

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 1030/2018**

Reserved on: 19th December, 2018
Pronounced on: 9th January, 2019

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M/S B.R. METALS LTD. & ANR. Appellants
Through: Ms. Amita Gupta, Advocate.

versus

CNA METALS INC. Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. No. 53714/2018 (for exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

C.M. No. 53713/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 32 days
in re-filing the appeal is condoned.

C.M. stands disposed of.

**RFA No. 1030/2018 and C.M. Nos. 53711/2018 (under Order XLI
Rule 27 CPC) & 53712/2018 (stay)**

3. This Regular First Appeal under Section 96 of the Code
of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit

impugning the Judgment of the trial court dated 31.07.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff for an amount of Rs. 66,81,330/- along with interest at 12% per annum on account of the appellants/defendants having failed to pay for the goods, being copper wire bars which were sold by the respondent/plaintiff to the appellants/defendants.

4. The facts of the case are that the subject suit was filed for recovery of Rs. 80,53,777/- or, in the alternative, for the respondent/plaintiff getting back the goods supplied to the appellants/defendants under the subject Invoices bearing nos. 11708 and 11708-A. The respondent/plaintiff is a corporation based in the State of Texas, United States of America and supplied copper wire bars to the appellants/defendants under the two aforesaid invoices totalling to 108.516 MT. Value of each of the two invoices was US\$ 71,077.98. The respondent/plaintiff pleaded that the appellants/defendants claimed that the copper wire bars pertaining to container nos. TOLU 2558518 and TOLU 261782 for 54.258 MT under Invoice No. 11708-A was destuffed in the godown of the appellants/defendants in Gulabi Bagh at Delhi and with respect to 54.258 MT of copper wire bars pertaining to container No. TOLU

2285701 and TOLU 3230431 under Invoice No. 11708 were detained/held by the Customs Authorities/Department of Revenue Intelligence (DRI). The appellants/defendants were to make payment within 90 days, however they failed to do so, and on extension of time upto 180 days, the appellants/defendants again failed to make the requisite payment. The appellants/defendants claimed that for certain reasons, the Customs Authorities/DRI had seized the goods, whereas some goods had been released to the appellants/defendants on *superdari*, however, some goods had not been released. The appellants/defendants pleaded difficulty to clear the bills on account of weak financial position and assured to return the goods back to the respondent/plaintiff. The appellants/defendants, however, could neither pay the amount of the goods supplied nor return the goods, and instead were trying to sell the goods in the open market. Therefore, the subject suit was filed.

5. The appellants/defendants originally contested the suit by filing written statement, but they did not lead any evidence in support of their case. The basic defence of the appellants/defendants was that the courts at Delhi had no territorial jurisdiction and the goods which were supplied were not as per the agreement between the parties. It

was also pleaded that there was no liability of the appellants/defendants and the liability, if any, was of the Customs Authorities/DRI.

6. The following issues were framed in the suit:-

“1) Whether this Court has no territorial jurisdiction to try and determine the present suit? OPD.

2) Whether the goods supplied by the plaintiff to defendant were not in accordance with the agreement between the parties? OPD.

3) If issues 1 and 2 are answered in favour of the plaintiff, what amount is the plaintiff entitled to? OPP

4) Whether the plaintiff is entitled to any interest, if so, at what rate, on what amount and for which period? OPP.

5) Relief?”

7. Evidence was first to be led on behalf of the appellants/defendants but despite repeated opportunities, since evidence was not led, the right of the appellants/defendants to lead evidence was closed vide Order dated 02.01.2006 and this order has become final. The respondent/plaintiff led evidence and proved its case through its witness PW-1, Mr. Sanjiv Khurania. The witness of the respondent/plaintiff also proved the necessary documents. These aspects are recorded in the following portion of the impugned judgment:

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"After framing of issues on 15.09.2012, the burden of issues no.1 and 2 were placed upon the defendant. Accordingly the defendant was asked to lead evidence at first instance. However, the defendant fails to lead any evidence and vide orders dated 02/01/2006 the evidence of defendant was closed. The plaintiff, in order to prove its case, led plaintiff evidence and got examined its attorney Sh. Sanjiv Khurania as PW-1.

