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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 12th March, 2018

Date of Decision: 1st June, 2018

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RFA 539/2014

U P PROJECT CORPORATION LIMITED & ANR. Appellants

Through: Mr. Sumit Sinha & Mr. Sinha Shrey,
Advocates.

versus

M/S MAA KRUPA ENTERPRISES

..... Respondent

Through: Mr. K. S. Verma & Mr. Sachin
Verma, Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. A suit for recovery was filed by the Respondent/Plaintiff - Maa Krupa Enterprises (sole proprietary concern of Mr. Naresh Kumar Soral) (*hereinafter 'Plaintiff'*) against the Appellants/Defendants – U.P. Project Corporation Ltd. (*hereinafter 'UPPCL'*) and the Project Manager of UPPCL for a sum of Rs.5,05,328/-. The said suit was decreed along with interest @12% per annum by the Trial Court.

2. On 20th October, 2012, the following issues were framed in the suit.

“1. Whether this court has territorial jurisdiction to entertain this suit? OPD1 and OPD2

2. Whether the suit is bad for non-joinder to necessary party? OPD1 and OPD2

3. Whether the goods (600 pieces of PVC PRV) sent by the plaintiff have been received by the defendant? OPP

4. Whether plaintiff is entitled to decree for a sum of Rs.5,05,328/- against the defendant? OPP

5. Whether the plaintiff is entitled to interest at the aforesaid amount? If so, at what amount and for which period? OPP

6. Relief'

3. The only issue urged before this Court is in respect of issue no.3 above that the goods supposedly sent by the Plaintiff were never received by UPPCL.

4. The Plaintiff is a manufacturer of PVC Pressure Release Valves, PVC Weep Hole Fitments, PVC Water Stops, PVC Flanges & PVC Drainage Pipes, under the name and style of "*MAA Krupa Enterprises*".

5. A quotation letter was sent by the Plaintiff to the Project Manager, UPPCL for supply of PVC Pressure Release Valves on 2nd June, 2007. The said quotation was accepted by the UPPCL vide letter dated 31st May, 2008. The total cost of the goods to be supplied was Rs.4,95,420/- @ Rs.825.75 per piece for 600 pieces. It is claimed that the Plaintiff had sent the sales tax declaration form No.38 to the Sales Department, U.P. for supply of the said products.

6. It is the case of the Plaintiff that after permission was given by the U.P. Government, the goods were dispatched to the office of UPPCL at Bahraich. The only document relied upon by the Plaintiff to show acknowledgment of receipt of the goods is invoice dated 15th June, 2008, Ex.PW-1/D1, which simply has a noting at the bottom - 'received 600 numbers with the initial "R"'. This, according to the Plaintiff, is the signature of the Project Manager/Defendant No.2. The Plaintiff further claims that the goods were sent by Tirupati Pushkar Roadlines, Delhi and the original *biltis* dated 15th June 2008 are annexed as Ex.PW-1/B & Ex.PW-1/C.

7. The Plaintiff claims that the transporter fully confirmed that the goods were delivered but despite accepting the delivery of goods, the amount was not released by UPPCL. Accordingly, the Plaintiff issued letters dated 2nd December, 2008, 31st March, 2009, 7th September, 2009 and 16th January, 2010 asking for payment. The Plaintiff then received a reply dated 10th March, 2010 which, according to the Plaintiff, allowed the Plaintiff to take the goods back. The text of this letter reads as under:

“.....Is karyalaya ke apoorti sankhya 76 dinak 31.5.08 dwara uprokt varnit samagri ki apoorti ka aadesh diya jata tha lekin aap dwara apoorti ki gai samagri karyalaya abhilekho ke anusaar nahi ki gai. Is sambandh mein aap dwara avgat karaya gaya hai ki apoorti ki gai samagri kaaryasthal ke pass bane anya vibhaag ke store mein rakhi hain atyev aap dwara kiye gae anurodh ke kram mein apoorti ki gai samagri ko wapas liye jane ki anumati is aashay ke saath di jaati hai ki is hetu kisi bhi prakar ka koi bhi claim swikaar nahi hoga kyonki ab is samagri ki avashyakta nahi hai.....”

8. It is the claim of the Plaintiff that, pursuant to this letter, it sent its employees to take the goods back, however, they were not allowed to take back the goods. Hence, notice dated 7th February, 2011 - Ex.PW-1/M, was issued calling upon UPPCL to pay the outstanding amount which was not done. Then, legal notice dated 10th March, 2011 was also issued, which was replied to on 15th April, 2011 - Ex.PW-1/Q. In the said reply, UPPCL took the stand that in fact the Plaintiff did not supply the material and, in view thereof, the project concerned could not be completed. Thus, UPPCL called upon the Plaintiffs to resist from raising false claims. Thereafter,

correspondence ensued between the parties, but to no avail. Finally, the subject suit came to be filed.

