

IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 486/2000

17th February, 2011

M/S. ANANT RAJ INDUSTRIES LTD. Appellant
Through: None.

VERSUS

M/S. DLF CONSTRUCTION & ENGINEERING Respondent
Through: Mr. Anil Kumar Seth with
Mr.Mithun K.S.Rathore, Advs.

**CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

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

VALMIKI J. MEHTA, J (ORAL)

1. This case was argued on behalf of the appellant on 15.2.2011. Today no one appears for the appellant. I have therefore heard the learned counsel for the respondent and am proceeding to pass the judgment.

2. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 12.6.2000 whereby the suit of the appellant/plaintiff for recovery was dismissed by holding that the appellant/plaintiff failed to prove

that payment was not made for goods having been sold to the respondent/defendant under the disputed bills/invoices, Ex.PW1/5 to Ex.PW1/8. Qua one of the invoices it was held that the plaintiff/appellant failed to prove that any goods were supplied.

3. The facts of the case are that there was relationship of buyer and seller between the parties whereby the appellant/plaintiff claimed to have sold goods, being ceramic tiles, to the respondent/defendant. A running account was maintained, and the appellant/plaintiff filed a suit for recovery on the basis of the running account. The respondent/defendant appeared and contested the case. The stand of the respondent/defendant was that with respect to each bill, a specific cheque qua that particular bill was issued, and all the bills by which supplies were made, were duly cleared. It was further argued that at the time of preparation of the cheque, a bill summary used to be prepared and unnecessary charges which were claimed by the appellant towards insurance, transportation and so on were reduced and the cheque was paid for the amount actually due. The bill summary on each occasion used to be given to the plaintiff/appellant before the cheques for payment used to be issued.

4. Both the parties led evidence and filed their statement of accounts in the Trial Court which were duly exhibited. On the basis of the evidence led by the parties, the Trial Court arrived at a finding of the fact that with respect to the disputed bills, no payments were due because out of

the 4 bills, 3 were paid and no goods were proved to be supplied under the 4th bill. The relevant paragraphs of the judgment of the Trial Court, which summarizes the position are paras 13 and 14 which read as under:-

“The only dispute between the parties is about reconciliation of accounts. While the plaintiff states that defendant has not paid balance amount as per running account maintained by the plaintiff, the defendant says that it has paid the entire amount as per the running account maintained by the defendant. Both the parties have produced their ledger in order to prove their point. It is admitted by the plaintiff witness that the defendant has been making payment as per bills and with every payment, a bill summary has been given by the defendant. It seems, a dispute arose between the parties about payment of certain amounts in the year 1995-96. In 1995, plaintiff vide letter dated 31.3.95 Ex.DW1/3, wrote to the defendant requesting clearing of all due payments in time to make it convenient for the plaintiff to supply the material on time. The plaintiff, however, did not specify what were the due amount. The plaintiff’s witness in his testimony has categorically stated that n o letter has been placed on record allegedly written by the plaintiff to the defendant asking for nay payment of the due amount. On the other hand, there is a letter written defendant Ex.DW1/4 wherein the defendant has stated as under:

“ Regarding settlement of your account and payment of your outstanding bills, we have already submitted you a reconciliation statement of your account.

During the meetings with you we have explained that difference is mainly due to following reasons:-

1. Bills are not raised as per the terms of purchase orders.
2. Following bills are not appearing in our books for which you have to give proofs that the material is received by us:-

Bill No.	Date	Amount In Rs.
692	13-10-92	2,902.77
693	13-10-92	27,142.65
694	13-10-92	27,200.99

Since our Sales Tax assessment for the year 1992-93 is to be finalized by 29-03-96, you are requested to hand over the Sales Tax Forms without any further delay on 29th morning otherwise the liability arising out of non-submission of sales tax forms will be on your account which will be Rs.11.65 lacs for the year 1992-93.

14. The purchase orders Ex.PW1/3 and Ex.PW1/4 which have been placed by the plaintiff on record are only subsequent purchase orders. It is not the case of the plaintiff that the payment of the supplied made against these purchase orders have not been made. Similarly, the invoices Ex.PW1/5, 6, 7 and 8 are the invoices in respect of the material supplied by the plaintiff to the defendant. It is not the case of the plaintiff that the payment against these invoices has not been received. Plaintiff's contention is that there was running account between the parties and as per running account, the amount of Rs.1,98,341.90 was due with the defendant. On the other hand, defendant has proved its own running account showing that the entire payment has been made. In such a case it was incumbent upon the plaintiff to prove the supplies made by the plaintiff to the defendant against which the payments have not been made by the defendant. The defendant has specifically proved the payments of the three bills about which the dispute was raised by the plaintiff. These bills have been paid as per the bank certificate Ex.DW1/P1 vide cheque no.254937, 254955 and 216316. The defendant has also filed statement of account obtained from the bank showing that these amounts of the cheques have been credited in the account of the plaintiff. At no point of time plaintiff had written any letter to the defendant to show which were the bills which were in dispute, rather it was the defendant who had written to the

plaintiff about three disputed bills and requested the plaintiff to give proof of the material supplied. I consider that the plaintiff has miserably failed in proving that any amount was due and recoverable by the plaintiff from the defendant."

5. I completely agree with the findings and conclusions of the Trial Court. Simply by filing a statement of account, a suit cannot be decreed for recovery of money unless the entries are proved which show the sale of goods. Of course, statement of account of the appellant/plaintiff may have been good enough if the respondent/defendant had not filed its statement of account and other evidences, however, the respondent/defendant not only filed its statement of account but the Trial Court has also relied upon the admission in the cross-examination of the appellant's/plaintiff's witness that with respect to each bill a summary used to be prepared and a cheque used to be issued with respect to each bill. With respect to the disputed bill except for an entry in the statement of account no proof was filed that the goods were actually supplied.

6. I therefore do not find any illegality or perversity in the impugned judgment and decree which calls for interference. The Trial Court has rightly held that the appellant failed to discharge its onus to prove the claim of any due under the bills. The appeal is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 17, 2011
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VALMIKI J. MEHTA, J.