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IN THE HIGH COURT OF DELHI

Judgment reserved on : September 30, 2008

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Judgment delivered on : October 20, 2008

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RFA 476/2007

BRIGHT STAR HOTELS PVT. LTD.

..... Appellant

Through: Mr.Ashwini Kumar Matta,
Sr.Advocate with Mr. Anupam
Srivastava, Adv.

VERSUS

GOBIND SINGH

..... Respondent

Through: Mr.A.K. Gupta, Advocate

CORAM:

Hon'ble Mr.Justice Pradeep Nandrajog

Hon'ble Mr.Justice J.R. Midha

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. Gobind Singh, carrying on business under the name and style of "M/s.The Refrigeration House" filed a suit for recovery of Rs.19.88,722/- against M/s. Bright Star Hotels (P) Ltd. (hereinafter referred to as 'Bright Star') alleging that under eight work orders, Ex.PW-1/1 to Ex.PW-1/8, he was awarded the work of supply of equipments, installation and commissioning a central air conditioning unit for the banquet hall, health club and dining space at Bristol Hotel, Gurgaon,

Haryana being constructed by Bright Star. He alleged having completed the works and that as per the running account maintained by him a sum of Rs.13,45,549.50 was due and payable. He alleged that he was entitled to interest @ 18% w.e.f. 1.9.1999 till 26.4.2002. He calculated said interest, being Rs.6,43,172.52. Thus, the total suit amount was $\text{Rs.13,45,549.50} + \text{Rs. 6,43,172.52} = \text{Rs.19,88,722.02}$. Bright Star took the defence that Gobind Singh left the work incomplete and unfinished; he supplied sub-standard material; the executed work was sub-standard and defective. It was stated that Bright Star had to engage the services of M/s. Roots Cooling System Pvt. Ltd. as also M/s.Carrier Aircon Ltd. to complete the balance work and that the former company had been paid Rs.7,15,981/- and the latter Rs.64,000/- to complete the work. Jurisdiction of the Court at Delhi was challenged on the plea that the goods were delivered at Gurgaon and the work was executed at Gurgaon.

2. Gobind Singh succeeded after the trial. Vide impugned judgment and decree dated 25.4.2007 finding returned is that Bright Star was liable to pay Rs.13,45,549.50 as the amount remaining unpaid for the work executed by Gobind Singh. Holding that there was no agreement between the parties regarding interest being payable @ 18% per annum, interest @ 12% per annum has been awarded w.e.f.

1.9.1999 till realization.

3. The reasoning of the learned Trial Judge is centered around the proof of the running bills raised by Gobind Singh being Ex.PW-1/9 to Ex.PW-1/47 and Ex.PW-1/56; which bills were duly reflected in the statement of account maintained by Gobind Singh being Ex.PW-1/48. The same evidenced that Rs.13,45,549.50 was the payment outstanding.

4. The defence of Bright Star has been negated for the reason no evidence was led of having got executed any work from M/s. Roots Cooling System Pvt. Ltd. and M/s.Carrier Aircon Ltd. The work order placed on the said two companies, never saw the light of the day. No proof of any payment made to said companies by Bright Star was brought on record. The defence that the material supplied was sub-standard and that the work executed was sub-standard has been negated for the reason the sole witness of Bright Star examined at the trial, DW-1, was the liaison officer of the company and he failed to establish any sub-standard work executed or sub-standard material supplied. No evidence was brought on record by Bright Star that any of the bills raised on it was rejected on account of sub-standard material supplied or sub-standard work executed. No document, correspondence or a communication was proved as per requirement of Section 42 of the Sale of Goods Act, 1930 notifying the rejection of the

goods or the works. Further reasoning of the learned Trial Judge is that the work orders have been issued on various dates between 21.2.1996 and 17.12.1996; evidencing according to the reasoning of the learned Trial Judge, that the work was progressing smoothly and to the satisfaction of Bright Star. For if this was not to be so, Bright Star would not have placed one after the other, eight work orders.

5. Since at the hearing held on 30.9.2008, Shri Ashwani Kumar Matta, learned Senior Counsel for Bright Star made no submission on the plea of territorial jurisdiction of courts at Delhi, we do not note the facts relatable to the territorial jurisdiction of the courts at Delhi and the findings returned by learned Trial Judge thereon.

6. It is settled law that when goods are not rejected by the buyer within a reasonable time the same are deemed to be appropriated as per the mandate of Section 42 of the Sale of Goods Act, 1930. It is also settled law that he who alleges a fact must establish the fact in the affirmative.

7. Bright Star did not dispute having placed the eight work orders Ex.PW-1/1 to Ex.PW-1/8. Bright Star disputed receipt of the bills, but did not dispute that the price at which the bills Ex.PW-1/9 to Ex.PW-1/47 and Ex.PW-1/56 were raised was as per the price stipulated in the work orders. Thus, if Gobind Singh discharged the initial onus of proving having

raised the bills as per the contract between the parties the onus to establish the defence would be on Bright Star.

