IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

CORAM

THE HONOURABLE MR.JUSTICE R. SUBRAMANIAN

A.S.No.206/2008 & M.P.1/2014

The Tamil Nadu State Transport Corporation,
(Coimbatore Division-1) Ltd.,
No.37, Mettupalayam Road,
Coimbatore. ..Appellant/Defandant

..Vs..

M/s. ELGI Rubber Company Ltd.,
Rep.by Mr.S.R.Venkatachalam,
Vice President,
No.2000, Trichy Road,
Singanallur,Coimbatore-614005.
..Respondent/Plaintiff

(Substituted vide Order of this Court dt.27.01.2017 made in CMP.No.928/2017 in A.S.No.206/2008).

Prayer: Appeal filed Under Section 96 C.P.C, against the judgment and decree dated 17.04.2006 made in O.S.No.550 of 2004 on the file of the Additional District Judge (Fast Track Court No.1), Coimbatore.

For Appellant : T.Chandrasekaran
For Respondent : Mr.R.Pradeep
for M/s.Iyer and Thomas

JUDGMENT

The defendant who suffered a decree for payment of money with interest is the appellant. The suit in O.S.No.550/2004 was filed by the plaintiff seeking recovery of sum of Rs.8,93,848/- (Rupees Eight Lakhs Ninety Three Thousand Eight Hundred and Forty Eight only) with further interest at the rate of 13% per annum on Rs.6,54,092/- (Rupees Six Lakhs Fifty Four Thousand Ninety Two only) from the date of suit till the date of realisation. The defendant, a Transport Corporation, had entered into an agreement with the plaintiff for lease of 7 Tyre Electric Chamber, Buffer, Builder and Inspection Spreader which are used in re-treading of Automobile Tyres. The lease agreement is evidenced by Ex.A-1 dated 04.04.1996. Under the lease agreement defendant has agreed to pay a sum of Rs.13,500/- (Rupees Thirteen Thousand Five hundred only) per month as nominal leasing charges. The agreement Ex.A-1 provides, among other things, for purchase of Precured Tread Rubber from the plaintiff alone till the lease is in vogue. Pursuant to the said agreement, the defendant issued purchase orders on various dates to the plaintiff for supply of Precured Tread Rubber. There is no dispute regarding the other purchase orders except the purchase orders dated 30.03.2001 and 12.04.2001 marked as Ex.A-2 & Ex.A-3. According to the plaintiff, under these two purchase orders, the defendant has placed orders for supply of Precured Tread Rubber at Rs.85.43 Per Kilogram. It is not in dispute that the quantity mentioned under both purchase orders has been supplied by the plaintiff. While so, by an order dated 07.08.2001, the defendant unilaterally amended the two purchase orders and reduced the price Per Kilogram from Rs.85.43 to Rs.66.60 Per Kilogram. This action of the defendant was not accepted by the plaintiff and since the defendant did not come forward to pay the difference in price despite several demands, the plaintiff has filed the suit for recovery.

2.The suit was resisted by the defendant on various grounds. According to the defendant, there was no agreement regarding the price of the goods to be purchased from the plaintiff. The defendant would contend that when a subsequent tender that was called for supply of the same material, the plaintiff itself had quoted a price of Rs.57.41 Per Kilogram of Precured Tread Rubber. Taking that quotation into account, according to the defendant, the price was reduced and the prices offered in two invoices dated 30.03.2001 and 12.04.2001 was not paid. It was also contended that the suit was barred by limitation. According to the defendant, the invoices are dated 30.03.2001 and 12.04.2001. A credit period of 30 days is allowed and therefore, the suit ought to have been filed before 12.06.2004. On the above pleadings, the learned Additional District and Sessions Judge, (FTC-I), Coimbatore framed the following issues:

> "1)Whether the plaintiff is entitled to the suit claim as prayed for?
> 2) Whether the suit is barred by limitation?
> 3) Whether the interest claimed is excessive?
> 4) To what other relief, the plaintiff is entitled to?"

3.On the side of the plaintiff, one Radhakrishnan was examined as P.W-1 and Exs.A-1 to Ex.A-22 were marked. On the side of the defendant, one Devaraj was examined as DW-1, and Exs.B-1 to Ex.B-3 were marked. On a consideration of the oral and documentary evidence, the learned trial Judge concluded that the unilateral scaling down of the prices cannot be accepted. In the absence of any agreement between the parties, the purchase order alone will be treated as the terms of the contract. Having placed an order to purchase the Tread Rubber atapriceof Rs.85.43 Per Kilogram, the defendant cannot unilaterally reduce the price.

