

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 29th April, 2011
Judgment Pronounced on: 9th May, 2011

+ **CS(OS) No. 1353/1999**

KAPCO ARTS PVT. LTD. Plaintiff

- versus -

**WORLD EXPO & CONVENTIONS
MANAGEMENT LTD. & ORS. Defendants**

Advocates who appeared in this case:

For the Plaintiff: Ms. Shantha Devi, Advocate

For the Defendant: None

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J

1. This is a suit for recovery of Rs.33,97,247/-. The plaintiff company is engaged in business of providing various exhibition related services including consultancy technical and architectural services to the organizers and participants. Defendant No.1 company is engaged in

business of organizing the exhibitions at different places. Defendant No.2 is the Chairman of Defendant No.1 whereas Defendants No.3 & 4 are its Directors. Defendant No.5 is the Vice President of Defendant No.1. Pursuant to discussions between the parties, Defendant No.1 issued a letter of intent dated 30.5.1998 which was followed by a General Purchase Order (GPO) dated 20.6.1998 for construction of hangars and shells scheme stalls for various exhibitions scheduled to be held between July, 1998 and April, 1999. The contract awarded to the plaintiff company was in respect of 06 exhibitions, first of which was to be held at Chennai from 22nd July, 1998 to 26th July, 1998. As per the terms of the contract Defendant No.1 was to be paid an advance amounting to 20% of the total expenditure, one month prior to the exhibition. The next 25% payment was to be made at erection of hangars and satisfactory installation of air-conditioners and other facilities whereas the balance payment was to be paid within 45 days of completion of exhibitions. It is alleged that the plaintiff company constructed 2880 sq. m. of air-conditioned and 1071 sq. m. of non air-conditioned tentages. As per the terms of GPO and subsequent correspondence, the plaintiff

company sent performa invoices of amount of Rs.36,72,247/- split into three bills. It is alleged that the defendant company cancelled the contract relating to other exhibitions and awarded the same to another company. It is claimed that by that time the plaintiff company had already incurred expenditure to the tune of Rs.7 lac for the exhibitions BangaloreIT.com-1998. The case of the plaintiff is that an amount of Rs.33,97,247/- is still due to it and this includes Rs.7 lac spent by it in respect of exhibitions which were scheduled to be held subsequent to the exhibition at Chennai.

2. The defendants filed WS contesting the suit and took a preliminary objection that the suit has not been instituted, and has not been verified and signed by a competent person. Another preliminary objection taken by the defendants is that the suit is bad for misjoinder of causes of action as the plaintiff has wrongly joined the claim on account of Bangalore exhibition with its claim in respect of Chennai exhibition. On merits, the defendants admitted having issued a GPO dated 20.6.1998 for construction of hangars/shell scheme stalls for various exhibitions to be

organized by defendant no.1. It is alleged that the plaintiff could not fulfill its obligations as envisaged under the GPO and major discrepancies were found in the arrangement made by it. It is claimed that malfunctioning was detected in air-conditioning and hangars were not made water proof. According to the defendants, the plaintiff was intimated that a) there was shortage of about 25-30 tons of air-conditioners b) Cloth sides had been provided in non air-conditioned tentages which was not as per standard practice in international exhibitions and is practically unsafe c) water leakage was observed at many points and d) air-conditioners were found to be tripping due to unbalanced load on generators. It is alleged that the air-conditioners were not tested for their effective operations nor the thermometers and psychrometers were available with the plaintiff. It has been alleged that out of 26 air-conditioners installed by the plaintiff company only 03 were found operational. It is further alleged that cable supplying the electricity had become very hot due to uneven distribution of load and had resulted in snapping of wires and disruption of supply to hall No. F, which was forced to shut down during exhibition hours, for replacement of the

cable. It is also alleged that it was agreed between the parties that the most appreciable way of doing air-conditioning was through a packaged air-conditioner of 7.5-10 tons or by ducting. It is also claimed that on account of breach by the plaintiff the goodwill and reputation of defendant suffered heavily and the popularity of the exhibition dwindled over the years, both in terms of total collection as well as the number of exhibitors. This is also the case of the defendant that all the deficiencies found in the work executed by the plaintiff were agreed to by Mr. Tilak Raj, a Director of the company in meeting held on 26.7.1998. It is also claimed that as per standard practice the area of the passage is 35-40% of the total exhibition area and therefore area of air-conditioning of hangars works out to be about 2600 sq. m. whereas the non air-conditioned hangars works out to be 825 sq. m. It is however admitted that it was the defendant company which had provided generators for Autofest 1998. It is also claimed by the defendant that though the exhibition was to commence from 23.7.1998 the work was in progress upto 2.30 pm on the previous day.

