NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

{Arising out of judgment and decree dated 11-2-1997 passed by the Third Additional Judge to the Court of District Judge, Raipur, in civil suit No.4-B/87 (old) 22-B/89 (new)}

FA No. 241 of 1997

1. Jayashri Plastic, 23-A, Netaji Subhash Road, 10th Floor, Calcutta – 700 001.

2. G.S. Jhawar, Partner, Jayashri Plastic, 23-A, Netaji Subhash Road, 10th Floor, Calcutta – 700 001.

---- Appellants

Versus

1. Shri Durga Sales Corporation, 9-Sadhani Market, Banjari Road, Raipur.

---- Respondent

For Appellants	Shri G.D. Waswani, Advocate
For Respondent	Shri Anurag Verma, Advocate

Judgment on Board

By

Prashant Kumar Mishra, J.

20/07/2018

1. This appeal by the defendants is against the judgment and decree dated 11-2-1997 passed by the Third Additional Judge to the Court of District Judge, Raipur allowing the plaintiff's one suit for a sum of Rs.1,11,581/- while dismissing the other suit for another sum of Rs.93,290/-.

2. The defendant appointed the plaintiff as its commission agent vide Ex.P/5 dated 17-2-1986 for the State of Madhya Pradesh

and Nagpur for sale of H.D.P.E. Pipes on condition, *inter alia,* that on obtaining supply orders and supply the plaintiff shall be entitled to commission of 15% on the net invoice value excluding taxes for the orders secured by the plaintiff effort executed and full payment received. Out of the said 15% commission the plaintiff was to receive 10% on receipt of supply order and the balance 5% on receipt of copy duly signed by the consignee and approval/acceptance of the material. When after obtaining supply orders, the defendant did not make payment of the amount of 15% the plaintiff preferred two separate suits one for Rs.1,11,581/- towards 10% amount and the other for obtaining payment of Rs.93,290/- equal to 5% of the supply order value. Both the suits were tried together and after trial the trial Court has allowed the suit for Rs.1,11,581/- and dismissed the other suit.

3. Shri G.D. Waswani, learned counsel appearing for the appellant, would submit that the trial Court has found that the plaintiff has failed to prove that supplies were, in fact, made on the orders procured by him and on that basis it has dismissed one suit, on the same reasoning, the second suit should also been dismissed. Referring to the admission made by Ramgopal (PW-1) in para 9 of his deposition, Shri Waswani would argue that the plaintiff having himself admitted that the supply orders (Ex.P/11 & Ex.P/12) not referring his name, as the person on whose effort the supply orders were issued, the

plaintiff is not entitled for 10% commission and the suit filed in this regard has wrongly been allowed.

4. Shri Anurag Verma, learned counsel appearing for the respondent, *per contra,* would submit that the finding recorded by the trial Court is based on material on record, therefore, the judgment and decree passed by the trial Court is not to be interfered.

5. Ex.P/5 is the communication by which the defendant appointed the plaintiff as its commission agent. The contents of the entire document is reproduced below :

> Sub : Appointment as a Commission Agent for the State of Madhya Pradesh.
>
> * * *
>
> With reference to the discussion we had with you on 17.2.96, we are pleased to appoint you as one of our Commission Agent for the State of M.P. and Nagpur for the sale of our H.D.P.E. Pipes on the following terms and conditions :
>
> 1. That you will be one of our Commission Agent initially up-to 30.6.1986, renewable thereafter on looking at your performance.
>
> 2. That you shall book supply orders in our favour from all the Govt. & Semi-Government Departments and Government undertakings on the basis of our DGS&D Rate Contract, lying in the State M.P. and from Nagpur.

3. That you will be entitled for a Sales Commission @ 15% on the nett invoice value excluding taxes for the orders secured by your own accord, executed and full payment received.

4. That the Commission earned by you shall be credited to your account on completion of each contract i.e. material supplied against the order and payment received.

5. That the payment shall be made to you as follows:

   i. 10% commission of the supply order value, on the receipt of the supply order.

   ii. 5% commission of the supply order value, on receipt of the copy No.2 & 5 of the Inspection Notes, duly signed by the consignee and approval/acceptance of the material.

