

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

+ **RFA No.509/2002**

% **November 16, 2011**

RAKESH KUMAR Appellant

Through: Mr. C.B.N. Babu, Advocate

Versus

THE NUCLEAR SCIENCE CENTRE & ORS. Respondents

Through: Mr. A. Konar, Advocate

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 Regular First Appeal filed under Section 96 of the Civil Procedure Code, 1908 (CPC) impugns the judgment and decree of the trial court dated 02.04.2002 by which the suit of the appellant/plaintiff for recovery of ₹ 3,50,963/- was dismissed.

2. The facts of the case are that the appellant-contractor was awarded a contract for making a New Bitumen Road for the respondent No. 1/Nuclear Science Centre vide letter of intent dated 01.03.2000. The total estimate of the work to be done was ₹ 12,42,000/- and bills were to be submitted as per the actual measurement of work done from time to time. The work relating to seal coat was to be done @ ₹ 20/- per square meter. The appellant/plaintiff claims to have completed the work and submitted a final bill. After giving due adjustment for payment made, it was claimed that an amount of ₹ 2,24,798/- was due. It was stated that the respondents/defendants through their letter dated 11.05.2000 pointed out certain defects which were rectified by the appellant/plaintiff. The appellant/plaintiff also claimed that an extra work to the tune of ₹ 39,632/- was done. The subject suit came to be filed for recovery of ₹ 2,24,798/- as the balance payment of the work done, an amount of ₹ 83,517/- as security deposit and ₹ 42,648/- as interest @ 24% per annum totaling to ₹ 3,50,963/-.

3. The respondents/defendants contested the suit and pleaded that as per the joint inspection carried out between the parties on 08.05.2000 it became

apparent that the work of the appellant/plaintiff was not satisfactory and therefore a detailed list of works to be rectified was supplied to the plaintiff/appellant vide letter dated 11.05.2000. Though the appellant/plaintiff by its letter dated 22.05.2000 claimed that deficiencies were removed, however, when the representatives of the Central Roads Research Institute (CRRI) visited the site on 25.05.2000 it was found that there were deficiencies in the work and which were pointed out to the appellant/plaintiff vide a letter dated 31.05.2000. The appellant/plaintiff by means of two letters dated 07.06.2000 (Ex. DW-1/2) and 19.06.2000 (Ex. DW-1/3) admitted the defects in the work and promised to rectify the same, however, the work which was to be done after a rainy season was not done by the appellant/plaintiff and therefore this was notified to the appellant/plaintiff by the respondent No. 1/defendant No. 1 vide its letter dated 26.09.2000 (Ex. DW-1/1). It was also pleaded that the appellant/plaintiff relied upon a report of the CRRI dated 26.07.2000 (Ex. PW-1/12), however, that report only dealt with the content of the Bitumen in the seal coat but not with respect to the issue of the defective nature of work.

4. The trial court after the pleadings were completed framed the

following issues:

- “1. *Whether plaintiff has not performed the contract to the satisfaction of the defendant, if so its effects? OPD*
2. *Whether defendants have made payment in respect of the agreement to the plaintiff save and except the final bill which could not have been paid until the works were completed satisfactorily and the defects rectified? OPD*
3. *Whether the defendants are entitled to with-hold the amount of contract of seal-coating alongwith security deposit? OPD*
4. *Whether plaintiff is entitled to amount claimed? OPP*
5. *Relief.”*

5. The trial court has dismissed the suit by holding that the admitted documents Ex. DW-1/2 dated 07.06.2000 and Ex. DW-1/3 dated 19.06.2000, being the letters of the appellant/plaintiff himself, admitted the defective work, which admittedly was not rectified and, therefore, the appellant/plaintiff was not entitled to suit amount.

6. Learned counsel for the appellant argued that the report of the CRRI dated 26.07.2000 (Ex. PW-1/12) clearly showed that there was no defect in the work and, therefore, the suit ought to have been decreed. It was argued that letters of the appellant/plaintiff to the defendants dated 07.06.2000 and

19.06.2000, Ex. DW-1/2 and Ex. DW-1/3 respectively, were got signed under coercion and pressure and, therefore, cannot be relied upon.

7. In order to appreciate the first contention of the appellant/plaintiff, it was necessary to refer to the document Ex. PW-1/12 which is relied upon by the appellant/plaintiff to claim that there is no defective work. This report is in fact a letter from CRRRI to the respondent No. 1 and the same reads as under:

“F.P. 3D(2)/331

Dated : 26th July, 2000

To

*Shri M.K. Gupta,
S.E. (Civil),
Nuclear Science Centre
Post Box No. 10502,
Aruna Asaf Ali Marg
New Delhi – 110067 (India)*

Sir,

Kindly refer to your letter No. NSC/9.85 dated 10th July, 2000. The sample of seal coat sent by your department has been tested.

The test results are as under:

<i>1. Bitumen Content</i>	<i>8.89%</i>
<i>By weight of Mix</i>	

2. *Sieve Analysis*

*2.36mm. – 100% Passing
180 Micron – 100% Rtd.*

Thanking you,

Yours faithfully,

*(Dr. Sunil Bose)
Flexible Pavements Division”*

A reading of this letter quite clearly shows that this letter has nothing to do with whether the work done by appellant/plaintiff was defective or not and this letter only talks of the Bitumen Content. Even if the Bitumen Content is as per the desired parameters that does not mean that the work done by the appellant/plaintiff was not defective, and as admitted by him vide Ex. DW-1/2 and Ex. DW-1/3.

8. The argument raised on behalf of the appellant/plaintiff that the appellant's letters Ex. DW-1/2 and Ex. DW-1/3 were got signed under coercion and pressure is an argument without any substance whatsoever because if these letters were written on account of any pressure or coercion, the appellant/plaintiff would have thereafter withdrawn these letters, however, these letters were never withdrawn. In fact, the respondent No. 1 after the rainy season wrote its letter dated 26.9.2000 (Ex. DW-1/1) which

reminded the appellant/plaintiff to rectify the defective work, however, the rectification was not done.

9. A civil case is decided on balance of probabilities. The balance of probabilities shows that in the present case the work done by the appellant/plaintiff was defective in as much as the appellant/plaintiff on his own letterheads and in his own handwriting admitted the work done to be defective vide Ex. DW-1/2 and Ex. DW-1/3. I have, therefore, no reason to interfere with the impugned judgment and the decree dismissing the suit of the appellant/plaintiff.

10. In view of the above, the appeal, being without merit, is dismissed, leaving the parties to bear their own costs. Trial court record be sent back.

VALMIKI J. MEHTA, J.

NOVEMBER 16, 2011

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