

**IN THE HIGH COURT AT CALCUTTA  
(Ordinary Original Civil Jurisdiction)  
ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**CS 204 of 2011**

**Shyam Steel Industries Limited**

**Versus**

**Assam Bengal Roadways Limited & Ors.**

Mr. K.C. Garg

Ms. Sunita Agarwal

... for the defendants.

Hearing Concluded On : 23.02.2024

Judgment on : 05.03.2024

**Krishna Rao, J.:**

1. The plaintiff had filed the instant suit against the defendant praying for a decree for an amount of Rs.14,89,925/- and Rs. 55,00,000/- along with interim interest.
2. The Plaintiff is a company incorporated under the Companies Act, 1956, having its registered office at 'Shyam Towers', EN- 32, Sector- V, Salt Lake City, Police Station – Electronics Complex, Kolkata- 700091.

3. The Plaintiff carries on a business of manufacturing and trading in steel and various steel products and ancillary jobs.
4. The defendant no.1 is a Company incorporated under the Companies Act, 1956, having its registered office at No. 6, Tiretta Bazar Street, Kolkata- 700073.
5. The defendant nos. 2 and 3 are the Directors of the defendant no. 1, and the defendant no. 4 is the Manager of the defendant no. 1 having their offices at No. 6, Tiretta Bazar Street, Kolkata- 700073.
6. The defendants have filed Written Statement along with counter claim wherein the defendants have claimed for a sum of Rs. 11,00,000/- along with interest.

**7. CASE OF THE PLAINTIFF :**

- a. The defendant no. 1, who works as a transporter, approached the plaintiff with the proposal to transport the products and/or goods of the plaintiff to all such places as directed by the plaintiff and/or its customers.
- b. The plaintiff accepted the proposal and had entered into an agreement orally.

Certain terms and conditions were also agreed between the parties:-

- i. *The defendant no. 1 would work diligently in transporting the goods and/or products of the plaintiff.*
  - ii. *After the consignments are loaded in the vehicles of the defendant no.1 till delivery at the destination point the defendant no.1 and/or its men and agents including defendant nos. 2 to 5 would be responsible for safe reaching of the goods and in the event of any mishap or loss of goods the defendant no.1 and/or its men and agents would be liable to compensate the same.*
- c. On the basis of the representation of the defendant no.1 and relying on the assurances of the defendant no. 1, entrusted few jobs of transportation to the defendant no.1 by the plaintiff included the consignment worth Rs.9,77,000/- against Challan and Invoice No. AWB/B08/MD/02654 dated 30.08.2008 to be transported to Navayuga Engineering Co. Limited, at its BMRCL Project Site, Army Training School Ground, Binnamangala, Opposite Indira, Old Madras Road, Karnataka-560080.
- d. The said consignment was loaded by the defendant No.1 in its Truck and Consignment Note bearing No. 110276 dated 30.08.2008 was also issued by the defendants.
- e. Though the consignment was loaded in the said Truck on 30.08.2008 from the factory site of the plaintiff at Durgapur and was scheduled to reach the destination by 8 to 9 days, the said Truck with the consignment did not reach the destination and no intimation as to such non-delivery of goods was served upon the

plaintiff by the defendants, the plaintiff came to know of such fact on 9<sup>th</sup> September, 2008 when the consignee that is the said Navayuga Engineering Co. Limited informed the plaintiff of such non-receipt of consignment.

- f. On 13<sup>th</sup> September, 2008, the plaintiff came to know from the defendant no. 5 that the said truck loaded with the goods of the plaintiff was hijacked and as such the consignment could not be delivered to the place of destination. Thus the plaintiff then requested the defendants to take necessary steps in the matter but the defendants did not show any interest to lodge a complaint or to initiate any legal proceedings regarding the matter.
- g. The plaintiff, however, managed to lodge the insurance claim to National Insurance Company Limited through Extra Cover Insurance Brokers Private Limited, the insurance broker on September 18, 2008, against loss of the said consignment.
- h. The plaintiff had repeatedly requested the defendants to lodge an FIR and to take necessary legal steps in the matter. On 27.09.2008 the defendant no. 4 had informed the plaintiff that the defendant no. 1 had taken out an application under Section 156(3) of the Criminal Procedure Code, 1898 in the Court of Learned Additional Chief Judicial Magistrate, Durgapur in M.P. Case no. 216 of 2008 dated 24.09.2008.

