Sr. No.104

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-849-850-C-2023 in/and
RSA-242-2023 (O&M)
Date of decision: 19.04.2023

CITCO (Chandigarh Industrial & Tourism Development Corporation Limited)

...Appellant

Vs.

JSK Steel Private Limited

…Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Madhu Dayal, Advocate
for the appellant.

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ARUN MONGA, J. (ORAL)

CM-849-C-2023

In view of deficiency of court fees having been made good, this application is rendered infructuous and the same is disposed of as such.

CM-850-C-2023

For the reasons stated in application, same is allowed subject to all just exceptions. Delay of 278 days in refiling the appeal is condoned.

Main case

For convenience, parties herein are addressed as per the recitals before Ld. Trial Court.

2. Having suffered concurrent adverse findings by the two Courts below, defendant (appellant herein) is in second appeal before this Court assailing Ld. Trial Court judgment and decree dated 31.05.206, as upheld by Ld. First Appellate Court vide its judgment and decree dated 06.02.2020, partly decreeing the suit for recovery filed by respondent/ plaintiff along with interest.

3. Briefly stated, facts as noticed by Ld. Courts below, are that plaintiff is a private limited company registered under the Companies Act, 1956. It has also got itself registered as Small Scale Industry/ Small Scale Service and Business Enterprises with District Industries Centre, UT, Chandigarh in the year 1996. After registration as SSI/SSBE, the Department of Industries, Chandigarh Administration issued certificate from time to time of assessed capacity of plaintiff in regard to the consumption of various raw material for the production of end products. After assessment, necessary information was forwarded to defendant from time to time. Validity of certificate was three years.

3.1. Pursuant to transaction between the parties for the last many years, plaintiff and defendant had entered into a Sales Policy (Iron and Steel) for the year 2011-12 for supply of raw material related to steel and iron. In pursuance of said transaction, bank guarantee No.04/2010 dated 23.3.2010 for Rupees One Crore was issued/furnished to defendant by plaintiff which was also got extended later on till 23.9.2012. In fulfillment of business transactions, plaintiff used to get credit facility from defendant and used to make payment against liability through post-dated cheque(s) and cash. However, defendant got encashed the bank guarantee of Rupees One Crore without consent and knowledge of plaintiff despite the fact that liability was less than Rupees One Crore.

3.2. Plaintiff requested defendant to justify the recovery through encashment of guarantee and also wrote letter dated 14.5.2013 under Right to Information Act, 2005 to supply documents of account balance. In response thereof, vide letter dated 14.6.2013, defendant disclosed that account balance of Rs.22,57,703/- was outstanding against them which was receivable by plaintiff from defendant as on 1.5.2013.

3.3. Thereafter, vide letter dated 19.6.2013, plaintiff requested defendant to release and refund the outstanding amount of Rs.22,57,703/-, being a legal liability against them. However, except verbal commitments, no amount was released. Constrained, plaintiff issued legal notice dated 13.9.2013. However, despite receipt of legal notice, defendant failed to clear its legal and enforceable debts and suit was filed.

4. Upon notice, defendant appeared and filed written statement raising preliminary objections that defendant-Corporation formulates its Sales Policy annually which regulates the terms of transaction(s)entered into with various SSI Units/parties. As per policy, every SSI unit is required to give its tentative quantity proposed to be lifted during the year. Plaintiff gave their booking for supply of iron and steel material for the year 2011- 12 to defendant within prescribed time. It was admitted that plaintiff had submitted bank guarantee of Rupees One Crore valid upto 22.9.2012 and that bank guarantee was encashed.

4.1. As per policy, plaintiff was required to clear credit amount within 60 days, failing which the amount was to be recovered by invoking bank guarantee. Bank guarantee of plaintiff was expiring on 22.9.2012. Party owed a sum of Rs.98.48 lakh for bills pertaining to July-2012. As the bank guarantee's validity was nearing expiry in September-2012, plaintiff was requested either to get the bank guarantee extended or clear the bill amount.

4.2. Further, per information, plaintiff company had stopped its manufacturing activities being conducted in Plot no.185, Industrial Area, Phase I, Chandigarh from July-2012 and had in fact stopped taking supplies from defendant beyond 23.7.2012. In these circumstances, vide letter dated 22.8.2012, plaintiff was requested to clear the bills of material lifted by them against bank guarantee upto 27.8.2012, failing which the bank guarantee would be revoked. Thus, sufficient opportunities were given to plaintiff to clear the bills. Details of recovery made were duly furnished to plaintiff company.