3. As regards expenditure related to BangaloreIT-.com-1998, the case of the defendants is that as per the GPO the plaintiff company was to provide architectural assistance for plan lay out on complimentary basis and therefore cannot claim any compensation for lay-out plant of Bangalore exhibition and in any case the GPO was cancelled before the work for Bangalore exhibition was to be taken up.

4. The following issues were framed on the pleadings of the parties:

1. Whether the suit has been instituted, plaint signed and verified by duly authorized person? – OPD
2. Whether the suit is bad for mis-joinder of cause of action? – OPD
3. Whether the agreement dated 20.06.1998 was altered and/or modified by the corrigendum dated 7th July, 1998 executed between the parties? If so, what is its effect? – OPP
4. Whether the defendant had failed to provide the

electricity supply in terms of the agreement? If so, what is its effect on the claim of the plaintiff?
- OPP

5. Whether the defendant committed the breach of the terms of the agreement entitling the plaintiff to claim the amount in this suit? – OPP

6. Whether the plaintiff had failed to provide air-conditioning system for the entire complex for exhibition and the defendant had terminated the contract for that reason in terms of the agreement? – OPD

7. What amount including the rate of interest, if any, the plaintiff is entitled to? - OPP

Issue No.1

5. The plaint has been signed, verified and instituted by Shri Ajay Kapoor, Director of the plaintiff company. Exh. PW-1/A is the copy of the resolution passed by the Board of Directors of the plaintiff company in its meeting held on 15.5.1999 authorizing Mr. Kapoor to institute the suit and sign and verify the documents. Even otherwise in view of

provisions contained in Order 29 Rule 1 of Code of Civil Procedure (CPC), in a suit by a company, pleadings can be signed and verified by Secretary/Director or other Principal Officer of the company. The suit therefore has been instituted, and the plaint signed and verified by a competent person. The issue is decided against the defendants and in favour of the plaintiff.

Issue No.2

6. Order 2 Rule 3 of the Code of Civil Procedure to the extent it is relevant provides that a plaintiff may unite in the same suit several cause of action against the defendant or the same defendants jointly. Hence, the plaintiff company could have joined the cause of action in respect of its dues for Chennai exhibition as well as its claim for the expenses alleged to have been incurred in connection with Bangalore exhibition in the same suit. The issue is decided against the defendants and in favour of the plaintiff.

Issues No. 3-6

These issues are inter connected and can be decided together.

7. The plaintiff has examined five witnesses. The defendants filed affidavit of one witness viz. Mr. Mukesh Arora by way of evidence but did not produce him for cross examination and therefore the affidavit cannot be taken into consideration.

8. In his affidavit by way of evidence Mr. Vijay Kapoor (PW-4) stated that there was no deficiency in providing services on the part of the plaintiff. He has further stated that it was for the defendant company to provide power supply but the supply provided by the defendant was neither proper nor adequate. He has claimed that the defendant company has illegally withheld the balance payment for the work done for it by the plaintiff company.

9. PW-5 Mr. Ashok Chitkara was an employee of the plaintiff company and supervising the general work at the site during Autofest-1998 organized by the defendant company. In his affidavit he has stated that the requirement of power was sent to the defendant company vide letter Exh. PW-1/D and the plaintiff company had completed its part of the contract for the above show in all respects, without there being any inefficiency or deficiency.

According to him there was no adequate/efficient power supply at the site due to which some air-conditioners were not functioning.

10. PW-2 Mr. Rakesh Gaind is the consultant who was engaged by the plaintiff company for air-conditioning of the exhibition. He has stated that they completed their job but there were some deficiencies. According to him they had completed the entire job of fixing the air-conditioners but the same could not be tested since there was no power supply and whatever supply was available, its voltage was not proper. According to him while staying at Chennai from 16.7.1998 to 26.7.1998 he had brought these difficulties and drawbacks in relation to the power supply to the notice of the plaintiff as well to the defendant and Exh. PW- 2/1 is the report which he had submitted to the plaintiff company with respect to the work. During cross examination, he stated that they had made arrangement for 2500 sq. m. of area for which 400 tons of air-conditioners was required and the air-conditioners provided by the plaintiff were of good quality. According to him different voltage was require for different air-conditioners, some of which required 220 V

while others required 440 V. He has stated that 10 generators were supplied to them which were giving 40-45 Kws. He stated that though the labels on the generators indicated 60 Kws, during testing by his persons in his presence, the outcome was found to be 40-45 Kws and these generators were capable of giving 440 V. According to him the total power was 500 Kws as against required of 900 Kws and therefore the power provided was not sufficient to run 400 tons of air-conditioners. During cross examination, he admitted that in one of the halls, the air-conditioners had to be shut down because of heating up of wires but this, according to him, might have happened because there were too many halogens lamps. He stated that the plaintiff as well as exhibitors was told that excess halogen lamps should not be put in the exhibition. He has claimed that installation of air-conditioners was complete in the night of 21.7.1998 but the air-conditioners were not tried since full power load was not available. He admitted that temperature in halls was not comfortable since air-conditioners were not functioning properly.

