

24.07.2023
Court No.13
Item Nos.1 & 2
AP

FAT 60 of 2015
Amit Mines Private Limited
Vs.
Maithan Alloys Limited & Anr.

With

FA 81 of 2015
Amit Mines Private Limited
Vs.
Maithan Alloys Limited & Anr.

Mr. Jayanta Kr. Mitra, Senior Advocate
Mr. Aniruddha Chatterjee
Mr. Srijib Chakraborty
Mr. Aditya Mondal
Mr. Deeptangshu Kar

...For the Appellant.

Mr. Debajyoti Basu
Mr. Subhojit Sil
Mr. Diptomoy Talukder
Mr. Dibyendu Ghosh

... For the Respondents.

1. The instant appeal is directed against a judgement and/or order dated 5th November, 2014 passed by the Civil Judge (Senior Division), Asansol in Title Suit No.32 of 2008.

2. The brief facts relevant for the instant appeal are that the plaintiffs/respondents placed an order for supply of Manganese ore from the appellant/defendant some time in the year 2007.

3. There were four several purchase orders between November 2007 and February 2008. According to the plaintiffs/respondents no supply was effected with regard to the second purchase order. Supplies in respect of the other orders, were effected of a different quality of

Manganese ore than the one ordered by the plaintiffs/respondents. An advance of about Rs.10.83 crores was made by the plaintiffs/respondents to the defendant/appellant.

4. The disputes and differences that arose between the parties on the following matters:-

(a) The loading of ore was not notified to the appellant by the respondents/defendants and hence the appellant did not get an opportunity to weigh the quantity of ore dispatched or test its quality.

(b) Testing and weighing both were done at the unloading point, contrary to the terms between the parties.

(c) The test results, according to the plaintiffs/respondents, indicated an inferior quality of ore supplied i.e. lower Manganese content.

(d) The respondents allegedly agreed initially to accept a higher grade of ore i.e. with higher content of Manganese but reneged from it.

5. The defendant/appellant, according to the plaintiffs/respondents, actually supplied a much lower quality than what was ordered. Even the ore supplied by the appellant was not to the satisfaction of the

respondents as it contained a higher grade of phosphorous.

6. The appellant filed a written statement. Issues were framed by the Court below. The respondents/plaintiffs examined four witnesses and the defendants examined two witnesses. A number of documents were exhibited by the parties.

7. This Court notes from the impugned judgement that apart from discussing the plaint case and the case made out in the written statement, the oral and documentary evidence have not been discussed or adverted to or addressed by the Trial Judge. This Court finds that the entire decision of the Trial Court is in two paragraphs without any discussion whatsoever, of the evidence brought on record.

8. In view of the above, it may not be inappropriate to hold that the findings arrived at by the Court below are based on conjecture and are surmise.

9. A Trial Court, after receiving oral and documentary evidence, is required to carefully examine the evidence, particularly where a contract is required to be inferred by exchange of letters between the parties.

10. The oral and documentary evidence as regards the actual quality of Manganese supplied by the defendant/appellant to the plaintiffs/respondents ought to have been discussed. The test certificates and the

expert evidence as regards the quality of ore also ought to have been discussed.

11. What are the documents that suggest or indicate any conclusion of any contract and at which point of time, ought to have been discussed. The Court below has also not discussed the waiver, acquiescence and estoppel of any of the parties.

12. In view of the above, the impugned judgement cannot be sustained in law and is therefore set aside. The suit is remanded back to the Court below.

13. This Court also finds serious omissions on the part of the appellant/defendant in conducting the suit. Repeated and frivolous adjournments were taken. This Court in its revisional jurisdiction has also imposed costs on the appellant for a sum of Rs.1 lakh. The Court below has recorded displeasure of the conduct of the appellant.

14. The Trial Court shall frame issues afresh after receiving suggestions from the parties. It is expected that specific issues are framed on each of the point of disputes between the parties. The parties shall thereafter make oral arguments on the evidence already recorded by the Court below. The Court below shall pronounce judgement and views on each of the issues after duly discussing the evidence on record.

15. The aforesaid exercise shall be completed by the Court below mandatorily and positively within a period of

two months from date. No adjournment shall be allowed to any of the parties on any of the dates that may be fixed by the Court below within the time period indicated hereinabove.

16. This Court however also directs the appellant to pay costs assessed at Rs.5 lakhs to the plaintiffs/respondents within 7 days from date, as a pre-condition for this order to take effect.

17. The appeal is allowed and disposed of.

18. LCR may be sent to the Court below immediately with urgency and expedition by the Registry through a Special Messenger.

19. In view of the above, all steps taken pursuant to the decree and filing of Commissioner's Report shall stand set aside.

20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)