4.On the question of limitation, the learned trial Judge held that the supply of raw materials was made up to 23.08.2001, and therefore, the suit filed on 06.08.2004, being within three years from that date is in time. On the above findings, the learned trial Judge had decreed the suit with interest of 9% per annum of Rs.6,54,092/- (Rupees Six Lakhs Fifty Four Thousand Ninety Two only) against 13% claimed by the plaintiff. Aggrieved by the said judgment and decree, the defendant/appellant has come forward with this appeal.

5.I have heard Mr.T.Chandrasekaran, learned counsel appearing for the appellant, and Mr.R.Pradeep, learned counsel appearing for M/s.Iyer and Thomas, learned counsel for the respondent.

The following points arise for determination in this appeal:-

1.Whether the defendant's action is unilaterally reducing the price of the Precured Tread Rubber is just and legal?

2.Whether the suit is barred by limitation?

6.Mr.T.Chandrasekaran, learned counsel for the appellant would contend that, since the plaintiff itself had offered to supply the same material at a reduced rate namely Rs.57.41 Per Kilogram, the defendant was justified in reducing the price for goods that had already been supplied.

7.On the other hand, Mr.R.Pradeep, learned counsel appearing for M/s.Iyer and Thomas, learned counsel for the respondent would contend that the offer at Rs.57.41 Per Kilogram is made on the basis of the price prevailing on that date for future supplies. According to him, the defendant having agreed to pay at the rate of Rs.85.43 Per Kilogram while placing the purchase orders under Ex.A-2 and Ex.A-3, cannot unilaterally reduce the price to Rs.66.60 Per Kilogram that too after the supplies were effected. Ex.A-1 does not contain any term as to the price of the Precured Tread Rubber to be supplied by the plaintiff. Therefore, by accepting Ex.A-2 and Ex.A-3 purchase orders, the defendant had required the plaintiff to supply certain quantity of Precured Tread Rubber at Rs.85.43 Per Kilogram. It is not in dispute that the plaintiff had supplied those materials also. Therefore, it is not open to the defendant to unilaterally alter the contract after the contract had been completely performed on the part of the plaintiff.

8.I am unable to agree with the contention of Mr.T.Chandrasekaran, learned counsel appearing for the appellant, that the plaintiff itself had given a lesser rate in a subsequent quotation and therefore the defendant is entitled to reduce the rates for the goods that were already supplied, as subsequent quotation cannot be the basis to alter the price for the products which were supplied on the basis of purchase orders made earlier.

9. The learned Additional District Judge has also found that the unilateral alteration of the terms of contract is not permissible in law. I do not find any reason to interfere with the findings of the learned Additional District Judge.

10.On the question of limitation, Mr.T.Chandrasekaran, learned counsel appearing for the appellant would contend that the last purchase order is dated 12.04.2001 and there is a credit period of 30 days and last supply was made on 12.05.2001. Therefore the suit filed on 06.08.2004 is beyond period of 3 years and hence the suit is barred by limitation.

11. Mr.R.Pradeep, learned counsel appearing for M/s.Iyer and Thomas, learned counsel for the respondent would contend that the cause of action for the suit would arose only upon receipt of Ex.A-6 namely the amendment issued by the defendant which is dated 07.08.2001. According to the learned counsel, from the said date the suit filed on 06.08.2004 is within time. In the case on hand, a particular price was fixed under the contract initially that is on 30.03.2001 and 12.04.2001. The plaintiff is entitled to the price of Precured Tread Rubber sold under Ex.A-2 and Ex.A-3 at the rate of Rs.85.43 Per Kilogram, but for Ex.A-6 dated 07.08.2001. It is only under Ex.A-6 dated 07.08.2001, the defendant had amended the purchase order and had claimed that it will pay only at the rate of Rs.66.60 Per Kilogram and not at Rs.85.43 Per Kilogram.

12.In my considered opinion, it is Ex.A-6 dated 07.08.2001 which gives the cause of action to the plaintiff to come forward with the present suit. The limitation starts only on 06.08.2001 and not from any other earlier date as urged by Mr.T.Chandransekaran, learned counsel for the appellant. The suit, having been filed on 06.08.2004, is within 3 years from the date of Ex.A-6 i.e. 07.08.2001. I do not think that it is possible to accept the contention of the learned counsel for the appellant that the suit is barred by limitation.

Therefore, both the points are answered against the appellant/defendant.

13.In fine, the appeal is dismissed, confirming the judgment and decree of the trial Court. Further considering the facts and circumstances of the case, there shall be no order as to costs in this appeal. Consequently, the connected miscellaneous petition is dismissed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

The Additional District Judge (Fast Track Court No.1),
Coimbatore.

Copy to
The Section officer
V.R. Section
High Court, Madras

+1 CC to Mr. T. Chandrasekaran, Advocate sr 7653
+1 CC to Mr. H. Karthik seshadri, Advocate sr 7596

A.S.No.206 of 2008

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