11. PW-3 Shri J.C.Bhalla was working with the

plaintiff company from June, 1998 to June 2003 and was Manager In-charge for the work at the site of Autofest-1998. He was supervising the general work from 11.7.1998 to 26.7.1998. He has stated that the plaintiff company had completed its part of the work in all respects and there was no inefficiency or deficiency of any kind in work provided by the plaintiff company, though there was inadequate/insufficient power supply at the site which was the responsibility of the defendant company. PW-4 Mr. Vijay Kapoor is another Director of the plaintiff company. He has stated that he was controlling the affairs of Autofest-1998 work and was the Director In-charge at the site from 13.7.1998 to 24.7.1998. He also maintained that there was no deficiency in service in part of the plaintiff company and it was the defendant company which did not provide sufficient power supply to run the air-conditioners.

12. A perusal of Exh. P-2 which is the GPO dated 20.6.1998 would show that as per the agreed rates between the parties the plaintiff company was to be paid as follows:

Sheds/Tentages with Air-condition Rs.750/- per sq.m

Sheds/Tentages without Air-condition Rs.550/- per sq.m

Standard Shell Scheme	Rs.400/- per sq. m
Synthetic Gangway Carpet-New	Rs.90/- per sq. m
Synthetic Gangway carpet – Old	Rs.65/- per sq. m

13. Exh. PW-4/A (colly) are the invoices by the plaintiff company on the defendant company for the work done for Autofest-1998. A perusal of invoices would show that the plaintiff company raised invoices for 2880 sq. m. AC Tentages, 1071 sq. m. Non-AC Tentages, 892 Sq. m for Exhibitors' Area, 145.5 sq. m for Organiser's office, business lounge and 1535.42 sq. m for Gangway Carpet area making of total sum of Rs.32,34,752.30. The plaintiff company also raised invoices of Rs.2,72,495/- for the furniture, TV/VCR/Refrigerator etc. and for the carpet and additional panels. The plaintiff company raised another invoice of Rs.1,65,000/- for erection of welcome gate, main gate, sponsored tower, ramp at entry gate in parking area, special pillar fabrication in Bajaj Auto Stand and general lighting near main gate, lily pond area etc. This is not the case of the defendants that the plaintiff company had not provided tentages for the quantity mentioned in the invoices dated 4.8.1998 nor do they claim that the plaintiff company did

not provide stand construction and gangway carpet as claimed in this invoice. Similarly this is not the case of the defendants that chairs and other materials mentioned in the invoice for Rs.2,72,495/- were not provided by plaintiff company. They also do not claim that the work charges for which have been claimed in the invoices for Rs.1,65,000/- were not executed by the plaintiff company. The entire defence taken by the defendants is that there were gross deficiencies in the work executed by the plaintiff company and in particular adequate air-conditioning was not provided which resulted in discomfort to the visitors and had the consequences on goodwill and reputation of the Defendant Company besides resulting in reduction in number of exhibitors and visitors. This is also the case of the defendants that instead of laminated panels, cloth panels in non air-conditioned tentages were provided by the plaintiff company. The third deficiency claimed by the defendants is that water leakage was observed at a number of points though very light shower had occurred during the night and early morning. No evidence has however been led by the defendants to prove the alleged deficiencies. As regards air-conditioning the deposition of Mr. Rakesh Gaind

(PW-2) corroborated by testimonies of Mr. J.C.Bhalla and Mr. Ashok Chitkara would show that the electricity was to be provided by the defendant company and not by the plaintiff and the supply provided at the site was grossly inadequate the same being only 440 Kws as against requirement of 900 Kws. The generators at the site were provided by the defendant company as is evident from the WS wherein this fact has been expressly admitted as also from Exh. PW-5/A, which are the minutes of the meeting held with Mr. Ashok Chitkara of the plaintiff company. A perusal of the bill dated 25th July, 1998 raised by Bharathi Electrical on Mr. Mukesh Arora, President of the defendant company; a copy of which has been filed by the defendant and therefore can be read against it, would show that only one generator was provided for three hours on 19.7.1998, three generators; one for twelve hours, the second for three hours and the third for three hours were provided on 20.7.1998 and ten generators; four for thirteen hours each, one for twelve hours, three for ten hours each and two for 14 hours each were provided on 21.7.1998. Thus, adequate generators were not provided in time. In the absence of generators, air-conditioning could not have been checked