PW-1 has filed his evidence by way of affidavit wherein he reiterated and reaffirmed the contents of the plaint and relied upon documents Ex. PW-1/1 and Exhibit PW-1/Mark-2 to PW-1/Mark-7. PW-1 was extensively cross examined by the defendant. However, during cross examination of Exhibit PW-1/Mark-2 and PW-1/Mark- 3 were confronted to the witness PW-1 and accordingly the same were exhibited as Exhibit PW-1/2 and Exhibit PW-1/3. The details of the said Exhibits are as follows:-

The following documents, produced by Department of Custom, were also exhibited vide order dated 06.04.2017:-

1. Original Letter dated 31.3.2017 written by Sh. Anil Chaudhary, Assistant Commissioner (Gr.-IV), ICD/Import, TKD, New Delhi as Ex.A-1
2. Certificate of origin dated 28.02.1999 is Ex.A-2.
3. Photocopy of Invoice no. 11708, 11708A both dated 28.02.1999 as Ex. A-3 and A-4."

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8. At this stage, it is required to be noted that by virtue of different interim orders passed in the suit, when the suit was in the original side of this Court, the appellants/defendants were given possession of the goods, which they sold, but the appellants/defendants failed to deposit the amount of the goods in the Court as directed. In fact, proceedings were taken by the Court in the subject suit for cancellation of the passport of the appellant

no.2/defendant no.2. These relevant orders passed in the suit are as under:

“Order dated 06.09.2001

Present: Mr. S. N. Gupta for the plaintiff.
Mr. R.K. Handa for the defendant.

In view of the statement of counsel for the defendant that after selling the goods he would deposit the invoice amount in the court so as to ensure the recovery of the suit amount, the defendant is permitted to sell the goods with the aforesaid condition. However, the deposit by the defendant shall be without prejudice to the rights and contentions of the parties.

With this order application under Order 39 Rules 1 and 2 stand disposed of.

Renotify on 12th December, 2001.

06th September, 2001.

Sd/-
J.D. KAPOOR,
JUDGE

Order dated 12.12.2001

Present: Mr. Anil Kumar Gupta, with Mr. S. N. Gupta & Mr. Prahlad Bhatt for the plaintiff.
Mr. R.K. Handa for the defendant.

Vide order dated 05/10/2001, the Division Bench has treated the statement of the counsel for the defendant made on 6.9.2001 before this court as an undertaking for deposit of sale proceeds.

Since the order dated 6.9.2001 whereby defendant was permitted to sell the goods and deposit the invoice amount in the court by 12th December, 2001, has been treated as an undertaking, request for extension of three months time is allowed subject to deposit of title deeds of the property within one month.

Renotify on 21st March, 2002.

12th December, 2001

Sd/-
J.D. KAPOOR,

Order dated 11.12.2002

Present: Mr. Anil Kumar Gupta with Mr. Amit Tyagi for plaintiff.
Ms. Amita Gupta for defendant.

Ld. counsel for the plaintiff vehemently argued that goods were in possession of the defendant; that on 20th July, 2001, defendant undertook not to part with possession of the goods and that on 6th September, 2001 defendant is permitted to sell the goods without prejudice to his rights and contentions subject to his depositing the invoice amount in the court so as to ensure the recovery of the suit amount in the court. Ld. counsel further argued that defendant has sold the goods but failed to deposit the invoice amount in the court. Ld. counsel further argued that defendant has sold the goods but failed to deposit the invoice amount. The statement made by the counsel on behalf of defendant was ordered to be treated as an undertaking. On an application moved by the defendant, the time was extended and they were permitted to deposit the title deed of the property within one month. Further, appeal filed was dismissed on 12th December, 2001.