   Until the total transaction against the supply order is completed and your entitlement is credited to your account, the above payments shall be treated as advance payments only and stand debit to your account.

6. That it shall be your responsibility to obtain favourable physical and approval report from the consignee for all the supplies made against the orders secured by you in our favour and to obtain extension in delivery period of the order if it becomes necessary.

> The agreement is sent herewith in duplicate and now you are requested to return the duplicate copy duly signed by you as a token of your acceptance.

6. When the supply orders Ex.P/11 & Ex.P/12 were issued by the Chief Materials Manager, Central Coalfields Limited, Singrauli Colliery, Sidhi (MP), the defendant wrote a communication to the said Officer of the CCL on 19-4-1986 (Ex.P/7) acknowledging the receipt of supply orders and copy of the said communication was also sent to the plaintiff. By another document dated 23-4-1986 (Ex.P/8) the defendant acknowledged with thanks the receipt of supply orders assuring the plaintiff to release the commission on receipt of amendments against the supply orders received. It is, thus, apparent that after receipt of supply orders the defendant appreciated the efforts made by the plaintiff in procuring the supply orders otherwise it would not have thanked the plaintiff vide document Ex.P/8. In yet another communication of similar nature dated 12-5-1986 (Ex.P/10) the defendant informed the Material Manager (Pur), CCL that on making amendment in the supply order, the supplies can be effected at the earliest. Copy of this communication was also endorsed to the plaintiff. Thus, at all relevant stage i.e. from the stage of obtaining supply order and thereafter, the defendant has been keeping the plaintiff in loop about the developments in respect of supply of materials.

7. As against the above documentary evidence duly proved by the plaintiff in course of trial, the appellant would harp upon the statement made in para 9 of the deposition of Ramgopal (PW-1), however, on a reading of the said part of the statement, I am of the view that the said statement does not amount to any admission by the plaintiff to the effect that he had not made any effort in procuring the supply order. In juxtaposition to the said statement of Ramgopal (PW-1), if the deposition of Ramkisan Jhawar (DW-1) is read, he would admit that the defendant had written to the plaintiff for obtaining amended supply order. If according to the defendant, the plaintiff had not made any effort in obtaining the supply order there was no reason or occasion for the defendant to have written the plaintiff for sending amended supply order. Ramkisan Jhawar (DW-1) would also state that the supply orders were obtained by their agent through A.K. Singh, who is still employed with them, however, said A.K. Singh has not been examined to prove as to what effort he made to procure the supply order.

8. The next submission of Shri Waswani is that on a reading of the agreement between the parties the only inference which can be drawn is that the plaintiff was entitled for entire payment after supply was made, therefore, since admittedly supply was not made due to the effort of the plaintiff, but it was obtained by the defendant on its own independent efforts, the plaintiff was not entitled for any payment. Para 5 of the document (Ex.P/5)

provides that 10% commission shall be paid to the plaintiff on receipt of supply order and the remaining 5% on receipt of copy No.2 & 5 of the inspection notes, duly signed by the consignee and approval/acceptance of the material and further that until the total transaction against the supply order is completed and your entitlement is credited to your account, the above payments shall be treated as advance payments only and stand debit to your account. The above expression used in the agreement nowhere uses the expression that even after supply order is received, but it is found that the plaintiff fails to make effort at any subsequent stage he will not be entitled to the initial amount of 10%. The later part of para 5 is to the effect that even if payment of 10% is made at the beginning after obtaining the supply order, the same would remain as advance, but it does not mean that no payment shall be made to the plaintiff. In any case, once the defendant has made supply to the CCL, although on its own efforts, the fact remains that at the stage of procuring the order it was the plaintiff who had worked for the defendant, therefore, the trial Court has rightly allowed the suit for Rs.1,11,581/- equal to 10% of the supply order value.

9. On the basis of above discussion, I do not find any substance in this appeal, which fails and is hereby dismissed. Sd/-

Judge
Prashant Kumar Mishra

Gowri