- i. The plaintiff was constrained to issue a letter dated October 04, 2008 to the defendant no. 1 requesting once again for the copy of the FIR and stating that the goods alleged to have been stolen have been lost under the Consignment Note of the defendant No. 1.
- j. On October 16, 2008, the defendants supplied a copy of the FIR being No. 93/08 under Section 406/407/420/120B of the Indian Penal Code, 1860 as drawn up by the Coke Oven Police Station, Durgapur.
- k. The defendant no. 1 by a letter dated October 31, 2008 replied to the letter of the plaintiff dated October 04, 2008 informing the plaintiff that it has no knowledge as to the fate of the consignment. The defendant purportedly denied their negligence in the loss of the consignment and did not make any attempt to make good the loss that the plaintiff has sustained due to the loss of the consignment from the custody of the defendants.
- l. The plaintiff thereafter issued a letter dated November 12, 2008 to the defendant no. 1 and its driver and/or men are responsible and liable for non-delivery of the said consignment.
- m. The defendant no. 1 thereafter issued a letter dated November 25, 2008 wherein the defendant no. 1 purportedly denied its liability in loss of the said consignment.

- n. The plaintiff replied to the said letter dated November 25, 2008 by a letter dated December 09, 2008 denying the false allegations of the defendant no. 1 as contained in the said letter dated November 25, 2008 and repeating that the defendants have made deficiency in service.
- o. The plaintiff's business received a set back when the said Navayuga Engineering Limited claimed a sum of Rs. 25,00,000/- from the plaintiff for the loss sustained by the said Navayuga Engineering Limited for non-delivery of the said consignment and the said Navayuga Engineering also stopped placing further order with the plaintiff which has caused the plaintiff to suffer loss of revenue to the tune of about Rs.10,00,000/- per year.
- p. In the meantime, as the insurance claim was not disposed of by the insurance company, the plaintiff issued two letters dated August 10, 2009 and February 17, 2010 to the National Insurance Company Limited to settle the claim of the plaintiff.
- q. On February 22, 2010, M/s Tirupati Associates, Surveyor & Loss Assessor of the National Insurance Company Limited, submitted its report as against the claim of for loss of the said consignment. In the said report, the claim of the plaintiff was discarded holding that the available record indicates that there is not enough circumstantial evidence from which it can be drawn up that the said truck loaded with TMT Bars of 22.46 MT from the plaintiff

was genuinely hijacked near Naidu Peta. Some of the reasons basing on which the said report was issued are as follows :-

- i. *The transporter had issued three different consignment note to carry three trailer loaded with TMT Bars for a same party at Bangalore, then how one trailer got isolated when normally trucks originating from the same place prefer to move all at a time.*
  - ii. *The truck was not recorded in the incoming register at Lakhan Nath Border from 30.08.2008 to 01.09.2008.*
  - iii. *No worries for the driver or assistant were noticed.*
- r. By a letter dated march 18, 2010, the National Insurance Company Limited repudiated the claim of the plaintiff on the following amongst other grounds:
  - i. *The trace of the vehicle was made reportedly at Naidu-Peta but no FIR was lodged there with regard to missing of consignment.*
  - ii. *The said Truck was found insured with M/s ICICI Lombard vide Policy No. 3003/54813706/00/00 for the period 26.08.2008 to 25.08.2009 but no claim (theft) was intimated despite no trace of vehicle for nearly one and half month period.*
  - iii. *The fitness of the said truck was affected after examination on 29.08.2008 by Inspector, Motor vehicles, Kohima, Nagaland, therefore presence of the said truck at Durgapur appears not convincing at all.*
  - iv. *The said Truck does not appear to have recorded at the exit point at Lakhan Nath Point Border during the period 30.08.2008 to 01.09.2008.*

- s. The plaintiff thereafter issued a letter dated April 29, 2010 to the National Insurance Company Limited requesting it to reconsider the matter but the National Insurance Company Limited by its letter dated May 02, 2011, rejected such request of the plaintiff.
- t. The plaintiff, in the meantime, issued a debit note to the defendant No.1.
- u. As per the agreement between the plaintiff and the defendant No.1 and also in the facts and circumstances of the present case, the defendants are liable to make good the losses suffered by the plaintiff due to the aforesaid wrongful acts and conducts of the defendants and though the plaintiff on several occasions requested the defendants to pay the damages and the cost of the consignment as misappropriated by the defendants, the defendants paid no heed to such requests of the plaintiff and as such the plaintiff was constrained to issue a demand notice dated July 22, 2011, requesting the defendant No. 1 to pay a total sum of Rs. 64,77,000/-.
- v. The defendant No. 1 thereafter issued a letter dated 04.08.2011 from its office 6, Tiretta Bazar Street, Kolkata - 700073, purportedly denying its liability and leveling false and baseless allegations against the plaintiff.

