for many years. On the other hand, our request has been for worn out wheel sets which would serve our purpose without affecting Railway supplies. We had approached Northern Railway in Dec.1989 for release of 26 Nos. Worn out Wheel sets, having wheel dia less than last workshop issue size.”

Therefore, in view of the reproduced portion of Ex.DW1/P1, I reject this argument urged on behalf of the plaintiff.

11. Issue No.1 is accordingly decided in favour of the defendant No.1 and against the plaintiff and giving the finding that plaintiff is not entitled to refund of the amount paid.

Issue No.2

12. Since the plaintiff is not entitled to the principal amount, there does not arise any issue of grant of interest. Issue No.2 is therefore decided in favour of the defendant No.1 and against the plaintiff.

Issue No.3

13. Issue No.3 is not pressed on behalf of the defendants with respect to the suit being time barred.

14. This issue is decided in favour of the plaintiff.

Relief

15. In view of the aforesaid, suit of the plaintiff is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

OCTOBER 04, 2012

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