4.3. It was admitted that plaintiff had approached the defendant under RTI Act vide letter dated 14.5.2013 and vide reply dated 14.6.2013, they were informed that their ledger balance showed credit balance of Rs.22,57,703/- as on 1.5.2013. This was subject to audit.

4.4. Plaintiff had sought refund of amount without providing any supporting documents including their ledger account etc. to justify that said balance was in order. Thus, it became important for the defendant to get the ledger balance confirmed from the Auditors before releasing the amount. This consumed time as the plaintiff company had defaulted on various accounts. Accordingly, following the provisions of Sales Policy, it was found that the company was not eligible for rebate for which defendant had issued credit notes valuing Rs.10,12,646/-.

4.5. Since plaintiff company had defaulted on a number of counts, therefore, all the penal provisions had to be imposed. Based on this factual position, the actual amount now refundable to the plaintiff company is determined to be Rs.12,45,057/-, which is also subject to the condition that plaintiff will produce copy of ledger account of defendant company in its books of accounts and original credit notes issued by defendant company to plaintiff company to enable it to cancel the same for ensuring that same is not misused in future.

5. Based on the rival pleadings, following issues were framed:

1) Whether defendant has illegally encashed bank guarantee given to the defendant against which plaintiff is entitled to recovery of Rs.27,88,152/-? OPP

2) Whether the suit is not maintainable in present form? OPD

3) Relief and costs.

6. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid*.

7. On appraisal of evidence vis-à-vis pleadings, all the issues were decided against defendant and consequently, suit of plaintiff was partly decreed by the learned trial Court for a sum of Rs.22,57,703/- with proportionate costs vide impugned judgment and decree dated 31.05.2016.

8. Aggrieved, defendant-appellant preferred first appeal, which was dismissed by Ld. First Appellate Court vide impugned judgment and decree dated 06.02.2020, resulting in instant Regular Second Appeal before this Court.

9. The gravamen of the contentions of learned counsel for appellant is that accounts of appellant/defendant company are subject to audit first by the internal auditor, then by the Statutory Auditors and thereafter by the Accountant General of Punjab. The accounts of respondent/plaintiff were also subject to the audit and the figure given under the RTI Act too was subject to audit. She would further argue that amount was not payable to respondent/plaintiff who was informed vide letter dated 19.06.2013 that respondent/plaintiff had defaulted on a number of occasions and was not entitled to the rebates given to it by issuing credit notes amounting to Rs.10,12,646/- and the balance payment that was payable to it i.e., Rs.12,45,057/- was paid to it during the trial.

10. In its judgment, learned First Appellate Court, *inter alia*, observed, as under:

> *"xxxx xxxx xxxx xxxx*
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> *15. Admittedly, after filing the suit for recovery for Rs. 27,88,152/- (Rs.22,57,703/-(principal) + Rs.5,30,809(interest)) the appellant/ defendant submit a challenge of Rs. 12,45,057/- in favour of plaintiff, on 13.11.2014 at the stage of plaintiff evidence.*
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> *16. The defendant/ respondent has defended his case on the basis of Ex. D-1 (table of payment by plaintiff Company), Ex.D-8(Detail of dishonour cheque as per Bank statement 2010-110) and Ex.D-9(table of credit no. with remarks and amount). However during cross examination DW-1 has stated that he cannot tell when document Ex.D-1, D-8 and D-9 were generated as the same does not bear any date. He further stated that Ex.D-1 and Ex.D-9 does not bear his signatures. However, Ex.D-8 bears his signature. Ex.D-9 is photocopy. He further stated he could not tell where Ex.D-1, Ex.D-8 and Ex.D-9 were made but it might be made*

in account branch. He categorically replied that he cannot tell on what basis Ex.D-1, Ex.D-8 and Ex.D-9 have been prepared.