## **8. CASE OF THE DEFENDANT:**

a. The defendant have entered appearance in the suit and have filed their Written Statement along with counter claim. The defendants have made out the following case in the Written Statement:

- i. *The plaintiff approached to the defendants to carry the goods at the agreed rates and the plaintiff would pay the transportation charges to the defendants within 30 days in default the plaintiff would pay interest @24% per annum.*
- ii. *The goods would be booked and/or carried at owner/s risk and the defendants would not responsible for any loss and damages.*
- iii. *The vehicle would be engaged as per the instruction of the plaintiff and the plaintiff would be fully responsible for the said vehicle and the defendants will not be charged for the same.*
- iv. *The defendant No.1 carried the goods of the plaintiff and the transportation charges of the defendant No.1 comes to Rs. 5,56,744.00 apart from interest.*
- v. *The plaintiff failed and neglected to pay the transportation charges and withheld the transportation charges of the defendant No.1 without any reason.*
- vi. *The defendant by way of counter claim prayed for a decree of Rs. 11,00,000/-.*

- b. That on perusal of the said consignment note, it appears that the goods were carried on owner's risk not at the risk of the defendants, as the goods were insured by the plaintiff, it proves that the goods were carried at owner's risk. The defendants also states that the defendants intimated to the plaintiff that the defendants are enquiring about the fate of the vehicle and also the defendants intimated the plaintiff that the vehicle has been hijacked and as such the goods did not reach at the destination. The defendants has tried their best to file a complaint with the concerned police station but when the police authority did not take any step the defendants moved an application before the Learned A.C.J.M. Durgapur and as per the direction of the Learned Court, Oven Coke Police Station initiated FIR No. 93 of 2008 under Section 406/407/420/120B IPC.
- c. A company proceeding before this Hon'ble Court being **C.P. No. 270 of 2011 (Shyam Steel Industries Ltd. -VS- Assam Bengal Roadways Ltd.)** an this Court by an order dated 20.12.2011, permanently stayed the Company Petition with the liberty to the petitioner to enforce the perceived claim elsewhere in accordance with law.
- d. The defendant had preferred an appeal against the Order dated. 20.12.2011 being APO No. 178 of 2012 and by an order dated 08.10.2012 disposed of the said appeal by passing the following Order.

*“We have considered the rival contentions. We do not feel it prudent to receive the winding up petition. Parties are also relegated before this Court in the civil suit. The appellant would be entitled to file written statement making its counter claim. They would also be entitled to the benefit of Section 14 of the Limitation Act as they were pursuing their claim bonafide before this Court in this proceeding. We direct the respondent to keep the said amount of Rs.5,56,744/- in a suitable interest bearing fixed deposit account in any Nationalized Bank earmarked to the credit of the suit being the civil suit no.204 of 2011 pending in this Court. The said fixed deposit is to be kept renewed from time to time until disposal of the suit. In case no counter claim is made in the written statement, the respondent would be at liberty to encash the fixed deposit.*

*The respondent would wait for the said purpose for a period of one month after long vacation enabling the appellant to make a counter claim in respect of their claim made in the present appeal.*

*The appeal is disposed of without any order as to costs.”*

- e. In terms of the Order passed by the Hon’ble Division Bench dated 08.10.2012, the plaintiff has deposited the amount of Rs. 5,56,744/- in the name of the defendant by way of Fixed deposit being Fixed Deposit Receipt No. SD/161551 dated 18<sup>th</sup> December, 2012 in the State Bank of India, Commercial Branch, MID Corporate, Kolkata.
- f. Though the defendants have filed Counter Claim but the plaintiff has not filed any additional written statement to the counter claim. The plaintiff has not appeared in the matter for several dates and accordingly the suit filed by the plaintiff is dismissed for default by

an Order dated 30.11.2023 and the defendant has proceeded its counter claim.

**9. EVIDENCE OF DEFENDANT:**

- a. The defendant have examined one witness namely Mr. Mrityunjoy Banerjee. The defendant have adduced a total number of 5 Exhibits, from Exhibit-1 to Exhibit-5.
  - I. **Exhibit-1** : Copies of Seven (7) Invoices presented by the defendant, which were due and payable by the plaintiff to the defendant.
  - II. **Exhibit-2** : Copy of an order 20.12.2011 passed in CP No. 270 of 2011 by this Hon'ble Court.
  - III. **Exhibit-3** : Copy of an order dated 08.10.2012 passed in APO No. 178 of 2012 by this Hon'ble Court.
  - IV. **Exhibit-4** : Copy of a Letter dated 17.12.2012 which was sent by Sunita Agarwal, Advocate of the defendant to the Plaintiff.
  - V. **Exhibit-5** : Letter dated 19.12.2012 which was sent by Manik Das, Advocate of the Plaintiff in reply of the letter dated 17.12.2012.

