

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

+ **RFA No.140/2001**

% 3rd February, 2011

M/S SHEFFIELD APPLIANCES LTD.
HAVING ITS OFFICE AT B-27-28,
SECTOR I, NOIDA (U.P.)

..... Appellant

Through: None

VERSUS

M/S STOW PACK INDUSTRIES
HAVING ITS OFFICE AT
G & J (U) 4B-A, PRITAMPURA, DELHI

..... Respondents

Through: None

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 is on the Regular Board of this Court since 3.1.2011. No one appears for the parties although it is 2.30 p.m. This case is effective item no.2 on the Regular Board of this court today. I have therefore perused the record and I am proceeding to dispose of the matter.

2. Challenge by means of this Regular First Appeal is to the impugned judgment and decree dated 15.1.2001 whereby the suit of the respondent/plaintiff has been decreed. Recovery was claimed by the respondent/plaintiff on account of having supplied corrugated boxes and cartons to the appellant/defendant.
3. The facts of the case are that as per the order placed by the appellant/defendant, the respondent/plaintiff supplied 1650 boxes 1x1 for a sum of Rs.29,172/- vide bill no.3872 dated 11.10.1998 and also vide bill no.3874-3877 dated 17.10.1998 and 30.10.1998 for a sum of Rs.19107/- and Rs.50,721/- respectively. The total value of material supplied came to Rs.99,000/-. The respondent/plaintiff also conducted job work for a sum of Rs.5,200/- for which bill no. 9899 dated 17.10.1998 was raised by the appellant. Since the appellant/defendant paid only Rs.21,970/-, the suit for recovery was filed after the plaintiff sent several letters dated 24.4.1999, 12.6.1999, 14.6.1999, 5.7.1999, 15.10.1999 and 2.2.2000, asking for the balance amount. In the suit it is also prayed that since the appellant/defendant failed to give the C' form pertaining to sales tax, the appellant/defendant was also liable to pay 6% extra charges amounting to Rs.5712/-.
4. The appellant appeared/defendant in the suit and contested the suit on the ground that they had rejected the materials as they were defective. The appellant took a stand that there was an agreement that only 2835

numbers 3 ply (1x1) inner box would be accepted under deviation on 50% rate deduction and 350 numbers 3 ply (1x1) inner box were rejected and the respondent/plaintiff was to lift the same immediately.

5. After the pleadings were completed the trial court framed the following issues :

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- 1) Whether the suit is not maintainable as the suit has not been signed verified by proper and competent person?
- 2) Whether the plaintiff is entitled to the amount claimed?
- 3) Whether plaintiff is entitled for interest if so, at what rate and for which period?
- 4) Relief.

Later on additional issue was framed whether the goods supplied by the plaintiff were rejected by the defendant?”

6. The main issue which is dealt with is issue no.2. While discussing these issues, the trial court has referred to the exhibited bills being Ex.PW1/2 to PW1/4. The accounts were also proved as Ex.PW1/5 to PW1/6. The trial court also rejected the letters which were allegedly sent by the appellant/defendant to the plaintiff being Ex.DW1/4 to DW1/7 because there was no proof of sending of these letters and nor any postal receipt was filed on record to show that these letters were actually delivered to the respondent/plaintiff. Trial court has further held that there is no material to substantiate the story of negotiations as set up by the appellant/defendant that there was an agreement to give 50% concession and also reject certain goods. The summary of the findings

and conclusions of the trial court are contained in paras 8 and 9 with which I agree and which read as under :

“8. As against this defendant has taken the objection that the goods were rejected by the defendant and as per the negotiation held between the plaintiff and defendant plaintiff has accepted 2835 boxes at 50% costs and remaining 350 boxes had to be lifted by them. Ashok Bhardwaj DW-1 stated before the court that the goods were received by him, he is Assistant Store Officer, goods were received by him and he received the goods vide Ex.DW1/1 to Ex.DW1/3. The goods were rejected vide letter Ex.DW1/4, DW1/5 and Ex.DW1/6 and Ex.DW1/7, but as argued by the counsel for the plaintiff neither there is any proof of sending these letter nor any postal receipt have been filed on record to show that these letters were actually delivered to the plaintiff. DW-3 Vasu Saxena stated that there was negotiation between plaintiff and defendant as per which plaintiff pleaded for acceptance of the goods at 50% costs. To corporate and help them they accepted their request out of total boxes 350 pieces were not totally acceptable and the remaining pieces were accepted at deviation at 50% of prices. In cross examination he stated that one Mr. Jain negotiated this with the plaintiff. But that Mr. Jain could not be identified by the witness. It could not be proved specifically whether nay negotiations held for reduction of the prices ad acceptance of the article by the plaintiff at 50% deviation prices. There is no material to substantiate this negotiations story of the defendant which is not duly proved by the defendant specifically when defendant company is limited company and some record of these negotiations were required to be kept and specifically when it is not proved that the rejection was ever communicated to the plaintiff as letters through which such negotiations were stated to be held were not proved to be delivered to the plaintiff. The quality Inspector who was produced by the defendant admitted sample box Ex.PW1/10. He stated that there was some variation in the printing as against the specified material. No such pleading have been submitted by the defendant to show how the goods were rejected and what was the material difference in goods supplied to defendant against specification. The so called Specialist Deepak Dubey stated that there is some similarity between Ex.PW1/10 and Ex.PW1/D1 and ExPW1/D3 to

