

SUPREME COURT OF INDIA

Madhya Pradesh Mines

Vs.

R. B. Sreeram Durga Prasad Ltd.

C.A.No.1727 of 1966

(J. C. Shah and K. S. Hegde, JJ.)

09.04.1970

JUDGEMENT

SHAH, J.:-

1. This is an appeal with special leave by the defendants against the judgment of the High Court of Bombay (Nagpur Bench) confirming the decree of the Additional District Judge in Suit No. 8-B of 1956.

2. The defendants agreed to supply manganese ore of certain specifications to the plaintiffs under two contracts Nos.65 and 66 both dated May 7, 1953. Under Contract No. 65 the defendants agreed to supply before the end of November 1953, 4,000 tons of Second Grade manganese ore at the rate of Rs. 103/- per ton f.o.r. Sitasaongi and Dattapoa. By the second contract No. 66 the defendants agreed to supply on or before December 31, 1953, 6000 tons of High Grade manganese ore at the rate of Rs. 142/- f.o.r. Sitasaongi and Dattapohar. Under Contract No. 65 the defendants supplied 3,649 tons which were accepted. 320 tons of ore offered by the defendants was not accepted, because it was according to the plaintiffs, not according to the specifications. The defendants

thereafter did not supply the balance of 351 tons. Under Contract No. 66 upto December 27, 1953, the defendants supplied 2,873 tons 3 c.w.t. The defendants also offered to supply between 28th and 31st of December, 1953, 3,693 tons in ten lots, but on sampling it was found that the contents of silica, phosphorous and iron of the manganese ore were not according to the specifications under the terms of the contract, and the plaintiffs declined to accept the quantity offered.

3. On the allegation that the defendants had committed breach of contract, the plaintiffs commenced an action in the Court of the Additional District Judge, Bhandara, for a decree in which they originally claimed Rs. 1,84,137/5/6 which was later by amendment increased to Rs. 3,56,949/-. Under Contract No. 65 the plaintiffs claimed Rs. 88, 596/- and under Contract No. 66 Rs. 2,68,853/-. The plaintiffs claimed that time was the essence of the contracts and the defendants had failed and neglected to deliver manganese ore according to the specifications within the period of the contracts. The defendants contended, inter alia, that they had offered 351 tons of manganese ore under Contract No. 65 which the plaintiffs did not accept. They also contended that the contract was acted upon till August 7, 1953, and thereafter the parties agreed to waive the contract. In respect of Contract No.66 the defendants contended that they had supplied manganese ore to the plaintiffs since January 1953 under several contracts, and that there used to be distinct subsequent oral agreements by which the written terms about the specifications of the various contents of the ore were modified, and the plaintiffs agreed not to enforce the specifications regarding silica, iron and phosphorous contents of the ore but to accept the ore; that there was a distinct subsequent oral agreement after Contract No. 66 was executed by which the plaintiffs agreed that they would not enforce the stipulation about the contents of silica, iron and phosphorous, and even about the manganese contents of each lot it was agreed that the plaintiffs would accept "on the basis of average of grouped lots taken together provided the overall average came to 46.25 percent though any one or more lots show the contents less than 46 per cent. but not less than 45.1 per cent that in pursuance of the agreement 2.873 tons were not analysed in respect of non-manganese contents; that the stacks of 3, 693 tons of ore were prepared and offered but were not accepted by the plaintiffs; that the plaintiffs by their declarations, acts and omissions intentionally caused and permitted the defendants to believe that they will not enforce the terms stipulated in the contract, but will accept the ore under the terms as modified by the subsequent oral agreement; that the plaintiffs had never informed the defendants that they intended to enforce the original terms of the contract and the plaintiffs having failed to do so in good time before December 31, 1953, the delivery offered to them of 3,693 tons was according to the specifications as agreed after the terms of the contract were originally recorded.

4. The Trial Court held that the stipulation as to time was of the essence of contract under both the contracts, and that the terms of the contracts were not orally modified by the parties subsequent to the execution of the contracts. The Court further held that 3,693 tons of ore offered by the defendants under Contract No. 66 between December 28 to 31, 1953, were below the agreed specifications, and the defendants had committed breach of contract, and were liable in damages. The Trial Court on that view decreed the claim against the defendants for Rupees 1,87,955/- and proportionate costs.

5. In appeal by the defendants the High Court confirmed the decree passed by the Trial Court. The High Court agreed with the view of the Trial Court that the defendants failed to establish the case that there was a subsequent oral agreement varying the terms of the written contract in respect of the specifications relating to the contents of silica, phosphorous and iron.

6. The Trial Court held that the defendants had failed to supply 351 tons of manganese ore under Contract No. 65: at the hearing of the appeal before the High Court counsel abandoned the defendant's plea in respect of Contract No. 65. He conceded that the defendants were unable to establish that the plaintiffs had wrongfully refused to accept 351 tons of ore under Contract No. 65. Before us, counsel for the defendants has not sought to press the appeal in respect of the claim decreed by the Trial Court and confirmed by the High Court in respect of Contract No. 65.

7. In respect of the claim for breach of Contract No. 66 counsel for the defendants sought to urge the contention raised before the negated by the Trial Court and the High Court in answer to the plaintiff's claim that there was an oral agreement between the parties whereby the plaintiffs agreed to modify the specifications and to accept the manganese ore supplied by the defendants according to the modified specifications. That plea was not accepted by the Trial Court and the decision of the Trial Court has been confirmed by the High Court. This is a finding on a question of fact and we see no reason to reappreciate the evidence for determining whether the Courts erred in reaching that finding.

8. The appeal fails and is dismissed. Having regard to the circumstances of the case, there will be no order as to costs.

Appeal dismissed.