

OD-1

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APD/6/2021
with
CS/254/2019

IMPERIAL TUBES PVT. LTD.
VERSUS
RAMESH CO.

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE UDAY KUMAR
Date : 21st March, 2023.

The Court : None appears on behalf of the parties.

Even on the earlier occasion, the parties were not represented. The matter was adjourned on 29th March, 2023 on the prayer of the learned counsel representing the appellant that the issue with regard to the jurisdiction of the Master to grant leave under Section 12A of the Commercial Courts Act, 2015 and the power of the Master to allow amendment of the plaint are the issues raised in the execution proceedings and the said application is pending. Although the parties were not represented, we directed the office to inform us about the outcome of the said proceedings.

Thereafter, on 31st January, 2023, we have recorded that during the pendency of the appeal, the application for recalling the orders passed by the learned Master and the other connected applications were dismissed by Justice Moushumi Bhattacharya on 7th April, 2022. It appears that the ground nos.(V),

(VI), (XLIV) to (LIX) are in connection with the issues that have been decided by the learned Single Judge on 7th April, 2022. There is no independent appeal from the said judgment.

We have not been informed as to whether any appeal is pending arising out of the judgment dated 7th April, 2022. Accordingly, we proceed on the basis that the said order has attained finality.

The plaintiff filed an application under Chapter XIII A of the Original Side Rules for a summary decree for a sum of Rs.5,79,58,608/-. The said application was filed based on confirmation of accounts and admission. The principal defence to the claim was three letters in which the defendant alleged to have raised disputes with regard to the quality of goods supplied. Justice Debangsu Basak had relied upon three acknowledgement of accounts dated 1st April, 2016, 1st April, 2017 and 1st April, 2018 respectively in allowing the said application for judgment upon admission. The said accounts were all signed by the parties. The signatures of the parties are not in dispute. The letters under reference, however, do not specify the quantity of the inferior goods alleged to have been supplied. The letter in support of the alleged inferior quality dated 2nd March, 2017 was after acknowledgment of the goods and confirmation dated 1st April, 2016. In fact, the defendant made various part payments subsequent to 2nd March, 2017 in acknowledgement of acceptance. The defendant was unable to furnish the list of alleged inferior goods supplied and the invoices under which such goods were supplied. The allegations are bald and invented with a view to deny the legitimate claim of the plaintiff. The appellant has dealt with the goods inconsistent with the right of the plaintiff as owner thereof and after having consumed the goods has

raised such complaints of inferior quality. There is a clear acceptance of the goods within the meaning of Section 42 of the Sale of Goods Act, 1930.

Under such circumstances, we do not find any reason to interfere with the judgment passed by the learned Single Judge.

The appeal stands dismissed.

However, there shall be no order as to costs.

The judgment dated 7th April, 2022 passed by Justice Moushumi Bhattacharya is kept with record.

[SOUMEN SEN, J.]

[UDAY KUMAR, J.]