

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CM-9941-42-C-2016 in/and
RSA-3824-2016 (O&M)
Date of Decision : 13.08.2018**

M/s J.C. Engineers Pvt. Ltd.

..... Appellant

Versus

M/s Kay Iron Works Pvt. Ltd. and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present :- Mr. Ashok Kumar Khubbar, Advocate
for the appellant.

AJAY TEWARI, J. (ORAL)

CM-9941-42-C-2016

For the reasons recorded, the applications are allowed. Delay of 105 days in refiling and delay of 159 days in filing the appeal is condoned.

RSA-3824-2016 (O&M)

This appeal has been filed against the concurrent judgments of the courts below dismissing a suit filed by the appellant.

The appellant had challenged two debit notes. Its case was that it was a supplier which had supplied material to the respondents in the year 1999 and 2000 and the respondents owed money to it for that material. However, the respondents illegally rejected some of the goods and sent two debit notes. The appellant had sought a declaration that those debit notes were illegal and in the alternative also sought a

mandatory injunction for directing the respondents to at least return the rejected goods 'in excellent and marketable condition' or in the alternative to make good the price of the said material in case the respondents wanted to keep the goods. It would be productive to note here that originally the appellant had filed a company petition in this Court for those dues which also resulted in a company appeal. That company appeal was decided in the year 2009 and the appellant was granted liberty to take recourse to any other remedy which may be available to it and it was thereafter in the year 2009 that the instant suit was filed. Both the courts below held that the appellant was actually praying for recovery and in these circumstances the suit for declaration and mandatory injunction would not lie.

Counsel for the appellant has argued that even if this finding may be correct regarding the debit notes yet both the courts below have not dealt with the prayer of the appellant for the return of the rejected goods or its price.

The specific case of the respondent was that it had informed the appellant to receive its rejected goods (and in fact during the pendency of the company petition, this Court had directed the appellant in the year 2005 to receive his goods) but the appellant did not do so.

In my opinion, the omission of the appellant to lift its goods even when directed to do so by this Court, clearly shows that the appellant was not interested in getting its goods back and was interested in getting the money only and for that he had to file a suit for recovery.

In the circumstances, no fault can be found with the judgments of the courts below. Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

August 13, 2018
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No