

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 09.12.2010

+ **CS(OS) 1170/2001**

SDB CONSULTANTS P LTD BA+ Plaintiff
Through : Nemo.

versus

GMT INSTITUTE OF MANAGEMENT & TECHNOLOGY Defendants
Through : Sh. Kuljeet Rawal, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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

MR. JUSTICE S.RAVINDRA BHAT, J (OPEN COURT)

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1. The plaintiff seeks specific performance of an alleged agreement dated 03.04.2000, as well as a decree for Rs. 35 lakhs towards its professional fee bill.

2. The brief facts emerging from the suit are that the plaintiff claims that by a letter dated 03.04.2000, it was appointed as Architect for a proposed project by the defendants, and it (the plaintiff) communicated its acceptance letter on the same date. It is claimed that the plaintiff immediately thereafter placed its resources and manpower, and formulated its team of planners headed by its Director and officials. The plaintiff also discloses in-house meetings with architects to create a “State-of-the-art educational institution”, in order to fulfill its obligations under the contract. The plaintiff alleges that it sought for quotations from various organizations engaged in allied activities at the instance of the defendants, its client. The plaintiff refers to a joint meeting

on 04.05.2000, when it presented its conceptual plan for the Hostel and academic blocks in the project. The plaintiff mentions about having received quotations from the agencies engaged, for the purpose of geo-physical equipments. It is submitted that all this information was forwarded to the defendants. The plaintiff also mentions about visit by its Surveyors to the site and submission of drawings, lay-out plans prepared by it. It is claimed that the plaintiff raised its bill and Statement on 23.10.2000 and thereafter followed-up the issue of payment with the latter (the defendants) through letters dated 20.11.2000, and subsequently through meetings and oral reminders. It is submitted that the plaintiff is, therefore, entitled to decree for specific performance and also decree for Rs. 25 lakhs against the defendants jointly and severally, towards professional fee and expenses.

3. The defendants, in the written statement, denies any completed contract. It is stated that the true facts are that Smt. Shakuntala Educational & Welfare Society was constituted under the Societies Registration Act, for the purpose of imparting education. It (the society) is affiliated to various organizations, including the All India Council for Technical Education (AICTE), and had approached various authorities with plans for construction of the institute and other related buildings. It is submitted that the plaintiff had discussed the question of preparation of plans and architectural services but no concluded contract or arrangement was arrived at. It is urged that the entire construction in the project and all the buildings were completed by M/s. Mohan Khatse & Associates, a renowned Architect of the country, which was associated with the Society since inception. The defendants state that the appointment of that Architect took place on 28.02.2000 for a consultancy fee of 2.5% of the cost of construction, and completion of all works till the issuance of Occupancy Certificate. It is stated that these works were in fact completed in August 2000. The defendants mention about a second block having been taken-up for construction through an Agreement dated 20.12.2000 with M/s. Raj Rewal & Associates and Urban Design Consultants Pvt. Ltd., leading to further construction. The defendants assert that the mere discussions with the plaintiff without any commitment or otherwise did not result in any concluded contract. The defendants deny all allegations to the contrary and on the other hand, contend that copies of documents filed along with the suit are forged.

4. On 20.08.2007, on the basis of the pleadings, this Court framed the following issues:

- (1) Whether the present suit has been signed, verified and instituted by a duly authorized person? OPP

(2) Whether the present suit is time barred as mentioned in the written statement of defendant no.3? OPD

(3) Whether the plaintiff undertook various works on the project as mentioned in the plaint? OPP

(4) Whether the plaintiff was ready and willing to perform his part of the contract and if so, to what effect.

(5) Whether the plaintiff is entitled to the amount claimed in the suit and if so, against whom? OPP

(6) Whether the plaintiff is entitled to any interest and if so, at what rate and what amount? OPP

(7) Relief.

5. This Court notes that the admission/denial of documents was scheduled and concluded on two dates, i.e. 12.05.2003 and 17.09.2004. Both the plaintiff and defendants denied each other's documents.

6. The plaintiff was granted several opportunities, after framing of issues – evident from the orders dated 06.11.2007, 14.03.2008, 22.09.2008, 27.01.2009, 04.05.2009, 15.10.2009, 11.03.2010 and 17.08.2010, to lead evidence. The plaintiff was unrepresented on several occasions. In the circumstances, on 17.08.2010, the plaintiff's evidence was closed. This was noted by the Court on 26.10.2010 and the matter was directed to be listed today for further proceedings/orders. Despite notice of today's date, the plaintiff is unrepresented. In these circumstances, the Court proposes to proceed to deal with the suit on the basis of existing materials in exercise of its power under Order 17 Rule 2 CPC.

7. **Issue No. 1:** Although the onus of this issue was on the plaintiff, the defendants have not seriously contested that the suit was preferred on behalf of the plaintiff through an authorized person. Accordingly, the issue is answered in favor of the plaintiff. The suit is held maintainable.

8. **Issue No.2:** This issue was framed on account of the third defendant's plea that the claim as against it was time-barred. The third defendant was impleaded on 16.11.2005 after the parties had exchanged pleadings. This apparently was on account of the written statement of the first two defendants, submitting that the Smt. Shakuntala Educational & Welfare Society owned the defendant institution and was managing its affairs. This aspect was brought to the notice of the Court at the earliest opportunity – on 21.08.2001. In spite of these, the plaintiff did not choose to

implead the said Society for a further period of four years, which is not only a proper but a necessary party as the relief could have been effectively claimed against it. Section 21 of the Limitation Act reads as follows:

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21. Effect of substituting or adding new plaintiff or defendant - (1) *Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was made a party:*

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

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9. The order dated 16.11.2005 nowhere discloses that claim as against the third defendant would relate back to the institution of the suit. In these circumstances, the consequent spelt-out in Section 21 are attracted (due to the mandate of the provision, which states that the institution of the suit as against that party “shall as regards him.....” be deemed to have been instituted on the date he was made a party. In these circumstances, this issue has to be answered against the plaintiff and in favor of the third defendant. The suit is not maintainable against the said defendants and is time barred.

10. **Issue Nos. 3 to 6:** In this case, the plaintiff alleges that the agreement was entered into with the defendants for services to be given to the latter on 03.04.2000. The plaintiff also alleges that various meetings, consultations and works were undertaken and further that it engaged manpower and spent amounts in processing the works on behalf of the defendants. The plaintiff, despite the denial of its documents by the defendants, did not choose to prove them. In deed the plaintiff did not choose to lead any evidence in this case.

11. It is far too well established that the plaintiff in a suit has to establish his case by positive

evidence and the suit averments have to stand on their legs. The defendants have denied the transaction in entirety and alleged on the other hand that there was no concluded contract. It was, therefore, incumbent upon the plaintiff to lead evidence to establish that such binding contract did exist which was capable of being enforced through a decree of specific performance, and further that it has discharged its obligation and was ready and willing to do so. Also, the plaintiff had to lead evidence to disclose how it was entitled to any amounts claimed by it. There is no evidence in this case. In these circumstances, the Court is compelled to answer all these issues against the plaintiff and in favor of the defendants.

12. **Issue No. 7:** In view of the findings above, the suit cannot succeed, and has to fail. The suit is, therefore, dismissed with costs; counsel's fee is quantified at Rs. 75,000/- to be borne by the plaintiff within four weeks.

**S. RAVINDRA BHAT
(JUDGE)**

**DECEMBER 09, 2010
'ajk'**