

Date of decision :10.04.2024

M/s BBF Industries Limited **...Appellant**

Mrs. Seema Aggarwal and another ...Respondent

M/s BBF Industries Limited **...Appellant**

Mrs. Seema Aggarwal and other **...Respondents**

Present: Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Shrey Sachdeva, Advocate
for the appellant.

1. With the consent of the learned counsel representing the parties, two connected regular second appeals shall dispose with this common order.

2. The appellant before this Court is the plaintiff in a suit for recovery of Rs. 6,66,600/- as out-standing compensation and damages for supply of sub-standard potassium nitrate with a consequential relief from mandatory injunction, directing the defendants to remove the defective

material from the plaintiff's premises, the defendants filed the counter-claim for recovery of Rs.33,36,165/-. Both the Courts below dismissed the plaintiff's suit, whereas, decreed the counter-claim filed by the defendants. That is how these two appeals have been filed.

3. In order to comprehend the issues involved in these cases, relevant facts in brief are required to be noticed.

4. The appellant runs a Bharat Box Factory. It require potassium nitrate for producing/manufacturing mosquito repelling coils. On 18.06.2009, the first order was placed by the plaintiff to the respondents for supply of potassium nitrate, which was delivered to the plaintiff on 18.07.2009. On 30.07.2009, a fresh purchase order was issued by the plaintiff to the defendants for purchase of nearly three times of the material. This time the consignment was supplied on three different dates. The first supply was made on 12.08.2009, whereas, the second supply was on 17.08.2009. The third and the final consignment was received on 22.08.2009. It is the case of the plaintiff that on 22.08.2009, the defendants were intimated that potassium nitrate is not of desired quality.

5. *Per contra*, it is the case of the defendants that the plaintiff has filed the suit only to avoid payment of the material supplied.

6. Upon appreciation of the evidence, both the Courts below have decreed counter-claim filed by the defendants.

7. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

8. Learned counsel representing the appellant while referring to

Sections 41, 42 and 43 of the Sale of Goods Act, 1930 (herein after referred as the '1930 Act') submits that buyer has the right to examine the goods and reject the same if the same is not in conformity with the contract. He submits that the buyer was not bound to return the rejected goods.

9. *Per Contra*, learned counsel representing the respondents submits that as per the plaintiff's case, the testing laboratory informed the plaintiff about the quality of potassium nitrate on 24.07.2009, however, still, the plaintiff placed a new order for much larger quantity than the previous one. He submits that for the first time, the plaintiff objected to the quality only on 22.08.2009, when the last consignment out of the second order was supplied. He submits that the plaintiff is only trying to avoid payment of the amount.

10. This Court has considered the submission of learned counsel representing the parties.

11. Section 41 of 1930 Act provides that the buyer has a right to examine the goods and reject, if he has not previously examined the material. Section 43 of 1930 Act provides that unless otherwise agreed, the buyer is not bound to return the rejected goods. It will be noted here that pursuant to the first purchase order, the material was supplied on 18.07.2009. The plaintiff had opportunity to inspect the same on the day it was delivered to the plaintiff in its factory. However, the plaintiff, once again, placed a fresh order of much larger quantity as compared to the first purchase order. Obviously, the plaintiff was satisfied with the material.

Generally, in a normal course, the purchaser will place fresh order to the seller only when he is satisfied that the material supplied is in conformity with the order placed. Moreover, as per the plaintiff’s case, on 24.07.2009, report came that the material supplied is sub-standard, however, the plaintiff went ahead and placed a fresh order. The first consignment from the second purchase order was received by the plaintiff on 12.08.2009, whereas, the second purchase order was received on 17.08.2009. The purchaser remained silent during all this time. The Company did not take any step to intimate the defendants (suppliers) about its objection. Once the last consignment of the purchase order was supplied, the objection to the quality was taken. Both the Courts below have correctly appreciated the conduct of the plaintiff.

12. Hence, no ground to interfere is made out.
13. Dismissed.

10.04.2024

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Whether speaking/reasoned :

Whether Reportable :

(ANIL KSHETARPAL)

JUDGE

Yes

No

Yes

No