prior to 21.7.1998. The deposition of Mr. Gaind and other witnesses would show that the generators provided by the defendant company were capable of giving only 440 V whereas some of the air-conditioners required generators capable of giving 220 V. It is evident from his deposition and the report Exh. PW-2/1 furnished by him that had the defendant company provided adequate power supply and had the generators been provided on time, in sufficient number and been giving required voltage the air-conditioners could have been tested well in time and would also have properly functioned during the festival. There is no evidence on record to prove that the air-conditioners provided by the defendant company were inadequate for the air-conditioning of tentages provided by it and/or were not of good quality. If some of the air-conditioners could not function or were malfunctioning due to non-availability of power and the generators being of inadequate capacity and not capable of giving required voltage the plaintiff company cannot be faulted for the air-conditioned tentages not being comfortable and temperature therein being rather high. No doubt the temperature in hall was not comfortable and the air-conditioners were not functioning properly as admitted

by Mr. Gaind but the responsibility for this malfunctioning cannot be attributed to the plaintiff company.

14. It has come in the deposition of Mr. Gaind that some air-conditioners had to be shut down because of heating up of wires this however according to the witness might have happened on account of how many halogen lamps have been put in the halls despite the exhibitors having been told that excess halogen lamps could not be put. There is no evidence before the Court to indicate that heating up of the wires could not have been on account of excess number of halogen lamps. It has come in the evidence of the plaintiff that extra halogen lamps were put in the hall. There is no evidence to indicate that the halogen lamps put in the halls were not in excess quantity. Therefore, shutting down of air-conditioning in one of the halls cannot be attributed to the plaintiff company.

15. As regards, partitions in tentages area being of cloth instead of being laminated there is no evidence to prove the alleged deficiency. The plaintiff has claimed that the partitions were not of fabric. Moreover, there is no evidence of the exhibitors or visitors facing any discomfort

in non air-conditioned tentanges on account of the partitions being of fabric instead of being made of laminates. Regarding alleged water leakage, again there is no evidence to prove the alleged leakage or its extent as well as the points from where the water is alleged to have leaked.

16. The main defence taken by the defendants seems to be that Mr. Tilakraj, a Director of the plaintiff company in a meeting held on 26.7.1998 had admitted the deficiencies claimed by the defendants. A perusal of the minutes would show that on 19.7.1998 it was found that the air-conditioners had not been tested for their effective operations and the air-conditioners were tripping after some time and the defendant was asked to check the effectiveness of the air-conditioning system. As noted earlier, neither delay in testing the efficiency of air-conditioners nor their tripping can be attributed to the plaintiff company. These minutes also show that on 26.7.1998, it was found that air-conditioners had not been put into operation except in Hall A, where 10% of the air-conditioners were operational and the representatives of the plaintiff were asked to take all possible efforts to ensure that the air-conditioners were in

working condition with proper load distribution. As noted earlier the deficiency in air-conditioning was attributable to failure of the defendant to provide adequate power and is not attributable to the plaintiff company. There is an observation recorded in these minutes that the wires had become very hot. It has come in evidence that this was due to excess number of halogen lamps having been put in the hall. There is no material to indicate that this was attributable to any deficiency on the part of the plaintiff company. It has been noted in these minutes that Mr. Tilak Raj affirmed that he also had come to know that the temperature inside the hangars could not be brought down to a comfortable condition and at certain places equipment had to be replaced and he further confirmed that air-conditioning was not satisfactory, despite all possible efforts and right system of doing air-conditioning would have been through packaged air-conditioners of 7.5 to 10 tons or by ducting. It was further noted in these minutes that the side walls of non air-conditioned hangars had been covered by cloth which was torn at many places and as a result the hangars could not be closed. It is also noted that Mr. Tilak Raj agreed that it would have been better, if they had made