By the application (IA No. 10209/2002) defendant is seeking modification of the orders dated 5.10.2001 as he has already deposited the original title deeds of his property. Ld. counsel for the defendant argued that the plaintiff's claim is based on the invoice dated 28th February, 1999; that the defendant never placed any order on that date and that through these invoices the plaintiff had in fact exported the goods to M/s Hindustan Overseas Limited. There was a raid at their premises, and these two invoices were seized. It was only thereafter the plaintiff fabricated these to two invoices, sent the goods to the defendant. The plaintiff has changed the invoices by changing the name of the goods, the weight of the goods, description of the goods and has sent the same to the defendants against their order dated 21st April, 1999. These facts were not known to the counsel for the defendants and the same could not be brought to the notice of the court when the undertaking was given. Ld. counsel further argued that defendant by way of customs duty and detention charges had to deposit Rs. 1,30,89,461/- qua goods recovered by these two invoices. This is contested by the Ld. counsel for the plaintiff. Let the documents showing that the

amount was deposited with the customs against the goods recovered against these two invoices be filed within four weeks with advance copy to the other side.

List for further hearing on 11th March, 2003 in the category of 'short cause'

December 11, 2002

Sd/-
S.K. Agarwal, J.

Order dated 14.07.2005

On 6th September, 2001, this court recorded the statement of Ld. counsel for the defendant to the effect that after selling the goods the defendant would deposit the invoice amount in the Court so as to ensure recovery of the suit amount.

Subsequently, the Division Bench in FAO(OS) 406/2001 passed the following order on 5th October, 2001:-

"Ld. counsel for the respondents states that pursuant to the impugned order goods have already been sold and there is no reason why the respondent will not abide by the undertaking to deposit the invoice amount in the Court, before the next date fixed before the Ld. single Judge, i.e. 12.12.2001. The ld. counsel for the respondents also states, as there appears to be a doubt in the mind of the appellant that the order dated 6.9.2001 does not amount to undertaking, the same shall be treated as an undertaking on behalf of the respondents for deposit of amount which is duly taken on record and in view of this, no further order is required to be passed in this appeal, which stands disposed off."

The admitted position is that the invoice amount has not been deposited by the Defendant in Court.

IA No. 3516/2002 under Order XXXIX Rule 2-A of the CPC should be listed on the next date for disposal. The alleged contemnor should make his statement on affidavit within six weeks.

To come up on 15th September, 2005.

Sd/-
MADAN B. LOKUR, J

Order dated 15.09.2005

This application has been filed by the plaintiff in view of the violation of the undertaking given by the defendants. Ld. counsel for the defendants submits that she will obtain instructions

whether defendants are willing to give a bank guarantee for the amount which was required by them to be deposited before this Court.

Taking into consideration, the allegations made in the application, I also consider it appropriate to direct the personal presence of defendant No. 2 unless a bank guarantee for the requisite amount is furnished before the next date.

List on 18th November, 2005.

Sd/-

September 15, 2005.

Sanjay Kishan Kaul, J

Order dated 18.11.2005

Present: Mr. S.P. Gairola, Advocate for the plaintiff.

Ms. Amita Gupta, Advocate for the defendants.

Defendant no. 2 is neither present in the Court nor has he filed the bank guarantee. The present proceedings are in the nature of contempt proceedings. Defendant no. 2 is willfully disobeying the Orders of the Court and keeping away from the process of the Court. Defendant no. 2 is stated to be in Brisbane, Australia. In view thereof, I consider it appropriate that steps must be taken to direct cancellation of his passport.

Let notice be issued to the concerned Department (Passport Department) of the Ministry of External Affairs, returnable on 02.01.2006 for steps to be taken to cancel the passport of Shri Pradeep K. Saraogi.

Sd/-

Sanjay Kishan Kaul, J.

