

THE HIGH COURT OF TRIPURA
AGARTALA

RFA 11 of 2008

M/S Dooars Transport Ltd.,
9062/3, Ram Bagh Road,
Azad Market, Delhi- 110006,
Represented by Mr. Vijay Singh Rawat,
S/O Late B.S. Rawat, authorised person of,
M/S Dooars Transport Ltd.

.... **Appellant.**

VERSUS

Sri Gautam Saha,
Proprietor of M/S Tripura Sales Agency,
Agartala, West Tripura.

.... **Respondent**

BEFORE

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE U.B. SAHA

For the appellant : Mr. D.Bhattacharji, Advocate

For the respondents : Mr. A. Roy Barman, Advocate

Date of hearing and : 12.02.2015.
delivery of judgment.

Whether fit for reporting : NO

JUDGMENT & ORDER(ORAL)

Deepak Gupta, CJ

This appeal by the defendant is directed against the judgment and decree dated 01.12.2007 passed by the learned Civil Judge (Senior Division) Court No.2, West Tripura, Agartala in Money Suit No. 16 of 2006 whereby he decreed the suit of the plaintiff and held that the plaintiff was entitled to recover a sum of Rs.15,79,350/- from the defendant (including the present appellants) along with interest @6% per annum from the date of institution of the suit till payment of the amount.

2. Briefly stated, the case set up by the plaintiff was that he was a wholesaler of medicines and he used to purchase medicines from Nicholas Piramol India Limited, who were arrayed as defendant nos. 4 and 5. According to the petitioner he got his medicines transported through defendant no.1 M/s Dooars Transport Limited. The main office of the company is at Delhi. Defendant no.2 was the Branch Office of the company at Gauhati and defendant no.3 was Branch Manager of the company at Agartala. However, the main defendant is defendant no.1.

3. Notices were issued in the suit and on behalf of defendant no.1 Power of Attorney was filed by Sri Amit Mittal and Mr. Bibek Banerjee, Advocates on 08.09.2006. This obviously means that the company had been served prior to 08.09.2006. The matter was listed before the learned trial Court and thereafter, after 08.09.2006 on 03.11.2006. On these dates counsel appeared for defendant no.3 who was the Branch Manager of the company but none appeared for the defendant nos.1 and 2 i.e. the present appellants and they were proceeded against exparte. Thereafter, the matter was listed on 21.11.2006 when none was present on behalf of defendant nos.1 and 2. It appears that in the mean time some proceedings in the application were going on but finally the matter was listed in Court on 11.06.2007 and none appeared for the defendants and the case was adjourned to 03.07.2007. Again none appeared for the defendants. Thereafter, the case was listed on 12.07.2007 when the Court work was suspended. The case then was adjourned to 09.08.2007 when counsel for the defendants were present. The case was then adjourned to 20.08.2007 when counsel for the defendants sought time to seek instructions from the defendant as to what has to be submitted in the case.

4. From the order of the learned trial Court it appears that the written statement was filed on 26.03.2007 but the learned trial Court did not officially take it on record because of the fact that the defendants had been proceeded against exparte. Though on 26.03.2007 the appellants knew about this fact that their written statement had not been accepted they choose to file an application for setting aside the exparte proceedings only on 12.09.2007. There is no explanation worth the name why such application was not filed at an earlier stage especially when the parties were represented by counsel and the counsel were appearing on certain dates and disappearing on certain dates. Though the learned trial Court may have been wrong in rejecting the application on a highly technical plea that the provision of law mentioned was wrong, we are of the view that even on merits the defendants were not entitled to any indulgence because of the fact that for more than one year they did not take any steps to get the exparte proceedings set aside.

5. The written statement has been signed on 21.10.2006. The defendants were proceeded exparte on 21.11.2007. It is obvious that the written statement must have reached the counsel by 21.11.2006 but for reasons best known, the written statement was not filed for one year and the learned counsel also did not appear. In this view of the matter, we are clearly of the view that the learned Court was fully justified in not permitting the defendants to file written statement at a later stage.

6. As far as the merits of the case are concerned, the plaintiff stepped into the witness box and supported his case fully. On that date also no counsel was available on behalf of defendant nos. 1 and 2 to cross examine the plaintiff. How can the plaintiff at the stage of appeal now

claim that the case should be remanded back for a fresh trial?. The defendant nos. 1 and 2 are solely responsible for what has been fallen on them and no indulgence can be shown to them. On merits the learned trial Court has rightly held that 1020 cartoons were not delivered and has only decreed the suit in respect of those 1020 cartoons of medicine.

7. Therefore, we do not find any merit in the appeal which is accordingly dismissed.

JUDGE

CHIEF JUSTICE

Saikat