electrical load diagram so that uneven distribution and overloading at certain points could have been avoided. In his affidavit by way of evidence Mr. Tilak Raj has stated that he was not concerned with Autofest at Chennai and had no connection or coordination with the defendants in this regard. According to him during the casual visit on 26.7.1998 Mr. Mukesh Arora of the defendant compelled him to sign the minutes in spite of the fact that other General Manager, Dy. General Manager and other officials of the plaintiff company were present at the site. He has stated that no other official of the plaintiff company present at the site was allowed to enter into the cabin where the minutes were signed and he was threatened by Mr. Mukesh Arora that if he did not sign the minutes, the plaintiff company would not be allowed to remove the goods placed at the site. He has further stated that on repeated requests Mr. Mukesh Arora allowed him to call Mr. Ajay Kapoor who told him that goods lying at the site worth crores of rupees and non-removal of those goods from the site after specified time would attract penalty of Rs.75,000/- per day in terms of the GPO and therefore he signed those minutes on the advice of Mr. Kapoor. Thus, according to him these minutes

were signed by him under coercion and duress. The deposition of Mr. Tilak Raj finds corroboration from the deposition of Mr. J.C.Bhalla and Mr. Ashok Chitkara. The defendants have not come forward to produce any evidence and therefore the aforesaid deposition of Mr. Tilak Raj corroborated by testimonies of Mr. Ashok Chitkara and Mr. J.C.Bhalla remains uncontroverted and unchallenged. I, therefore see no reason to disbelieve the plea and accordingly hold that these minutes were not agreed by Tilak Raj of his free consent and he was made to sign under coercion since without Mr. Tilak Raj signing the minutes, the plaintiff would not have been allowed to remove its goods worth crores of rupees from the site and also would have been liable to pay damages amounting to Rs.75,000/- per day for not removing them from the exhibition site.

17. Exh. D-2 is a bill of Rs.38,500/- raised by Bharathi Electrical on the plaintiff company in respect of electrical services and hiring of fans whereas Exh. D-3 is a letter addressed by Mr. Tilak Raj of the plaintiff company to Bharathi Electrical agreeing to pay a sum of Rs.1,20,000/- towards additional generators and cable etc. The case of the

plaintiff is that this letter was also obtained under coercion when the minutes dated 26.7.1998 were got signed from Mr. Tilak Raj. The expression used in this letter coupled with the date which appears on it, tend to support the case of the plaintiff in this regard. Ordinarily, there would be no reason for the plaintiff company to write such a letter to Bharathi Electrical and give it to the defendant, in case the additional generators were hired by the plaintiff company. Moreover, as noted earlier the defendant has admitted that the generators were to be provided by the defendant company and this is also borne out by Exh. PW-5/A i.e. minutes of the meeting with Mr. Ashok Chitkara. Also, there is no evidence on record to prove that requirement of additional generators arose on account of some deficiency on the part of the plaintiff company in providing services for Autofest-1998 therefore, nothing really turns on these documents.

18. Admittedly the invoices raised by the plaintiff company in respect of Autofest-1998 were of total sum of Rs.36,72,247/- out of which a sum of Rs.9,75,000/- stands paid to the plaintiff company leaving a balance of Rs.26,97,247/- which remained payable to the plaintiff

company in connection with Autofest-1998. The plaintiff company has also claimed a sum of Rs.7 lac in connection with the exhibition which was scheduled to be held at Bangalore. This comprises a sum of Rs. 2 lac as advance as per lay out and another sum of Rs.5 lac for making arrangements of material site visits, site measurements etc. for Bangalore exhibition. A perusal of the payment terms contained in GPO dated 20.6.1998 would show that 20% advance payment was to be made one month prior to exhibition. Had the plaintiff company actually executed the Bangalore exhibition, this advance payment if made by the defendant company, would have been adjusted in the bill of the plaintiff company. Therefore, since the work was not actually executed, the plaintiff company is not entitled to this amount. Assuming that there was a breach on the part of the defendant company when it cancelled the GPO, the plaintiff company would be entitled only for compensation of the actual loss, if any, suffered by it on account of cancellation of work in respect of other exhibitions. No evidence has been led by the plaintiff company to prove that it had incurred expenditure of Rs.2 lac on preparation of lay out plan. Similarly, no evidence has been led by the

plaintiff company to prove that it had incurred expenditure of Rs.5 lac for arrangement of material and on site visits/site measurements etc., in absence of such evidence, the plaintiff company is not entitled to any amount on account of cancellation of the purchase order. The issues are decided accordingly.

ORDER

19. For the reasons given in the preceding paragraphs a decree of Rs. 26,97,247/- with proportionate costs and pendent lite and future interest @ 12% p.a. is passed only against defendant no. 1, as the contract was only between plaintiff company and defendant no.1 company. The plaintiff is not entitled to recover any amount from the other defendants. The suit against defendants no. 2 to 5 is therefore dismissed with no orders as to costs.

Decree Sheet be prepared accordingly.

(V.K. JAIN)
JUDGE

MAY 09, 2011
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