05.09.2024.
Item No. 25.
Court No. 13
sp

F.A. No. 317 of 2013
With
CAN 6 of 2024
M/s. Sharp Tool & Anr.
Versus
Sankar Ghosh

Mr. Partha Chakraborty,
Mr. A. Chakraborty
....for the appellants

Mr. Haradhan Banerjee,
Mr. Amitava Pain,
Mr. P.P. Mukhopadhyay,
Ms. Manideepa (Paul) Roy
..for the respondent

CAN 6 of 2024

1. Sufficient grounds are available to explain the absence of the appellant on 30th July, 2024. The order dated 30th July, 2024 is recalled. Hence, the appeal is restored to its original file and number.

2. CAN 6 of 2024 is allowed and disposed of.

F.A. No. 317 of 2013

3. The appeal is directed against the judgment and order dated 29th June, 2013 passed by the learned Civil Judge (Sr. Division), 1st Court at Barasat, North 24 Parganas in Money Suit No. 72 of 2004 (Sankar Ghosh Vs. M/s. Sharp Tools). The suit was for recover of price of goods sold and delivered.

4. The brief facts of the case are that sometime in the end of 2003, the plaintiff entered into an agreement for supply of certain machinery to the defendant. The total

agreed price was to be Rs. 8.61 lakhs. An advance of Rs. 3.45 lakhs was paid by the defendant to the plaintiff. The supply of the machinery was completed.

5. Two letters were issued by the defendant dated 5th May, 2004 and 11th May, 2004 which have been duly replied by the plaintiff/respondent. In the two letters, the defendant/appellant did not raise any grievance with regard to delay in supply or short supply of any machinery or part thereof.

6. It is only on the persistent demand of the respondent that the appellant for the first time on 3rd August, 2004, alleged delay, short and defective supply allegedly made by the respondent to the plaintiff.

7. In the written statement and the evidence on record in the Court below, the defendant contended that in view of the alleged delay on the part of the respondent, and the fluctuation in the rate of US dollar, the defendant has suffered losses.

8. Across the bar today, learned counsel for the appellant/defendant would argue that sales tax was deducted despite the fact that the respondent knew that goods were meant for export. It is further submitted that there was a subsequent settlement between the parties which was not placed before the Court below. No formal application has been taken out before this Court to bring the said document on record.

9. This Court is in complete agreement with the analysis of the Court below in its impugned judgment and order. This Court is of the unequivocal view that the impugned judgment and decree calls for no interference whatsoever.

10. The appeal fails and hereby dismissed.

11. The respondent/plaintiff shall be entitled to withdraw the sums of money deposited by the appeal with this Court, when the appeal was admitted, together with all accrued interest, upon the respondent and/or his authorized representative, presenting the bank particulars.

12. The Registrar General of this Court shall transmit the said sums of money deposited by the appellant to the respondent forthwith.

13. There shall, however, be no order as to costs.

14. L.C.R., if any, be returned to the Court below.

15. The Registry of this Court shall communicate a copy of this order to the Court below.

16. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Ajay Kumar Gupta, J.*)