OC-38

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
[Commercial Division]

IA NO. GA-COM/1/2024
(OLD No. CS/175/2023)
CS-COM/671/2024

VICKY JEWELLERY WORKS PRIVATE LIMITED
Vs
SENCO JEWELLERS PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date : June 10, 2024.

Appearance:
Mr. Sankarsan Sarkar, Adv.
Mr. Sunil Kumar Singhania, Adv.
Ms. Kalpana Singhania, Adv.
...for the plaintiff

Mr. S. S. Sarkar, Adv.
Ms. Tanusri Chanda, Adv.
...for the defendant

The Court: Mr. Sankarsan Sarkar, learned Counsel is appearing for the plaintiff and Mr. S. S. Sarkar, learned Counsel is appearing for the defendant.

Counsel for the plaintiff has filed a suit praying for a decree of sum of Rs.53,35,000/- along with interest.

The plaintiff has filed the present application under Order XIIIA of Code of Civil Procedure as amended by the Commercial Courts Act, 2015. The plaintiff says that the plaintiff has supplied raw gold on five occasions, that is, on 5th January, 2023 for an amount of Rs.9,87,752/-, 11th January, 2023 for an amount of Rs.2,07,421/-, 11th January, 2023 for an amount of Rs.5,64,152/-, 1st March, 2023 for an amount of Rs.11,57,000/- and 12th

April, 2023 for an amount of Rs.20,50,000/-, total amounting to Rs.49,66,325/-.

Counsel for the plaintiff submits that the plaintiff has raised bills and the defendant has made a part payment of Rs.1,40,000/- on 19th January, 2023 to the plaintiff against the aforesaid bills leaving the balance sum of Rs.48,26,324/-.

Counsel for the plaintiff says that the defendant had issued a cheque dated 18th April, 2023 for a sum of Rs.48,26,325/- of Bank of India, Boubazar Branch in favour of the plaintiff. The plaintiff has presented the said cheque on 18th April, 2023 but the same was returned with the endorsement "insufficient fund". After dishonor of the cheque, the plaintiff has issued notice to the defendant calling upon the defendant for payment of the said amount but in spite of the receipt of the notice no reply was sent. The plaintiff had initiated the pre-institution mediation but in spite of the receipt of the notice the defendant failed to appear before the mediation and accordingly non-starter report was submitted and on the basis of the same the plaintiff has filed the present suit. The Counsel for the plaintiff has drawn the attention of this Court with regard to the tax invoices raised by the plaintiff after the supply of the raw gold to the defendant which was duly received by the defendant by putting seal signature of the defendant company. The plaintiff has also drawn the attention to the cheque dated 18th April, 2023 which was dishonored with the endorsement "insufficient fund". Counsel for the plaintiff submits that after the dishonor of the said cheque, the defendant has paid the part amount of Rs.27,26,325/- by way of two separate cheques of Rs.16,19,325/- and Rs.11,57,000/- on 2nd August, 2023.

Counsel for the plaintiff submits that still the amount of Rs.20,50,000/- has remained due and payable by the defendant. Counsel for the plaintiff submits that the defendant has received the materials which is reflected from the tax invoices. The defendant had issued the cheque which also admitted that the amount was due and out of the total amount, the defendant had paid the part amount leaving the balance amount of Rs.20,50,000/- and as such the defendant has no defence to contest the suit and the plaintiff is entitled to get the summary judgment.

Per contra, learned Counsel for the defendant submits that the tax invoice dated 12th April, 2023 being VJ/168/23-34 for Rs.20,50,000/- is not genuine and is the fake invoice.

Counsel for the defendant submits that no raw gold was received by the defendant in terms of the tax invoice dated 12th April, 2023.

Counsel for the defendant also submits that no due of Rs.20,50,000/- is pending, whatever the raw gold was received by the defendant from the plaintiff, the defendant has paid the total amount to the plaintiff.

Counsel for the defendant also denied with regard to the issuance of the cheque dated 18th April, 2023 for an amount of Rs.48,26,325/- and submitted that the directors of the defendant's company always remains outside of the Kolkata and accordingly they used to keep the signed cheques in the drawer of the company and one Munna Roy, who is the common employee of the plaintiff and the defendant, has used the said cheque by giving the said cheque to the plaintiff and the invoice dated 12th April, 2023 is also signed by the Munna Roy without the knowledge and consent of the defendant, though the plaintiff has not supplied the gold to the defendant with respect of tax invoice dated 12.04.2023.

Counsel for the defendant submits that the defendant has made out a triable case which is to be adjudicated only after conducting the trial and as such no summary judgment can be passed in the present application.

Counsel for the defendant submits that the defendant is ready to deposit the amount before the Registrar, Original Side of this Court till the disposal of the suit so as to enable the defendant to contest the suit by filing written statement.

Counsel for the defendant further submits that the cheque was never presented in the bank and the plaintiff has managed to get the cheque return memo from the bank.

Counsel for the plaintiff has relied upon an unreported judgment passed by this Court in GA/8/2021in CS/242/2018 dated 11th April, 2023, wherein this Court has decided the fact that if the defendant's defence is not sufficient to defend the suit then summary judgment can be passed.

Heard the learned Counsel for the respective parties. Perused the materials on record and the judgment relied upon by the plaintiff.

Counsel for the defendant has only denied with regard to the claim of the plaintiff of Rs.20,50,000/- with respect of the tax invoice dated 20th April, 2023. The defendant had issued the cheque on 18th April, 2023 for an amount of Rs.48,26,325/-. The plaintiff has presented the said cheque though the defendant has denied in regard to the presentation of the said cheque but the document reveals that the cheque was returned with the cheque return memo with the endorsement "insufficient fund". The defendant has not brought any document in their reply to say that the defendant has made any complaint to the bank to say that the plaintiff has managed to get the cheque return memo from the bank without depositing the said cheque in the bank.

This Court also found that after the dishonor of the said cheque, the plaintiff has issued the notice to the defendant and the defendant has duly received the said notice which appears from the track report. Even after receipt of the notice, the defendant has made the payment to the plaintiff except sum of Rs.20,50,000/-. Even after receipt of the legal notice, the defendant has not raised any objection with regard to the invoice dated 12th April, 2023 for an amount of Rs.20,50,000/-. Now, the defendant has also raised an issue that the signed cheque was kept in the drawer and one Munna Roy has used the said cheque by handing over the same to the plaintiff. The plaintiff has also not brought any record before this Court to say that the plaintiff has taken any steps against the said Munna Roy.

This Court finds that the invoice dated 12th April, 2023 bears the seal and signature of the plaintiff as well as the seal and signature of the defendant's company. The defendant has submitted that the invoice dated 12th April, 2023 is not correct but after going through the document, it is found that the defendant has duly received the said tax invoice by affixing seal and signature. The defendant submits that the signature appearing in the said seal in the tax invoice dated 12th April 2023 is of Munna Roy and they have not authorized Mr. Munna Roy to put the signature. But the other invoices that is, invoice dated 3rd January, 2023, and 11th January, 2023, the signature of Munna Roy is appearing which has not been disputed by the defendant and the defendant has made the payment with respect of the said invoices.

Considering the above facts, this Court finds that the defendant has no defence to proceed with the suit the defence raised by the defendant in sham and illusory.

In view of the above, the defendant is directed to pay the amount of Rs.20,50,000/- along with interest at the rate of 12% per annum from the 22nd August, 2023 till the realization of the total amount.

GA-COM/1/2024 is disposed of.

Accordingly, CS/175/2023 is disposed of.

Decree be drawn accordingly.

Counsel for the defendant has filed affidavit in opposition and the plaintiff has filed affidavit in reply by denying the allegations.

(KRISHNA RAO, J.)

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