17. He further submitted that JPC rebate was allowed and against JPC rebate department used to issue Credit notes. DW-1 admitted suggestion that credit notes cannot be reversed. He showed his ignorance whether any rebate has been obtained by defendant/ respondent in the income Tax Return on the basis of credit note issued to the plaintiff. He categorically admitted in cross examination that vide Ex.P10 they confirmed the balance of Rs. 22,57,703/- was due as on 1.5.2013 towards plaintiff/respondent company. DW-1 further admitted that amount of Rs. 12,45,057/- was refunded after legal notice served by the plaintiff and after filing the suit in Court. He further admitted that no interest has been paid on the amount refunded on 13.11.2014. He further failed to explain how the amount of Rs. 22,57,723/- came to Rs. 12,45,057. Though he stated that account of plaintiff/respondent was separately maintained in the books of account i.e. ledger however he admitted suggestion that he has not attached with his affidavit debit note and account statement of the plaintiff. Only details of dishonoured cheque as per bank statement and credit notes issued have been attached.

18. The plaintiff/ respondent has not claimed any sum beyond the sum admitted by the defendant itself in the letter dated 14.06.2013 Ex.P10 which is proved on record. Thus the plaintiff / respondent has found his claim on the basis of liability admitted by the defendant/ appellant in its letter/ information. So contention that plaintiff has to establish by leading by books of account maintained by plaintiff company in ordinary course of business is not tenable. Once plaintiff/respondent has proved the liability of defendant/ appellant to the tune of Rs. 22,57,703/- on record and defendant/ appellant out of this admitted liability gave a cheque of Rs. 12,45,057/- to the plaintiff/ respondent in court and failed to bring on record how this liability is reduced to Rs. 11,45,057/- from Rs. 22,57,703/-. Thus, burden shifts on defendant/appellant that how liability of amount of Rs. 22,57,703/- reduced to Rs. 12,45,057/- which he failed. Cross examination of DW-1 has already been discussed in the foregoing paras in this regard. While dealing issue no.1 the ld. Trial Court has given detail findings and has rightly held that the plaintiff is entitled to interest on the said amount of Rs. 12,45,057/- from the date of accrual till 13.11.2014, while for the remainder of the amount, the plaintiff shall be entitled to interest from the date of accrual thereof till realization. Thus, this Court does not find any ground to interfere in the well-reasoned findings of Ld. Trial Court.

19. Hence, keeping in view the above said discussion, this Court does not find any merit in the appeal and there is no ground to interfere in the impugned judgment and decree. Hence the appeal is dismissed. Decree sheet be prepared. Lower Court record be returned to the concerned quarter. Appeal file be consigned to the record room."

11. Apart from what has been observed herein above, perusal of judgments rendered by Ld. Courts below reveals that having itself conceded to the outstanding

liability payable to plaintiff, that too under RTI Act, which ordinarily carries higher level of legal presumption, defendant-Corporation did not respond either. Letter Ex. P-11 or reminder letter Ex.P-12 written by plaintiff seeking the payment of outstanding, further support the claim of plaintiff that there was an admission on the part of the Corporation *qua* the outstanding. Even thereafter, when demand notices (Ex.P-13 and Ex.P-14) were sent to the defendants, no response came forth from the latter to place any defence of the kind that outstanding amount is payable only after the audit is conducted.

11.1. Learned counsel for appellant, in course of arguments in this second appeal, canvasses that it was not a question of simplicitor admission of the outstanding amount but the same was payable only after the audit was to be carried out. I am unable to accept this contention as it appears to be a complete afterthought. Once the suit for recovery was filed and only thereafter the said defence was taken in the written statement/pleadings for the first time, the same had necessarily to be proved by way of supporting record which was not produced in course of evidence. Merely an oral testimony of defence witness i.e. DW-1 was adduced in support of the pleadings, which to say the least, is a self-serving statement, without any collateral documentary evidence and has, therefore, been rightly disbelieved by both Ld. Courts below.

12. Resultantly, no fault can be found with the findings rendered by Ld. Trial Court, as affirmed by learned First Appellate Court, since the same were based on cogent evidence adduced by plaintiff.

13. Having perused the impugned judgments, my considered opinion is that the submissions made before learned Courts below were duly considered and repelled by recording sound and sufficient reasons consistent with record and the applicable law. I am inclined to agree with the same. There seems no substance in the submissions that the impugned judgments are based on conjectures and surmises.

13.1. No new contentions have been raised by learned counsel for appellant other than reiteration of the stand taken before learned Courts below.

14. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

15. In the premise, there seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings.

16. Furthermore, no question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

17. As an upshot of my preceding discussion, this appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.

18. Pending application/s, if any, shall also stand disposed of.

19. No order as to costs.

(ARUN MONGA)
JUDGE

April 19, 2023
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No