NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 19-7-2019

Delivered on 30-8-2019

FA No. 177 of 2006

- M/s. Indus Smelters Limited, a company duly registered under the relevant provisions of Indian Companies act, 1956 through its Director Shri Umeh Kumar Singhania, aged about 38 years, son of Shri Natthulal Singhania, 454-B, Sector-C, Urla Industrial Area, Raipur, Proprietor of Sarti Ispat Udyog, Urla, Industrial area, Raipur (CG).

– Appellant/plaintiff

Vs.

- M/s. Alaps Texfeb Private Limited, B/B-4, D-3, Shopping cum facilities Centre, DDA Alaknanda, New Delhi 110019.
- Sandeep Agarwal son of Shri K.K. Agarwal, Director, M/s Alaps Texfeb Private Limited, D.D. 22, Kavi Nagar, Gaziabad (UP).
- Bhagwati Lal Jain, son of Shri Nathmal Jain, Director, M/s Alaps Texfeb Private Limited, "Sambhav" Recreation Road, Choubey Colony, Raipur (CG).

--Respondents/defendants

For Appellant	:	Mr. Ankit Singhal, Mr. Shobhit Benerjee and Mr. Manish Thakur, Advocates.
For respondents	:	Mr. Prafull N. Bharat, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decree dated 26-6-2006 passed by 9th Additional District Judge, Bilaspur, in Civil Suit No. 1-B/2005 wherein the said court granted partial decree in favour of appellant/plaintiff and against the respondents/defendant to the tune of Rs.2094/-.

2. The appellant/company is the sole proprietor of Sarti Ispat Udyog which carries on the business of manufacturing and selling CTD Bars and other re-rolled products of Urla Industrial area, Raipur whereas the respondents/defendants are the tide customers of the appellant/plaintiff and used to purchase CTD Bars etc from the appellant/plaintiff on credit and between the period from June 1999 to December 1999 the defendants have purchased on credit CTD Bars for the purpose of construction of their factory building and shed at Raipur. The respondents/defendants were required to pay the bills of the credit purchases made within 15 days from the date of purchase of material and in case of default, the defendants have undertaken an obligation of payment of interest @ 24% per annum. Under the said account an amount of Rs.3,72,094/- was due and payable by the respondents as on 13-12-1999 but they did not clear the amount even after notice, therefore, a suit for recovery was filed before the trial Court. It is pleaded on behalf of the

respondents/defendants that Rs.3,70,000/- was paid by them. After hearing both sides, the trial Court opined that Rs.3,70,000/- was paid by the respondents and only Rs.2,094/- is due against them and passed the decree accordingly.

3. Learned counsel for the appellant would submit as under:

I) The version of the appellant is more trustworthy and relying on the same the trial court ought to have decreed the suit of the appellant as claimed.

ii) The respondents/defendants have not sent their reply to the legal notice demanding the amount and they acted against the natural human conduct, therefore, finding of the trial court is not sustainable.

Iii) The respondents were under obligation to prove that relevant cheque by which Rs.3,70,000/- was paid, is credited in the account of appellant but same is not proved, therefore, finding of the trial Court is not liable to be sustained and decree should be passed in favour of the appellant.

4. On the other hand, learned counsel appearing for the respondents submits that as per their account (Ex.D/1 and D/2) Rs. 3,70,000/- was transferred to appellant/company and only Rs.2,094/- is due against them, therefore, they cannot be forced to pay the amount twice. He would further submit that as per respondents, finding arrived at by the trial court is based on proper marshalling of the evidence which is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of both the court below in which judgment and decree has been passed.

6. The only question for consideration of this court is whether R.3,70,000/- was transferred from the account of respondents to the account of appellant.

7. The respondents/defendants have filed bank account Ex. D/2 in which it is mentioned that Rs.3,70,000/- was transferred from the account of respondents to the account of appellant on 31-3-2000. The account of bank is maintained regularly and it is presumed that the act of bank is performed regularly. No audit account of appellant side or cash account was produced before

the trial court to rebut the entry made in the bank account of the respondents, therefore, the trial Court held that an amount of Rs.3,70,000/- was paid to the appellant. It is not a case that any other transaction had taken place between the parties for the said amount, therefore, the amount which was transferred from the account of the respondents is regarding same transaction of CTD Bars and this amount must be adjusted against the said transaction. Argument advanced on behalf of the appellant is not sustainable. The appeal is liable to be dismissed.

8. Accordingly, the decree is passed in favour of respondents and against the appellant as under:

i) The appeal is dismissed with cost.

ii) Parties to bear their own costs of this appeal.

iii) Pleader's fee, if certified, as per schedule or certificate whichever is less.

iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju