IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.120 OF 2023

Appellants : (Oriiginal Defendants on R.A) :

1. M/s. Sundaram Multipap Ltd.
Registered Office at 5/6, Papa Industrial Estate, Surent Road, Andheri (East), Mumbai – 400093, Through its Authorized Officer Shri Dishant D. Sharma.

2. Shri Shantilal P. Shah, Director, Aged about Major, Occ. Business.

3. Shri Haskmukh A. Gada, Director, Aged about Major, Occ. Business.

4. Shri Jagdish J. Kothari, Director, Aged about Major, Occ. Business.

5. Shri Anuj V. Sukadia, Director, Aged about Major, Occ. Business.

6. Shri Bhavin P. Gogri, Director, Aged about Major, Occ. Business.

7. Shri Nilesh S. Dedhia, Director, Aged about Major, Occ. Business.

8. Shri Prakash Kumar P. Jain, Director, Aged about Major, Occ. Business.

9. Shri Mahip D. Agrawal, Director, Aged about Major, Occ. Business.

10. Shri Manikandam P. Kammenchery, Director, Aged about Major, Occ. Business.

11. Shri Kaushal R. Sheth, Director, Aged about Major, Occ. Business.

12. Mrs. Minjal V. Kadakia, Director, Aged about Major, Occ. Business.

Appellants No.2 to 12 all are Directors of M/s. Sundaram Multipap Ltd., Registered Office at

5/6, Papa Industrial Estate, Surent Road,
Andheri (East), Mumbai – 400093.

– Versus –

Respondent : (Original Plaintiff on R.A.) : M/s. Floton Commodities,
A Proprietary Firm, Through its Proprietor,
Shri Mayur s/o Kishorebhai Bagadia,
Aged about 52 Years, Occ. Business,
R/o Lichade Bhawan, Near Hotel Harmony,
Gandhibagh, Nagpur.

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Mr. Yash Maheshwari, Advocate for the Appellants.
Mrs. Rashi Deshpande, Advocate for the Respondent.

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CORAM : M.W. CHANDWANI, J.
DATE : 24th JULY, 2024.

ORAL JUDGMENT :

With the consent of learned Counsel for the appellants as well as the respondent, the matter is taken up for final hearing at the admission stage.

02] **Admit.**

03] This appeal is an exception to the judgment and order dated 06/09/2022 passed by the learned Adhoc District Judge, Nagpur, thereby confirming the decree passed by the trial Court in Spl.Civil Suit No.701/2015, whereby the appellants were directed to pay an amount of Rs.17,89,094.56 with future interest at the rate of Rs.12% per annum.

04] The plaintiff (the respondent herein) has filed a suit against the original defendants (the appellants herein) for recovery of Rs.21,98,357/- on the premise that it supplied coal to appellant No.1-Company worth Rs.22,22,227/-, out of which an amount of Rs.5,11,448/- has been paid by appellant No.1 and remaining balance amount of Rs.17,10,779/- is standing due against the appellants. In written statement, the appellants admitted that the respondent has supplied the coal, but not to the extent of Rs.22,22,227/-. It is the case of the appellants that the coal was of bad quality, therefore, the part of amount was withheld. The trial Court, after hearing the suit on merits, decreed the suit and directed the appellants, including appellant Nos.2 to 12, who were the directors of appellant No.1, to pay an amount of Rs.17,89,094.56 along with interest at the rate of 12% per annum till its realization.

05] The appellants assailed the judgment of the trial Court before the appellate Court by filing an appeal under Section 96 of the Code of Civil Procedure before the learned Adhoc District Judge, Nagpur vide R.C.A. No.270/2019. The appellate Court dismissed the appeal. Feeling aggrieved with the judgments and orders impugned, the present appeal came to be filed.

06] This Court while issuing notice to the respondent framed the following substantial questions of law :

(I) Whether the judgment of learned First Appellate Court is in conformity with Order XLI of Civil Procedure Code, 1908?

(II) Whether the learned Courts below were justified in admitting in evidence and relying upon the documents filed by the plaintiff, without the same having been proved as per the Indian Evidence Act, 1872?

(III) Whether the learned Courts below were justified in admitting in evidence and relying upon the photocopies of purchase orders (Exhibit 27 to 31) despite non-production of the originals thereof and without any permission under Section 65 of the Indian Evidence Act, 1872?

(IV) Whether the learned Courts below were justified in decreeing the suit against the defendant nos. 2 to 12 when it was evident that they are directors of defendant no. 1 Company and cannot be legally liable for claims against the company, which is a distinct legal entity?

(V) Whether the learned Courts below erred in decreeing the suit despite absence of any proof regarding the authority of person filing the suit to represent the plaintiff firm?

(VI) In absence of the foundational evidence regarding delivery of pre-suit notice to defendants having been laid by the plaintiff, whether the learned Courts below were justified in raising the presumption of its service and go on to decree the claim for interest based on such patently erroneous basis?

07] Mr. Yash Maheshwari, learned Counsel appearing for the appellants submitted that the trial Court as well as the appellate Court did not read the written statement of the appellants in proper perspective and passed the decree on the assumption that supply of quantity of coal claimed by the respondent has been admitted by the appellants in their written statement. He took me to Issue No.1 and Point No.1 that arose for determination for the trial Court as well as the appellate Court, respectively, which states "whether the plaintiff-company proved that it has supplied coal worth of Rs.22,22,227/-". According to him, by framing the above said issue and point, the Courts were of the view that the plaintiff-company has to prove the supply/delivery of coal to the defendants worth Rs.22,22,227/-.

08] The learned Counsel for the appellants would submit that if the plaintiff was asked to prove the quantity of supplied coal claimed by it, the trial Court should not have exhibited the copies of the purchase order filed by the appellants. Therefore, the trial Court ought not to have exhibited the copies of purchase order and, therefore, committed serious error by directing the appellants to pay an amount of Rs.17,89,094.56 to the respondent without proving the exact quantity of coal supplied to the appellants by the respondent.

09] It is also one of the grounds argued on behalf of the appellants that the trial Court as well as the appellate Court should not have directed appellant Nos.2 to 12 to pay the amount of Rs.17,89,094.56 to the respondent. According to him, appellant Nos.2 to 12 are the Directors of appellant No.1, which is a private limited company and they cannot be held liable to pay the amount of Rs.17.00 lakhs and some odd amount personally. He further submitted that the Directors of the Company can only be held liable to the extent of unpaid balance share capital invested by the Directors and not more than that. To buttress his submission, he placed reliance on the decision of the Supreme Court in ***Jaikisan s/o Jaynarayan Bhaiyya vs. United Western Bank Ltd., Akola – 2004 SCC OnLine Bom 120***, wherein it has been held in Paragraph 20 as under :

> "20. *As per the case made out in the Original Application, the petitioner is neither a Borrower nor a Guarantor. The defendant No.1 being a Company incorporated is a separate legal entity and unless a Director of the said Company is a surety or a guarantor, he cannot be fastened with liability to repay the loan advanced to the defendant No.1 Company. Even assuming that the petitioner is a shareholder of the defendant No.1 Company, his liability will be only to the extent of balance amount due on the shares held by him and that liability will arise only when call is duly made. The Original Application filed by the respondent does not disclose any cause of action against the petitioner."*

10] The decision of the Delhi High Court in ***Anirban Roy and another vs. Ram Kishan Gupta and Another – 2017 SCC OnLine Del 12867,*** also came to be relied upon, wherein it has also been held in Paragraph 9(ix) as under :

> *"**9** .... (ix) that it cannot be laid as a general proposition that whenever the decree is against a company, its Directors/shareholders would also be liable-to hold so would be contrary to the very concept of limited liability and obliterate the distinction between a partnership and a company; ...."*

11] The sum and substance of the argument of the learned Counsel for the appellants is that the decree against the appellants cannot be sustained much less against the Directors-appellant Nos.2 to 12.

12] *Per contra,* Mrs. Rashi Deshpande, learned Counsel for the respondent vehemently submits that the trial Court as well as the appellate Court has rightly decreed the suit against the appellants. According to her, there is a clear-cut admission in the written statement filed by the appellants regarding delivery of steam coal of the quantity as claimed by the respondent. According to her, the only dispute raised by the appellants in their written statement is about the quality of coal. The appellants did not examine anybody in support of their defence. The trial Court as well as the appellate Court rightly did not appreciate this defence of the appellants in absence of any evidence on record. Therefore, the decree passed by the trial Court and confirmed by the appellate Court against the appellants is proper. She supported the judgments of the trial Court as well as the appellate Court and seeks dismissal of the appeal.

13] Perusal of the written statement goes to show that the appellants did not dispute supply of steam coal by the respondent. The case of the appellants is that the coal supplied to the appellants was not worth Rs.22,22,227/-. The contents of the written statement further goes to show that a part of the amount was withheld by the appellants due to bad quality of material. Holistic reading of written statement as a whole reveals that no dispute is raised by the appellants insofar as supply of quantity of coal as claimed by the respondent. That's why, the appellants did not object to the exhibiting of copies of the purchase order issued by appellant No.1-Company. Therefore, I do not find any illegality in exhibiting the copies of purchase order of the appellants by the trial Court and reading the same in the evidence. That apart, there are invoices filed by the respondent, which have been issued for supply of coal coupled with, deposit of Value Added Tax (VAT) by the respondent prevailing at the time of transaction with the Government authority. Therefore, I do not find force in the argument of the learned Counsel for the appellants that just because in Issue No.1 and point for determination, framed by the trial Court and appellate Court, respectively, amount of Rs.22,22,227/- is written, the trial Court and the appellate Court were of the view that the respondent has to prove the quantity of the coal supplied by it. Perhaps, the reason for framing this issue and point for determination is, considering the defence of the appellants that the coal was of bad quality, therefore, burden was shifted on the respondent to prove that the coal, which was supplied to the appellants, was worth of Rs.22,22,227/-.

14] This takes me to the next submission, which is not disputed by the learned Counsel for the respondent that the Directors of the Company are not independently liable to make the payment of dues outstanding against the Company. Appellant No.1 is a separate legal entity distinct from its shareholders and directors. It is the appellant No.1, who has to pay the dues. The liability of the Directors shall be limited to the unpaid share capital, if any. Therefore, Question No.(IV) is answered accordingly.

15] In view of the ratio laid down in the cases of ***Jaikisan Bhaiyya*** and ***Anirban Roy*** *(supra),* except Substantial Question No.(IV), I do not find any other question of law, much less substantial questions of law, arising in this appeal. To that extent, the appeal succeeds. Accordingly, the appeal is partly allowed. The impugned judgment and decree of the trial Court, which has been confirmed by the appellate Court, is modified to the extent that appellant No.1 shall pay amount of Rs.17,89,094.56 to the respondent along with *pendente lite* and future interest at the rate of 12% per annum till its realization. There shall be no order as to costs.

(M.W. CHANDWANI, J.)

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