IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 89 OF 2016
WITH
APPLICATION NO. 90 OF 2016
AND
CRIMINAL REVISION APPLICATION NO. 90 OF 2016
WITH
APPLICATION NO. 91 OF 2016

M/s. Sparta Cements and Infra Limited and anr. ... Applicants

vs.

M/s. Batliboi Environmental Engineering Ltd.
and anr. ... Respondents

Mr. Dinesh Kumar Dubey, Advocate for the applicants.
Mr. Amit Ghag, Advocate for the respondent no.1.
Mr. D. R. More, Additional Public Prosecutor for the State.

Coram : Smt. R. P. SondurBaldota, J.
Date : 22nd March, 2016.

P. C. :

1. This common order on the above two revision applications that involve identical questions of facts and law for consideration of the Court. The parties to the proceedings are also same.

2. The applicants seek to challenge concurrent findings of

the Courts below as regards their conviction for the offence punishable under Section 138 of Negotiable Instruments Act and the punishment awarded to them. Original accused no.3 has not challenged his conviction and sentence.

3. Respondent No.1 is engaged in a business of design, manufacture and supply of pollution control equipments. It had sold and supplied instruments and equipments to the applicants under eight purchase orders for their cement plant being set up at Kutch. The total price of the equipments supplied was of Rs.6,43,73,000/- excluding the taxes and duties. As provided in the purchase orders respondent no.1 had also installed and commissioned the instruments and equipments supplied by it. The applicants had issued certificates dated 4th April, 2009 and 26th March, 2010 certifying satisfactory performance of the equipments and services rendered by respondent no.1. Then respondent no.1 raised invoices for the amount of Rs.7,41,80,430.34 ps. including taxes and duties and after adjusting the payments already received made demand for the balance due amount of Rs.86,20,708.34 ps. After several reminders the applicants on 4th December, 2009 issued three cheques, dated 15th January, 2010, 15th February, 2010 and 15th March, 2010 each in the sum of Rs.15,00,000/-. Issuance of the

cheques was with an understanding that the applicants would make the payment of the amounts mentioned in the cheques on or before 30th March, 2010 and then collect the cheques. The cheques had been signed by original accused no.3 and one Ramesh Saptarshi. After 30th March, 2010 the applicants made several requests of extensions of time for payment and finally by the letter dated 31st May, 2010 requested respondent no.1 to wait for another 20 to 25 days for the payment. On expiry of the extension of 25 days, respondent no.1, after due intimation by letter dated 20th June, 2010 to the applicants, deposited the cheques in the Bank for payment. The cheques returned unpaid for want of funds. Thereafter, the statutory notice was served and respondent no.1 filed complaint bearing CC No.13690/SS/2010 in respect of the three cheques. The fourth cheque was issued on 5th December, 2009. It was dated 31st March, 2010 and for the sum of Rs.19,52,525.63 ps. with the same understanding as for the other three cheques. It also met the same tale as them and respondent no.1 filed CC No.93689/SS/2010 in respect thereof.

4. The defence of the applicants in their reply to the statutory notice as well as the proceedings initiated against them was that the cheques in question, were issued as security to the respondents to enable them to obtain Bank guarantee and not

towards discharge of any debt or liability. Further it was contended that there was delay in delivery of the material by respondent no.1, for which the applicants were entitled under the agreement to liquidated damages of 5% of the purchase orders. According to the applicants, they had paid 90% amount of the purchase orders. The balance amount was payable by them within three months from the last dispatch of the material for which respondent no.1 had to furnish Bank guarantee which was to be valid from 18 months from the date of last dispatch or 12 months from the date of the agreement. As respondent no.1 did not furnish the Bank guarantee, the applicants were not liable to pay the balance amount.

5. The defence taken by the applicants is indicative of admission of all the facts alleged by respondent no.1. The facts as regards the purchase order, delivery of the material under the purchase orders, part payment of the amount of the purchase order, issuance of four cheques, dishonour of the cheques, service of the statutory notice for demand and the reply sent to the notice by the applicants.

6. The Courts below have noted that the applicants have nowhere disowned their liability to pay even the balance 10% of the sale price. Their only complaint was of delay in the supply of

material and entitlement of liquidated damages for the delay. There is no dispute that respondent no.1 had not furnished Bank guarantee as agreed for 10% of the amount. However, the period of Bank guarantee i.e. of 18 months from the date of the last dispatch or 12 months from the date of commissioning of the equipments was already over. Therefore, there was no need for respondent no.1 to furnish the Bank guarantee.

7. If the cheques are to be treated as having issued as a security, it was necessary for the applicants to establish clearance of the debt by mode other than the cheque. The Courts have also noted that the letter dated 4th March, 2009 accompanying the cheques specifically admitted the liability of the applicants. The letter also expressed the difficulty of the applicants in having sufficient funds to clear the cheques. It is further found that the claim of the applicants for entitlement of the liquidated damages would not affect the merit of the case, because admission of liability would amount to admission of quality of the equipments supplied by respondent no.1. The Sessions Court while considering the appeal against the conviction have noted the additional fact of the arbitral proceedings between the parties. By the arbitration award dated 15th October, 2015, the learned Arbitrator has rejected the very contention by the applicants and

passed an award in favour of respondent no.1.

8. In my considered opinion, there is no infirmity whatsoever in the concurrent findings of Courts below against the conviction of the applicants. The sentence awarded to them is also extremely fair and reasonable. The sentence is only of payment of fine and substantive sentence of imprisonment is only in default of payment of fine. There is no any merit, whatsoever, in the revision applications filed by the applicants. Hence, the revision applications are dismissed. Consequently Criminal Application No. 90 of 2016 and Criminal Application No. 91 of 2016 do not survive. The same are accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]