## **10. DECISION WITH REASONS:**

- a) The plaintiff has initiated a suit against the defendant praying for a decree of Rs.14,89,925/- being the cost of the consignment along with interest and damages of Rs. 55,00,000/-. The defendant by way of Counter Claim prayed for a decree of Rs.11,00,000/- being the cost of the transportation charges along with the interest.
- b) The plaintiff have not filed any additional Written Statement to the Counter Claim of the defendant and also not proceeded with the suit, accordingly, by an Order dated 30.11.2023 the suit of the plaintiff is dismissed for default and the defendants have proceeded with the suit.
- c) The plaintiff has engaged the defendants for transportation of their goods. On 30.08.2008 goods were loaded from the factory of the plaintiff at Durgapur to be delivered at Navayuga Engineering Co. Ltd. at Bangalore, Karnataka but the same was not delivered at the designated place.
- d) On query, the defendants informed the plaintiff that the loaded truck with the goods of the plaintiff was hijacked. The defendants informed the plaintiff that on several request made by the defendants, the police authority have not taken any steps and the defendant have filed an application before the Learned Magistrate under Section 156(3) of the Cr.P.C and as per the direction of the Learned Court, the police of P.S Coke Oven, Durgapur had

registered a case being FIR No. 93/2008 under Section 406/407/420/120B IPC.

- e) The fact of the registration of the FIR is not in dispute as the plaintiff has initiated insurance claim of the materials before the insurance company on the basis of FIR initiated by the defendants. The defendants have raised bills against the transportation charges but the plaintiff has not paid the said charges to the defendants.
- f) The defendants have initiated company petition against the plaintiff but this Court was not satisfied that the plaintiff company is insolvent or unable to pay its debts and the Company petition was permanently stayed. The defendant had preferred an appeal and the Hon'ble Appellate Court has relegated the matter to the Civil Suit with the liberty to the defendant to file a counter claim. The Hon'ble had also directed the plaintiff to keep an amount of Rs. 5,56,744/- with the suitable interest bearing fixed deposit interest. In compliance of the said order, the plaintiff has deposited the said amount being FDR No. SD/161551 dated 18.12.2012, State Bank of India, Commercial Branch, Mid Corporate, Kolkata and copy of the said fixed deposit receipt was provided to the defendant.
- g) Exhibit -1 proves that the defendants have raised invoices against the transportation charges which was duly received by the plaintiff but the plaintiff has neither paid the amount to the defendant nor

the plaintiff has denied the invoices by filing additional written statement to the counter claim or by cross examining the witness of the defendant. The plaintiff has also not challenged the order passed by the Appellate Court and in terms of the order passed by the appellate Court, the plaintiff had secured the said amount in a fixed deposit.

## **11. CONCLUSION:**

Considering the facts and circumstances mentioned above, this Court finds though the plaintiff has initiated a suit against the defendants for their claims and the defendants have raised counter claim against the plaintiff but the plaintiff has not proceeded with their suit and has also not filed additional written statement to the counter claim by denying the claim of the defendant. On the other hand the defendants have proved their case that the defendants have transported the goods of the plaintiff and have raised invoices but the plaintiffs have not paid the amount to the defendant. In view of the above, the plaintiffs are liable to pay the amount of Rs. 5,56,744/- to the defendants. This Court finds that in terms of the order passed by the Hon'ble appellate Court in APOT No. 178 of 2012, the plaintiff has kept an amount of Rs. 5,56,744/- in an interest bearing Fixed Deposit No. SD/161551 dated 18.12.2012, State Bank of India, Commercial Branch, MID Corporate, Kolkata and thus the defendant is not entitled to get any further interest.

In view of the above, the plaintiff is directed to handover the original Fixed Deposit Receipt No. 161551 of Rs. 5,56,744/- dated 18.12.2012 of the State Bank of India, Commercial Branch, MID Corporate, Kolkata with the matured amount of the said fixed deposit to the defendant within a month from the date of receipt of this order. The defendant is at liberty to encash the said fixed deposit along with matured amount. The Manager, State Bank of India, Commercial Branch, MID Corporate, Kolkata is directed that if the plaintiff produces the Fixed Deposit Receipt No. 161551 of Rs. 5,56,744/- dated 18.12.2012, the same be transferred in the account of the defendant no. 1 along with matured amount.

**12. C.S. No. 204 of 2011 is disposed of.** Decree with respect of Counter Claim be drawn accordingly.

**(Krishna Rao, J.)**