November 18, 2005.

Order dated 21.02.2006

Present: Mr. Ashish Mittal and Mr. Rakesh Gandhi, Ld.

counsel for the plaintiff.

None on behalf of the defendants.

CS(OS) 1442/2001

Defendants have not filed the affidavit of evidence within four weeks, as was directed by Hon'ble Court vide order dated 02.01.2006. Defendant has also not paid the cost of Rs. 4,000/- to the plaintiff.

Vide order dated 02.01.2006, the Hon'ble court had directed that if the cost was not paid by the defendants and affidavit was not filed, the right of defendant to lead the evidence would stand closed. As defendants have failed to pay the costs and file the affidavit of evidence, the defendant's evidence is hereby closed.

Plaintiff to file the examination-in-chief of witnesses through affidavit within two weeks with advance copies of the same to the defendants.

Renotify for evidence of plaintiff on 16.03.2006 at 02:00 p.m. as matter is already listed before the Hon'ble court for 17.04.2006.

Sd/-
(BIMLA KUMARI)
JOINT REGISTRAR

21st February, 2006

Order dated 17.04.2006

Present: Mr. Anil Gupta with Mr. Ashish Mittal, Advocates
for the plaintiff.

CS(OS) No. 1442/2001

The matter has been passed over once and called the second time. None has appeared for the defendants. The defendants have failed to file either their affidavits or pay the costs imposed by the order dated 02.01.2006. The defendants are proceeded ex-parte.

The plaintiff to file affidavits by way of evidence within four weeks. List before the Joint Registrar on 11.07.2006 for exhibiting the documents of the plaintiff.

List on 28.08.2016 before the court for disposal.

IA No. 3516/2002 (U/o 39 R 2A CPC)

Learned Standing Counsel for the Union of India had put in appearance on 02.01.2006 and had taken time to verify as to what steps had been taken to cancel the passport of Sh. Pradeep K Saraogi in pursuance to the directions issued on 18.11.2015 and to file a status report within four weeks. No status report has been filed nor has any counsel for the Union of India put in appearance.

Learned counsel for the plaintiff states that Mr. Siddarth Mridul, Standing Counsel for the Union of India has resigned and the apparently the matter has been entrusted to Ms. Monica Garg. Let notice issue to Ms Monica Garg returnable on 28.08.2006 with the direction to file the status report within three weeks of the receipt of the notice. A copy of the order to accompany the notice.

Dasti

April 17, 2006

Sd/-
Sanjay Kishan Kaul, J

Order dated 28.08.2006

Present: Mr. Anil Gupta for the plaintiff.
Ms. Monica Garg for the defendant.

I.A. No. 6905/2006 in CS (OS) 1442/2001

Learned counsel appearing for the Union of India states that the order passed by this Court on 17th April, 2006 has been implemented and necessary steps in this regard are being taken. Let short affidavit be filed in this regard within two weeks. Renotify on 10th October, 2006, the date already fixed.

August 28, 2006

Sd/-
H.R. MALHOTRA, J.”

9. It is therefore clear from the aforesaid orders that appellants/defendants have received the goods. The appellants/defendants sold the goods but they did not deposit the amount in the Court, and this amount represents the value of the goods. The respondent/plaintiff has proved its case and led evidence and in any case, it is not and cannot be disputed that goods under the two invoices which were received by the appellants/defendants have been sold to them by the respondent/plaintiff, but the value of the invoices has not been paid to the respondent/plaintiff. The trial court was therefore completely justified in decreeing the subject suit.

10. There cannot be any doubt that the courts at Delhi have territorial jurisdiction because appellants/defendants are residing/ carrying on business at Delhi and the contract was performed/goods were supplied at Delhi.

11. In view of the aforesaid discussion, there is no merit in the appeal and the same is hereby dismissed.

JANUARY 09, 2019

VALMIKI J. MEHTA, J