

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

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Date of Judgment : 28.9.2010

+R.S.A. No.179/2010 & CM No.17580-17582/2010

M/S ASCENT CONSTRUCTIONS PVT. LTD.

Through: Mr.I.A.Rahmani, ...Appellant
Advocate for the
appellant.

Versus

M/S STANDARD SALES AGENCIES

Through: Nemo.

.....Respondent

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.(Oral)

CM No.17581/2010 (for exemption)

Allowed subject to just exceptions.

R.S.A. No.179/2010 & CM No.17580/2010 (for stay) & 17582/2010 (for direction u/S 151 CPC)

1. This appeal has impugned the judgment and decree dated 18.8.2010 which had endorsed the finding of the Trial Judge dated 31.7.2008 decreeing the suit of the plaintiff in the sum of Rs.74,235/- with costs along with interest @ 12% per annum on an amount of Rs.2,07,265/- from 20.4.2005 till realization on the principal amount of Rs.74,235/-.

2. The impugned judgment had modified the interest quotient.

The modified decree had entitled the plaintiff to recover a sum of

Rs.74,235/- with costs; interest @ 12% per annum on the amount of Rs.2,07,265/- was awarded w.e.f. 20.4.2005 till 19.12.2007 thereafter interest @ 12% per annum on the amount of Rs.74,235/- w.e.f. 20.12.2007 till realization had been awarded.

3. The substantial question of law had been formulated on page 4 and 5 of the memo of appeal. They border upon the statement of account filed by the defendant and the burden of proof having been illegally shifted upon the defendant.

4. The trial Judge while decreeing the suit had placed reliance upon the 58 invoices along with 58 delivery notes which have been proved by the plaintiff as Ex.PW-1/1 to Ex.PW-1/58 and Ex.PW-1/1A to Ex.PW-1/58A. It had also recorded that the written statement revealed that the transaction between the parties had in fact not been denied; it was also not the case of the defendant that the goods had not been delivered to him; Trial Court had noted that there was no evidence to justify a conclusion that any of the bills are inaccurate or that delivery was not made in relation to them. In fact the transactions and the bills themselves were not disputed.

5. Contention of the learned counsel for the appellant before this Court is that statement of account Ex.DW-1/A had not been considered in the correct perspective.

6. The onus to prove both the issues was on the plaintiff, however, in view of the disputed statement of account set up by the defendant Ex.DW-1/A the Trial Court had noted that in a situation as in the instant case where the defendant is unable to prove the inaccuracy of the bills or their non-delivery, the onus lay upon the defendant to justify that the total bill is of Rs.6,27,260/- and not of

Rs.7,01,495/-.

7. In this context the relevant extract of the judgment of the Trial Judge reads as follows:

“11. It has been noted earlier that the defendant is unable to prove either the inaccuracy of the bills or the non delivery of goods. In such a situation, the onus shall lie upon the defendant to justify the total bill amount to be Rs.6,27,260/- and not Rs.7,01,495/-. It is logical to assume that were the defendant proceeding on the basis of a figure of Rs.6,27,260/-, it would have mentioned the same in its reply to the legal notice of the plaintiff dated 02.5.06, Ex.PW-1/67, in which the plaintiff had clearly raised a demand of amount Rs.2,14,335/-. The defendant would have been expected to point out the difference of Rs.74,235/- in its reply dated 13/05/06 Ex.PW1/D1. This was, however, not done. This omission of the defendant clearly establishes that the defendant did not believe Rs.74,235/- to be difference in the calculations done by the parties. It was not sufficient for the defendant to allege a huge difference in the account through this notice without alluding to the differential amount in any manner.

12. The falsehood of the defence of the defendant is also revealed from the fact that despite alleging difference in the bills amount qua several bills mentioned in Ex.DW1/A, the defendant issued a 'C' Form in relation to seven of these disputed bills. The plaintiff brought on record the 'C' Form and also the details of the bills as Ex. PW1/D2 and Ex. PW1/D3 respectively. If indeed the defendant was in disagreement with the bill amount claimed by the plaintiff, there was no reason for it to issue a 'C' Form for the amount claimed by the plaintiff. Pertinently, these exhibits were not challenged during the cross-examination of PW1 and are credible documents. DW1 was specially asked whether a 'C' Form had been issued by the defendant with respect to certain bills including bill No.162 at serial lNo.12 of Ex.PW1/D3 for an amount of Rs.35,225/-. DW1 replied in the affirmative.

13. The difference of Rs.74,235/- asserted by the defendant remains wholly unsubstantiated and is in fact exposed as a concoction in view of the 'C' Form issued by it in relation to the disputed bills. DW1 did offer an explanation to the effect that it is not necessary that 'C' Form be issued only after the satisfaction regarding the receipt of goods. This explanation is unsatisfactory for the reason that this fact too was not incorporated in the reply of the defendant Ex. DW1/D1 dated 13/05/06 to the legal notice of the plaintiff dated 02.5.06.

14. The conclusion is inevitable. The calculation of the bill amount

by the plaintiff amounting to Rs.7,01,495/- is the correct version. The decision of a civil dispute rests on the balance of probabilities. The totality of the evidence tilts the balance in favour of the claim of the plaintiff.

15. The next aspect requiring consideration is the actual payment made by the defendant. The Id. Counsel for the defendant states that the payment made amounts to Rs.4,94,230/- as represented in the details of payment shown in Ex. DW1/A. In its replication, the plaintiff admitted having received an amount of Rs.4,77,000/- but denied the payment of Rs.17,230/-. The defendant has supported the payment with a statement of account. The onus for disproving any payment would, therefore, lie on the plaintiff. The plaintiff has, however, not led any evidence to establish that the payments mentioned at serial Nos.8,10 and 19 in Ex.DW1/A, made to the persons names, were in fact never paid. Two persons by the name of Ram Janam and Nozibur Rahman 9 serial Nos.8 & 10 respectively) have been referred to in this document. Nor did the plaintiff prove in any manner that the debit note for an amount of Rs.6,480/- at serial No.19, was not paid to the plaintiff. In this view, the only conclusion which must be drawn is that the defendant did make a total payment of Rs.4,94,230/-.

16. It has already been held that the correct total amount of all the bills is Rs.7,01,495/-. The defendant having made a payment of Rs.4,94,230/- is, therefore, liable to pay the remaining amount i.e. Rs.2,07,265/-. An amount of Rs.1,33,030/- has already been paid to the plaintiff by the defendant after the institution of the present suit. Resultantly, the defendant must now pay the difference of Rs.2,07,265/- and Rs.1,33,030/- i.e. Rs.74,235/-."

8. The impugned judgment had also endorsed this finding; but to the limited extent interest was modified.

9. The substantial questions of law sought to be raised in the memo of appeal are all fact based; infringing upon the statement of account set up by the defendant which had been considered in an indepth detail by both the Courts below. The onus to discharge the burden of proof on both the issues as already aforenoted was upon the plaintiff; the bills and invoices were not disputed. The disputed statement of account set up by the defendant and his claim that a lesser amount was due and not the amount claimed by the plaintiff

had led the Court to hold that this aspect was to be proved by the defendant which finding calls for no interference.

10. None of the arguments urged before this Court or the substantial questions of law as formulated in the body of the appeal raises any question of law much less any substantial question of law. This Court is not clothed with the jurisdiction to decide any other aspect except a substantial question of law and there being no such substantial question raised in this appeal, the appeal as also pending applications are dismissed in limine.

11. File be consigned to record room.

INDERMEET KAUR, J.

SEPTEMBER 28, 2010

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