8. Bright Star did not challenge the entries in the statement of account Ex.PW-1/48 meaning thereby, accepted the credit entries in the said statement of account showing money received by Gobind Singh from Bright Star. It was not a defence that certain payments made by Bright Star were not reflected in the statement of account Ex.PW-1/48. No counter statement of account maintained by Bright Star was proved at the trial. Gobind Singh stated that he raised the bills. Thus, Gobind Singh discharged the initial obligation of proving the bills being raised on Bright Star amount due and payable and the amount paid from time to time.

9. Indeed, we find no evidence on record that Bright Star awarded any work to M/s. Roots Cooling System Pvt. Ltd. and M/s.Carrier Aircon Ltd. To succeed on the defence that Gobind Singh left the work incomplete it was necessary that the work order placed on M/s. Roots Cooling System Pvt. Ltd. and M/s.Carrier Aircon Ltd. were not only proved but even connected with the work orders Ex.PW-1/1 to Ex.PW-1/8, to bring home the point that certain works listed in Ex.PW-1/1 to Ex.PW-1/8 were awarded to the said two companies. Further, proof of payment made to said companies had to be brought on record. Indeed, there is none.

10. We note that DW-1, Col. G.B.S. Sehgal (Retd.), the liaison officer of Bright Star, in his examination-in-chief (which we note was filed by way of an affidavit) merely reiterated the vague pleas in the written statement in respect of the alleged defective, incomplete work and sub-standard material allegedly supplied. His testimony on said point is in para 9 and 10 of his affidavit Ex. D-1. He stated as under:-

“9. That the defendant had to get the incomplete work completed and had further got rectified the defects because of the plaintiff for which the plaintiff is liable to compensate the defendant company.

10. That the goods supplied by the plaintiff were of sub-standard quality and defective in nature and the plaintiff has deliberately suppressed the relevant facts regarding the quality of the alleged goods with ulterior motives and with an intention to derive undue advantage to himself.”

11. No material particular of the alleged defective or incomplete work has been referred to by the witness of Bright Star. In what manner were the goods sub-standard has not been deposed to by the witness. The testimony is nothing but a blog.

12. The reasoning of the learned Trial Judge that the work orders were issued over a period of 10 months evidence that from time to time the work executed was satisfactory, is a good reason.

13. We may correct the learned Trial Judge on one factual point. The work orders are not between 21.2.1996 and 17.12.1996. The work orders commenced from 21.2.1996 to 20.5.1996. For nearly one year and three months, at different point of time, different work orders were issued. This lends assurance to the fact that since the works executed under the earlier work orders were found satisfactory and further work orders were issued by Bright Star to Gobind Singh.

14. The bill Ex.PW-1/56 shows that it was the first bill and was raised on 22.2.1996 and thereafter successive bills were raised from time to time the last being Ex.PW-1/47 raised on 10.9.1997. Indeed, not a single letter or a correspondence has been shown to us that Bright Star rejected any bill. Obviously, the inference is inescapable. Having not rejected the supply or the execution of the work within a reasonable time Bright Star is deemed to have appropriated the goods and accepted the due execution of the work.

15. We note that in his cross-examination Col.G.B.S. Sehgal (Retd.) admitted that his company was maintaining a running account. We note that Bright Star did not produce the said statement of account and therefore we would be justified in drawing an adverse inference against Bright Star of not having produced the best evidence available with it with the

conclusion that had the statement of account been produced it would have gone against Bright Star. It is also important to note that in his cross-examination, Col.G.B.S.Sehgal (Retd.) stated that he was not aware about the contents of the written statement.

16. To summarize, we may conclude by recording that Bright Star has not been able to show to us in appeal that the learned Trial Judge has ignored any relevant and material evidence or circumstance. It has not been shown to us that the learned Trial Judge has considered any irrelevant evidence or an irrelevant circumstance. No perversity has been shown to us in the process of reasoning adopted by the learned Trial Judge.

17. That apart we have gone through the testimony of the witnesses, the work orders Ex.PW-1/1 to Ex.PW-1/8, the bills Ex.PW-1/9 to Ex.PW-1/47 and Ex.PW-1/56 and the statement of account Ex.PW-1/48. We are satisfied that Gobind Singh has proved his case. The total value of the eight work orders is Rs.30,22,285.50. The bills Ex.PW-1/9 to PW-1/47 and Ex.PW-1/56 are in the sum of Rs.30,06,367.00. Ex.PW-1/48, the statement of account shows Rs.13,45,549.50 as balance due.

18. On the issue of interest we note that in the bills raised, Gobind Singh has clearly recorded that he would be

charging interest @ 18% per annum if the amount remained outstanding. But we need not deal with this issue any further for the reason Gobind Singh has not filed any cross-objections and has accepted interest awarded to him @ 12% per annum.

19. We note that in the year 1997 when the works were completed and payment became outstanding, scheduled banks were offering interest at said rates on fixed deposits.

19. We find no merit in the appeal. The appeal is dismissed with costs quantified at Rs.20,000/- against Bright Star and in favour of Gobind Singh.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

October 20, 2008
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