ExPW1/D5, but, he was never shown the boxes earlier and he has admitted that he has come to depose as one of other person working with the defendant was his friend. Moreover, before the court only four boxes were produced as per the case of the defendant 350 boxes were rejected. Counsel for the plaintiff has argued that these boxes were not produced as the same were used by the defendant. The variation and specification has been specified box ExPW1/10 has not been duly proved on record. It has not been proved on balance of probabilities by the defendant through their pleadings and evidence that any negotiations held as per which 2835 boxes were accepted and remaining 350 boxes were rejected and to be lifted out-rightly by the plaintiff. hence, this has not been proved on record and goods supplied vide bill ExPW1/2 to ExPW1/4 were defective. Accordingly, this additional issue stands disproved and is decided in favour of the plaintiff and against the defendant.

9. In view of my finding on additional issue and in view of the fact that plaintiff has duly proved on record that they supplied articles vide ExPW1/2 to ExPW1/4 beside job work of Rs.5,200/- alongwith 6% on account of non-supply of C'form which is duly accepted by the defendant. Plaintiff is entitled to Rs.99,000/- plus Rs.5,172/- on account of non-supply of C'form Rs.5,200/- on account of job work vide bill dt.17/10/98 out of which only sum of Rs.21,970/- was paid through cheque. Hence plaintiff is entitled to amount claimed."

7. I do not find any illegality or perversity in the impugned judgment and decree which calls for interference by this court. At the time of admission of the appeal it was contended on behalf of appellant that the document Ex.PW1/9 reflects a settlement. For ascertaining this aspect I have gone through this letter dated 3.6.2000 addressed by the appellant/defendant to the respondent/plaintiff and I do not find that it is a settlement at all. First of all, it is not a settlement in the usual sense of the term of having been signed by both the parties because it is a letter written by the

appellant/defendant to the respondent/defendant. Further, if really the boxes were defective, then the respondent/defendant would not have used the same. I find that the trial court has noted the argument on behalf of the respondent/plaintiff that the alleged defective boxes were not returned because the same were in fact used by the appellant/defendant. Trial court has also noted that in the cross examination of the appellant's witness, it was stated that one Mr. Jain negotiated for the settlement, however, that Mr. Jain could not be identified by the witness. Reference to the said Mr. Jain is the person mentioned in Ex.PW1/9. Merely because two views are possible, this court is not entitled to interfere with the view taken by the trial court unless the view is wholly illegal or perverse. The appellant/defendant having used the boxes, therefore, it cannot lie in its mouth to refuse to make payment for the supplies which it received.

8. However, the interest which has been granted by the trial court is at an abnormally high rate of 24% per annum which is against the ratio of the Supreme Court in its recent chain of decisions reported as ***Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others, 2005 (6) SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and others, 2006 (11) SCC 181, Rajasthan State Road Transport***

Corporation v. Indag Rubber Ltd., (2006) 7 SCC 700 & Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra, 2007 (2) SCC 720 and State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd (2009) 3 Arb. LR 140 (SC) and in which judgments it has also been held that if there is long pendency of litigation the rate of interest must be reduced, more so because of constant fall in the interest rates in the present economic scenario. Accordingly, I reduce the rate of interest from 24% per annum to 12% per annum simple. This interest will be granted for the same period for which the trial court has granted the same and with respect to which I am not inclined to interfere. In view of the above, the appeal is partly allowed by reducing the rate of interest to 12% per annum from 31.1.1999 to 31.3.2000 and also the same rate for pendente lite and future interest till realization.

9. Appeal is thus partly allowed. Decree sheet be prepared. Trial court record be sent back.

February 03, 2011
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VALMIKI J. MEHTA, J.