

PETITIONER:
CHIEF GENERAL MANAGER, TELECOM & ORS.

Vs.

RESPONDENT:
V.N.ENTERPRISES

DATE OF JUDGMENT 17/08/1995

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
MANOHAR SUJATA V. (J)

CITATION:
1995 SCALE (5)1

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

The respondent herein on supply of goods to the appellants raised bills which were partly cleared. Since the balance was substantial and the appellants a statutory authority and its representatives, the respondent moved the High Court of Orissa in a writ Petition for a direction so as to recover the balance outstanding. The High Court on entertainment of the Writ Petition came to grips of the matter inclusive of the objection by the appellants that a civil suit was the appropriate remedy. Overruling the objection, the High Court was moved by the fact that the writ petitioner before it, i.e., the respondent herein, had undeniably supplied the goods at the rate quoted by it and that the appellants had after taking delivery utilised the said goods, which factum was not disputed. It took the view that when the facts were admitted, there was no justifiable reason on the part of the appellants not to pay the amount due to the respondent when it had supplied the goods to the appellants. It is, in these circumstances, that the High Court ordered payment of the quoted price of goods supplied, allowing the writ petition. That view of the High Court has been put to challenge here.

We do not wish either to comment on the step taken or the view arrived at by the High Court in these proceedings since we find that before the High Court the appellants in their counter had pleaded that since they had been put to a loss of Rs.43,16,400/- due to high quotations they had a right to withhold that amount for being paid-over to the respondent. On the other hand, in the pleadings of the respondent herein, before the High Court, as also here, claim is laid that a sum of Rs.66,09,669.36 was outstanding and had been wrongly withheld. Interwining these two claims, it would become apparent that a sum of about Rs. 23 lacs on the parties' own showing is not disputed to be due to the respondent towards its claims. For this reason, we explain

away the orders of the High Court by ordering that the appellants shall pay without prejudice a sum of Rs.23 lacs to the respondent towards part clearance of the outstanding bills and sequally the orders of the High Court shall be meant to confine to the payment of Rs.23 lacs, which is more or less not disputed, as payable. Regarding the balance claim of respondent, since it is disputed, it would have to move the civil court claiming it in a regular suit. Necessarily accounting will be resorted to in that suit and the sums of moneys already paid to the respondent inclusive of the sum of Rs.23 lacs, as ordered to be paid today, would have to be reckoned in finalizing the accounts. We, thus, modifyingly clarify the High Court's orders confining it to ordering the above payment of Rs.23 lacs leaving all questions open inclusive of the claim to interest on all payments made delayedly to be settled before the civil court. The appeal would stand disposed of accordingly. No costs.