9. The Plaintiff relied upon the following exhibits to prove its case:

- Exhibit PW1/A – Quotation order dated 2nd June, 2007;
- Exhibit PW1/B – Original copy of bilti dated 15th June, 2008;
- Exhibit PW1/B1 - Letter of early supply dated 10th June, 2008;
- Exhibit PW1/C — Import Letter dated 9th June, 2008;
- Exhibit PW1/C – Copy of bilti dated 15th June, 2008;
- Exhibit PW1/D – Certificate dated 7th March, 2011 issued by Tirupati Pushkar Road Lines;
- Exhibit PW1/D1 – Invoice no. 324 dated 15th June, 2008;
- Exhibit PW1/E - Certificate dated 4th November, 2011 issued by Tirupati Pushkar Road Lines;
- Exhibit PW1/F – Insurance policy;
- Exhibit PW1/H to PW1/K – Notices requesting payment for delivery of goods;
- Exhibit PW1/L – Response by UPPCL dated 10th March, 2010;
- Exhibit PW1/M, PW1/M1, PW1/N – Notices requesting payment for delivery of goods;
- Exhibit PW1/O - Legal notice issued by the Plaintiff dated 10th March, 2011.
- Exhibit PW1/P – Notice dated 23rd March, 2011 under Section 80 CPC;
- Exhibit PW1/Q – Reply dated 15th April, 2011 to notice dated 10th March, 2011;

- Exhibit PW1/R – Rejoinder dated 24th May, 2011 to reply dated 15th April, 2011;
- Exhibit PW1/S – Reply dated 27th June, 2011 to Rejoinder dated 24th May, 2011

10. UPPCL relied upon its General Register with GR & MIR Register of UPPCL, Bahraich, (Exhibit DW1/A) which makes an entry of all the goods received etc., which showed that the Plaintiff's goods were never received at the Bahraich office. The said General Register covered the period from 1st April, 2008 to 31st March, 2009. Apart from the General Register UPPCL relied upon the acceptance letter dated 31st May, 2008 (Exhibit DW1/B).

11. In evidence, the proprietor of the Plaintiff deposed that he had dispatched the goods through Pushkar Transporter. He, however, stated that he did not remember as to exactly when the goods were supplied to UPPCL. The transporter, Mr. Shiv Narayan Sharma, who appeared on behalf of the Plaintiff, stated as under:

“.....Plaintiff has not given me any name and designation of the person to whom the goods were to be delivered. The goods were delivered at a distance of 50-60 kms away from the appointed designation. It is wrong to suggest that the defendant never gave any direction to deliver the goods at a distance of 50-60kms away from the appointed destination. The goods were delivered by my driver but I do not remember the name of my driver. My driver has obtained the receiving at the time of delivering the goods. It is wrong to suggest that defendant has not received the goods till date as in a ordinary course of business the defendant maintains a general register. It is wrong to suggest that I have deposed falsely.”

From the transporter's evidence it is clear that the goods were not delivered at the actual address given by the Plaintiff and were delivered to some other destination as per the transporter. Further the transporter also confirmed that the General Register maintained by UPPCL is evidence of the goods received.

12. The Project Manager of UPPCL, Mr. G. K. Singh, confirmed the order placed on the Plaintiff as Ex. DW-1/B. He repeatedly stated that no goods were received by UPPCL. He also averred that the goods were not lying in UPPCL store or place.

13. A perusal of the documents placed on record shows that the evidence is very sketchy and there is nothing on record to show that the goods were actually received by UPPCL. The only relevant document - Ex.PW-1/D1, does not reveal as to who actually received the goods and whose signatures were put thereon. The Project Manager who deposed was Mr. G. K. Singh, however, the Project Manager, who had placed the order, was Shri S. K. Gupta. The Plaintiff was unable to prove as to who was the person who had received the goods. The invoice Ex.PW-1/D1 was specifically put to the Plaintiff's witness, Shri Shiv Narayan Singh of Tirupati Pushkar Roadlines who stated that the signatures of Defendant No.2 i.e. the Project Manager appeared on Ex.PW-1/D1. However, it is not clear as to which Project Manager he actually meant. The said document was not put to DW-1, Sh. G.K. Singh, to check if it contained his signatures. Thus, the signatures, which appear on Ex.PW-1/D1, which is only the acknowledgement of the receipt of the goods, do not belong to Mr. G. K. Singh. No one has identified Shri S. K. Gupta's signatures on the said invoice.

14. From the memo of parties, it is not clear as to who is the Project Manager, who was impleaded. Presuming the person to be Mr. S. K. Gupta, the later Project Manager Mr. G. K. Singh ought to have been confronted with the acknowledgement Ex.PW-1/D1. Mr. G. K. Singh, in fact, confirms the document Ex.PW-1/B1 dated 10th June, 2008, but when confronted with Ex.PW1/B he denied the signatures thereon from his office. He was never confronted with the acknowledgement Ex.PW-1/D1. Moreover, the signature of Shri S. K. Gupta appearing on quotation letter dated 31st May, 2008, which is confirmed by the Plaintiff's witness, does not match with the signature as appearing on Ex.PW-1/D1. Barring this one invoice of 15th June, 2008, stated to contain an acknowledgement, there is nothing on record to show that the goods were actually delivered and received at UPPCL. Though the receiving of the subsequent correspondence is admitted, it has been the consistent stand of UPPCL that the goods have not been received by it. DW-1, in his evidence, only admitted the receipt of Ex.PW-1/A and issuance of the letter dated 10th June, 2008 exhibited as Ex.PW-1/B1. He has categorically deposed in respect of Ex.DW-1/A as under:

“6. That I say that U.P. Project Corporation Limited maintains a register that is UPPCL-BAHRAICH UNIT-22 JOURNAL Register with GR & MIR Register 2008-2009 and is exhibited as Ex.DW1/A. That the register maintains all the transactions relating to goods received, payments due, taxes levied, payment released and all other transactions for the particular year and perusal of the register clearly show that the said goods were never received by the defendant.”

15. The maintenance of this General Register is known to the transporter who clearly stated in his testimony that all goods received are entered on this Register. On this General Register, which belongs to a State Government undertaking, there is no cross examination which is conducted by the Plaintiff. In fact, this document is not challenged at all by the Plaintiff. The non-raising of any challenge by the Plaintiff to the General Register and the lack of any record of goods having been sent, goes to show that the Plaintiff has not discharged his burden.

16. The Plaintiff relied heavily on the transporter who himself was not aware as to where the products were delivered, who took the delivery and the signatures of the recipient were also not identified. Under these circumstances, the Trial Court's finding regarding the testimony of PW-2 is incorrect. Defendant No.2 i.e. Mr. S. K. Gupta never appeared in the witness box and so he could not have admitted or denied his signatures. The Trial Court is completely confused by the fact that Project Manager at the time when the order was placed was a different person i.e. Mr. S. K. Gupta, whereas the person who deposed as Project Manager was Mr. G. K. Singh. The Transporter who appeared as PW-2 did not mention the name of the Project Manager who signed the invoice. The Project Manager at both times was a different person. In fact, it was the Plaintiff's obligation to confront DW-1 who appeared on behalf of UPPCL as to whether the signature on invoice Ex.PW-1/D1 was of Mr. S. K. Gupta or not. This was never done.

17. Insofar as Ex.PW-1/L, which is letter dated 10th March, 2010 in Hindi, extracted hereinabove, DW-1 admitted writing the said letter and the said letter is mis-interpreted by the Plaintiff. The letter is not happily worded

but it does categorically state that the supply was not made as per the written records. The latter sentence contradicts the first sentence, but the said letter i.e. Ex.PW-1/L by itself cannot confirm the claim of the Plaintiff that the goods were delivered. Even the said letter says at the end that no claims would be entertainable qua these goods by UPPCL. The onus to prove that the goods were delivered was upon the Plaintiff, which has not been discharged. Signature on the receipts of the goods have not been proved and there being nothing else on record to show that the goods were delivered, except the statement of the transporter who also claims that the goods were delivered at a different location, is not sufficient evidence. It has been the consistent stand of UPPCL right from the beginning that the goods were never delivered. From the General Register maintained by the UPPCL, the supply is not established and the said evidence is unimpeachable evidence, on which no cross examination was conducted. Thus, the Trial Court judgment is not sustainable and the same is set aside. The amount lying deposited along with the interest accrued there on is refunded/released to UPPCL.

18. It is however important to place on record that the conduct of UPPCL and its officers have not been satisfactory in the present case. There ought to be a clear manner and method in receiving goods and releasing payments. This Court is concerned about the manner in which the letter dated 10th March, 2010 Ex. PW1/L is written in a casual manner without even confirming whether the goods were in fact received or not. Bogus claims for goods not supplied ought not to be entertained in this manner and a system ought to be in place to check such irregularities. A copy of this order be sent to the Chairman of UPPCL as also the Chief Secretary, Government of Uttar

Pradesh for framing of appropriate guidelines and affixing responsibilities, in this regard.

19. Appeal is allowed in the above terms.

PRATHIBA M. SINGH
JUDGE

JUNE 01, 2018/dk

